

SCHEDULES

SCHEDULE 1

Article 19(1)

MINOR AND CONSEQUENTIAL AMENDMENTS

1. The 1995 Act is amended as follows.
- 2.—(1) Section 2 (past disabilities) is amended as follows.
 - (2) In subsection (1) for “and III” insert “, III and VA”.
 - (3) In subsection (4) for “or Part III” substitute “, III or VA”.
- 3.—(1) Section 3 (guidance) is amended as follows.
 - (2) Before subsection (1) insert—

“(A1) The Office may issue guidance about matters to be taken into account in determining whether a person is a disabled person.”.
 - (3) In subsection (1) (power to issue guidance about particular matters) for the words from the beginning to “may” substitute “Without prejudice to the generality of subsection (A1), the Office may, in particular,”.
 - (4) In subsection (2) (elaboration of the power under subsection (1)), for “The guidance” substitute “Without prejudice to the generality of subsection (A1), guidance about the matters mentioned in subsection (1)”.
 - (5) In subsection (3) (duty of court or tribunal to take guidance into account), for the words from “an impairment” to “activities” substitute “a person is a disabled person”.
4. In the heading to Part II , after “THE EMPLOYMENT FIELD” insert “AND DISTRICT COUNCILS”.
5. In section 4C(2) (provisions whose application to an office or post prevents sections 4D and 4E applying), for “and section 14C” substitute “, section 14C and section 15B(3)(b)”.
6. For section 14C(3) (provisions about practical work experience do not apply where certain other provisions operate) substitute—
 - “(3) This section and section 14D do not apply—
 - (a) to anything which is unlawful under any provision of section 4, sections 19 to 21A, sections 21F to 21J or Part 4; or
 - (b) to anything which would be unlawful under any such provision but for the operation of any provision in or made under this Act.”.
7. In section 16A(2) (meaning of relevant relationship in section 16A)—
 - (a) in paragraph (a) (relationships during which certain acts are unlawful under preceding provisions of Part II), after “under any preceding provision of this Part” insert “, other than sections 15B and 15C”; and
 - (b) in paragraph (b) (which refers to employment services within the meaning of Part III), omit the words “(within the meaning of Part III)”.

Status: This is the original version (as it was originally made).

- 8.**—(1) Section 16B (discriminatory advertisements) is amended as follows.
- (2) After subsection (2B) (which is inserted by Article 11) insert—
- “(2C) Subsection (1) does not apply in relation to an advertisement so far as it invites persons to apply in their capacity as members of a district council, for a relevant appointment or benefit which the council is intending to make or confer.”
- (3) In subsection (3)(i) (which refers to employment services within the meaning of Part III), omit the words “(within the meaning of Part III)”.

- 9.**—(1) Section 17B (enforcement of section 16B and 16C) is amended as follows.
- (2) In subsections (1), (3) and (4)(a), and in the section’s heading, for “16B” substitute “16B(1)”.
- (3) In subsection (4)(c) for “that section” substitute “section 16B(1) or (as the case may be) section 16C”.

- 10.** In section 18D(2) (interpretation of Part II)—
- (a) in the definition of “duty to make reasonable adjustments”, after “14D” insert “, 15C”; and
- (b) in the definition of “physical feature”, after “in relation to any premises, includes” insert “(subject to any provision under section 15C(4)(e))”.

- 11.** In Part II (the employment field and district councils), after section 18D insert—

“Premises provided otherwise than in course of a Part II relationship

18E.—(1) This Part does not apply in relation to the provision, otherwise than in the course of a Part II relationship, of premises by the regulated party to the other party.

- (2) For the purposes of subsection (1)—
- (a) “Part II relationship” means 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 sections 4 to 15C; and
- (b) in relation to a Part II relationship, “regulated party” means the party whose acts of discrimination, or harassment, are made unlawful by sections 4 to 15C.”

- 12.**—(1) Section 19 (discrimination in relation to goods, facilities and services) is amended as follows.

- (2) In subsection (2) (interpretation of sections 19 to 21), for “and 21” substitute “to 21ZA”.
- (3) For subsection (5) (services to which sections 19 to 21 do not apply) substitute—
- “(5) Regulations may provide for subsection (1) and section 21(1), (2) and (4) not to apply, or to apply only to a prescribed extent, in relation to a service of a prescribed description.”
- (4) For subsection (6) (relationship between Part III of the 1995 Act and the 2005 Order) substitute

—

“(6) Nothing in this section or sections 20 to 21A applies to the provision of a service in relation to which discrimination is unlawful under Part III of the 2005 Order.”

- 13.**—(1) Section 21A (employment services) is amended as follows.
- (2) In subsection (1) (meaning of “employment services” in Part III), for “this Part” substitute “this Act”.
- (3) In subsection (4) (application of section 19 in relation to employment services), for paragraph (c) (application of section 19(2)) substitute—

- “(c) in subsection (2), for “sections 20 to 21ZA” there were substituted “sections 20 to 21A”.”
14. In section 22 (discrimination in relation to premises), after subsection (3) insert—
- “(3A) Regulations may make provision, for purposes of subsection (3)—
- (a) as to who is to be treated as being, or as to who is to be treated as not being, a person who manages premises;
 - (b) as to who is to be treated as being, or as to who is to be treated as not being, a person occupying premises.”.

15. In section 23(6) (meaning of “relevant occupier”), after paragraph (a) insert—

“(aa) in a case falling within section 22(3), the person managing the premises, or a near relative of his;”.

16.—(1) Section 24 (meaning of “discrimination” in section 22) is amended as follows.

(2) In subsection (3) (justifications), after paragraph (d) insert—

“(e) in a case to which subsection (3A) applies, the terms are less favourable in order to recover costs which—

 - (i) as a result of the disabled person having a disability, are incurred in connection with the disposal of the premises, and
 - (ii) are not costs incurred in connection with taking steps to avoid liability under section 24G(1);

(f) in a case to which subsection (3B) applies, the disabled person is subjected to the detriment in order to recover costs which—

 - (i) as a result of the disabled person having a disability, are incurred in connection with the management of the premises, and
 - (ii) are not costs incurred in connection with taking steps to avoid liability under section 24A(1) or 24G(1).”.

(3) After that subsection insert—

“(3A) This subsection applies to a case if—

 - (a) the case falls within section 22(1)(a);
 - (b) the premises are to let;
 - (c) the person with power to dispose of the premises is a controller of them; and
 - (d) the proposed disposal of the premises would involve the disabled person becoming a person to whom they are let.

(3B) This subsection applies to a case if—

 - (a) the case falls within section 22(3)(c);
 - (b) the detriment is not eviction;
 - (c) the premises are let premises;
 - (d) the person managing the premises is a controller of them; and
 - (e) the disabled person is a person to whom the premises are let or, although not a person to whom they are let, is lawfully under the letting an occupier of them.

(3C) Section 24G(3) and (4) apply for the purposes of subsection (3A) as for those of section 24G; and section 24A(3) and (4) apply for the purposes of subsection (3B) as for those of section 24A.”.

(4) After subsection (4) insert—

“(4A) Regulations may make provision for the condition specified in subsection (3)(b) not to apply in prescribed circumstances.”.

17. After section 24L (which is inserted by section 14) insert—

“Premises provisions do not apply where other provisions operate

24M.—(1) Sections 22 to 24L do not apply—

- (a) in relation to the provision of premises by a provider of services where he provides the premises in providing services to members of the public;
- (b) in relation to the provision, in the course of a Part II relationship, of premises by the regulated party to the other party;
- (c) in relation to the provision of premises to a student or prospective student—
 - (i) by a responsible body within the meaning of Chapter I or II of Part III of the 2005 Order, or
 - (ii) by an authority in discharging any functions mentioned in Article 19(1) of the 2005 Order; or
- (d) to anything which is unlawful under section 21F or which would be unlawful under that section but for the operation of any provision in or made under this Act.

(2) Subsection (1)(a) has effect subject to any prescribed exceptions.

(3) In subsection (1)(a) “provider of services”, and providing services, have the same meaning as in section 19.

(4) For the purposes of subsection (1)(b)—

- (a) “Part II relationship” means 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 sections 4 to 15C; and
- (b) in relation to a Part II relationship, “regulated party” means the party whose acts of discrimination, or harassment, are made unlawful by sections 4 to 15C.

(5) In subsection (1)(c) “student” includes pupil.”

18. In section 25 (enforcement etc. of Part III), for subsections (7) and (8) substitute—

“(7) Subsection (1) does not apply in relation to a claim by a person that another person—

- (a) has discriminated against him in relation to the provision of employment services; or
- (b) is by virtue of section 57 or 58 to be treated as having discriminated against him in relation to the provision of employment services.

(8) A claim—

- (a) of the kind referred to in subsection (6A) or (7); or
- (b) by a person that another—
 - (i) has subjected him to harassment in a way which is unlawful under section 21A(2), or
 - (ii) is by virtue of section 57 or 58 to be treated as having subjected him to harassment in such a way,

may be presented as a complaint to an industrial tribunal.”.

19. In section 26 (validity and revision of certain agreements), for subsection (1A) substitute—

“(1A) Subsection (1) does not apply to—

- (a) any term in a contract for the provision of employment services;
- (b) any term in a contract which is a group insurance arrangement; or
- (c) a term which—
 - (i) is in an agreement which is not a contract of either of those kinds, and
 - (ii) relates to the provision of employment services or the provision under a group insurance arrangement of facilities by way of insurance.”.

20. In section 27 (alterations to premises occupied under leases), in subsection (1) (circumstances in which section applies)—

- (a) in paragraph (a), after “provider of services” insert “, a public authority (within the meaning given by section 21B) or an association to which section 21F applies”,
- (b) in paragraph (b), for “he” substitute “the occupier”, and
- (c) in paragraph (c), at the end insert “or a duty imposed under section 21E or 21H”.

21. In section 46 (rail vehicle accessibility regulations)—

- (a) omit subsections (3) and (4) (offence of using rail vehicle that does not comply with accessibility regulations);
- (b) in the definition of “regulated rail vehicle” in subsection (6) for “the” substitute “provisions of”.

22.—(1) Section 54A (codes of practice) is amended as follows.

(2) In subsection (1) (persons to whom codes may be issued), after paragraph (b) insert—

- “(ba) public authorities within the meaning given by section 21B;
- (bb) associations to which section 21F applies;”.

(3) After subsection (1B) insert—

“(1C) The Commission may prepare and issue codes of practice giving practical guidance to persons subject to duties under section 49A on how to perform those duties.”.

(4) In subsection (8) (account to be taken of code of practice in proceedings under Part II or III) for “or Part III” substitute “, III or VA , or any proceedings relating to a relevant improvement, ”.

(5) In subsection (9) after the definition of “the Office” insert—

““relevant improvement” means an improvement (within the meaning of section 49C(9)) to premises which, having regard to the disability which a disabled person who lawfully occupies or is intended lawfully the premises has, is likely to facilitate his enjoyment of the premises.”.

23.—(1) Section 55 (victimisation) is amended as follows.

(2) In subsection (1) (victimisation is discrimination for the purposes of Parts II and III of the 1995 Act) after “Part III” insert “(other than sections 24A to 24L)”.

(3) In subsection (2)(a)(iii) (discrimination on account of something done under the Act), after “done anything under” insert “, or by reference to,”.

(4) In subsection (5) (provisions of Part II under which discrimination includes victimisation of a non-disabled person) after “14C” insert “, 15B”.

(5) Subsection (6) is omitted.

24.—(1) Section 64 (application to Crown etc) is amended as follows.

(2) Before subsection (1) insert—

Status: This is the original version (as it was originally made).

“(A1) The following provisions bind the Crown—

- (a) sections 21B to 21E and Part VA; and
- (b) the other provisions of this Act so far as applying for the purposes of provisions mentioned in paragraph (a);

and sections 57 and 58 shall apply for purposes of provisions mentioned in paragraph (a) as if service as a Crown servant were employment by the Crown.”.

(3) In subsection (1) (Act applies to certain acts done on behalf of the Crown as to acts done by private persons), after “This Act” insert “, other than the provisions mentioned in paragraphs (a) and (b) of subsection (A1),”.

(4) In subsection (2A) (subsections (1) and (2) have effect subject to section 64A), for “(1) and” substitute “(A1) to”.

25.—(1) Section 67 (regulations and orders) is amended as follows.

(2) After subsection (3) insert—

“(3A) Where regulations under section 21D(7)(b) provide for the omission of section 21D(5), the provision that may be made by the regulations in exercise of the power conferred by subsection (3)(a) includes provision amending section 21D for the purpose of omitting references to section 21D(5).

(3B) The provision that may be made by regulations under section 21G(5)(b) in exercise of the power conferred by subsection (3)(a) includes provision amending or repealing section 21G(4).”.

(3) For subsection (4) (instruments containing orders under section 50(3), which has been repealed, to be subject to affirmative procedure) substitute—

“(4) Subsection (4A) applies to—

- (a) the first regulations to be made under section 21H(1);
- (b) regulations under section 47J(3);
- (c) regulations under section 67A(3);
- (d) regulations under paragraph 6A(2) of Schedule 1.

(4A) No regulations to which this subsection applies shall be made unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

(4B) An order under section 47(1), if made without a draft having been laid before and approved by a resolution of, the Assembly shall be subject to annulment in pursuance of a resolution of the Assembly; but the exercise of the discretion conferred by this subsection is subject to section 67A.”.

26.—(1) Section 68(1) (interpretation) is amended as follows.

(2) In subsection (1) at the appropriate places insert—

““criminal investigation” has the meaning given in subsection (1A);”;

““criminal proceedings” includes—

- (a) proceedings on dealing summarily with a charge under the Army Act 1955 or the Air Force Act 1955 or on summary trial under the Naval Discipline Act 1957;
- (b) proceedings before a summary appeal court constituted under any of those Acts;
- (c) proceedings before a court-martial constituted under any of those Acts or a disciplinary court constituted under section 52G of the Naval Discipline Act 1957 (c. 53);
- (d) proceedings before the Courts-Martial Appeal Court; and

- (e) proceedings before a Standing Civilian Court;”;
- ““employment services” has the meaning given in section 21A(1);”;
- ““the Office” means the Office of the First Minister and deputy First Minister;”;
- ““public investigator functions” has the meaning given in subsection (1B);”.

(3) After subsection (1) insert—

“(1A) In this Act “criminal investigation” means—

- (a) any investigation which a person in carrying out functions to which section 21B(1) applies has a duty to conduct with a view to it being ascertained whether a person should be charged with an offence, or whether a person charged with or prosecuted for an offence is guilty of it; or
- (b) any investigation which is conducted by a person in carrying out functions to which section 21B(1) applies and which in the circumstances may lead to a decision by that person to institute criminal proceedings which the person has power to conduct.”.

(1B) In this Act “public investigator functions” means functions of conducting criminal investigations or charging offenders.

(1C) In subsections (1A) and (1B)—

“offence” includes any offence of a kind triable by court-martial under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957, and

“offender” is to be construed accordingly.”.

27. In Schedule 1 (provisions supplementing section 1), in paragraph 8 (progressive conditions), in sub-paragraph (1)(a), for “infection by the human immunodeficiency virus” substitute “HIV infection”.

28.—(1) Schedule 2 (modifications with which provisions mentioned in section 2(1) apply to persons who have had a disability) is amended as follows.

(2) In paragraph 2 (references in Parts II and II to a disabled person) for “and III” substitute “, III and VA”.

(3) In paragraph 3 (past disabilities: modification of references to “not disabled”) after “14D(1)” insert “, 15C(1)”.

(4) In paragraph 4 (past disabilities: modification of references to “has a disability”) after “14D(3)(b)” insert “, 15C(3)(a)”.

(5) After paragraph 4 insert—

4A. In section 24(3)(e)(i) and (f)(i), after “having” insert “had”.

4B. In sections 24D(2)(a) and 24J(3)(b), for “did not have” substitute “had not had”.”

29.—(1) Schedule 3 (enforcement and procedure) is amended as follows.

(2) In paragraph 2 (restriction on proceedings for breach of Part II of the Act), after sub-paragraph (2) insert—

“(3) Sub-paragraph (1) does not prevent the bringing of proceedings in respect of an offence under section 16B(2B).”

(3) In Part II (claims under section 25 to enforce Part III of the Act), after paragraph 6 insert—

Status: This is the original version (as it was originally made).

“Staying proceedings on section 21B claim affecting criminal matters

6A.—(1) Sub-paragraph (2) applies where a party to proceedings under section 25 which have arisen by virtue of section 21B(1) has applied for a stay of those proceedings on the grounds of prejudice to—

- (a) particular criminal proceedings;
- (b) a criminal investigation; or
- (c) a decision to institute criminal proceedings.

(2) The court shall grant the stay unless it is satisfied that the continuance of the proceedings under section 25 would not result in the prejudice alleged.

Restriction of remedies for section 21B claim relating to criminal matters

6B.—(1) Sub-paragraph (2) applies to a remedy other than—

- (a) damages; or
- (b) a declaration.

(2) In proceedings under section 25, the remedy shall be obtainable in respect of a relevant discriminatory act only if the court is satisfied that—

- (a) no criminal investigation,
- (b) no decision to institute criminal proceedings, and
- (c) no criminal proceedings,

would be prejudiced by the remedy.

(3) In sub-paragraph (2) “relevant discriminatory act” means an act—

- (a) which is done, or by virtue of section 57 or 58 is treated as done by a person—
 - (i) in carrying out public investigator functions, or
 - (ii) in carrying out functions as a public prosecutor; and
- (b) which is unlawful by virtue of section 21B(1).”

30.—(1) Schedule 3A (validity of contracts, etc.) is amended as follows.

(2) In paragraph 2(3) (meaning of “relevant independent adviser”), after paragraph (c) insert “; or

(d) if he is a person of a description specified in an order made by the Office.”

(3) For paragraph 11 (application of Schedule to Part III of the Act so far as relating to employment services) substitute—

“**11.** Any reference in this Schedule to this Part of this Act shall be taken to include a reference to Part III of this Act, to the extent that it relates to—

- (a) the provision of employment services; or
- (b) the provision under a group insurance arrangement of facilities by way of insurance.

12. Where a term to which section 26(1A)(c) applies is a term in an agreement which is not a contract, Part I of this Schedule shall have effect as if the agreement were a contract.”

31.—(1) Schedule 4 (premises occupied under leases) is amended as follows.

(2) In paragraph 2 (joining lessors in tribunal proceedings)—

- (a) in the heading, the words “or 25(8)” are omitted, and
- (b) in sub-paragraph (1), for “under section 17A or 25(8)” substitute “on a complaint under section 17A”.
- (3) In the heading to Part II (occupation by provider of services) for “provider of services” substitute “persons subject to a duty under section 21, section 21E or 21H”.
- (4) In paragraph 5 (failure to obtain consent to alteration), after “section 21 duty” insert “or the duty imposed under section 21E or 21H”.
- (5) In paragraph 7(1) (joining lessors in proceedings under section 25), for “under section 25, in a case to which this Part of this Schedule applies,” substitute “under section 25 in a case to which section 27 applies, other than a claim presented as a complaint under section 25(8),”.
- (6) After paragraph 7 insert—

“Joining lessors in proceedings relating to group insurance or employment services

7A.—(1) In any proceedings on a complaint under section 25(8) in a case to which section 27 applies, the complainant or the occupier may ask the tribunal hearing the complaint to direct that the lessor be joined as a party to the proceedings.

(2) The request shall be granted if it is made before the hearing of the complaint begins.

(3) The tribunal may refuse the request if it is made after the hearing of the complaint begins.

(4) The request may not be granted if it is made after the tribunal has determined the complaint.

(5) Where a lessor has been so joined as a party to the proceedings, the tribunal may determine—

(a) whether the lessor has—

(i) refused consent to the alteration, or

(ii) consented subject to one or more conditions; and

(b) if so, whether the refusal or any of the conditions was unreasonable.

(6) If, under sub-paragraph (5), the tribunal determines that the refusal or any of the conditions was unreasonable it may take one or more of the following steps—

(a) make such declaration as it considers appropriate;

(b) make an order authorising the occupier to make the alteration specified in the order;

(c) order the lessor to pay compensation to the complainant.

(7) An order under sub-paragraph (6)(b) may require the occupier to comply with conditions specified in the order.

(8) Any step taken by the tribunal under sub-paragraph (6) may be in substitution for, or in addition to, any step taken by the tribunal under section 17A(2).

(9) If the tribunal orders the lessor to pay compensation it may not make an order under section 17A(2) ordering the occupier to do so.”.

32. In Schedule 8, omit paragraph 2(1).