



# Disability Discrimination Act 1995

## 1995 CHAPTER 50

### PART II

#### EMPLOYMENT

##### *Discrimination by employers*

#### **4 Discrimination against applicants and employees.**

- (1) It is unlawful for an employer to discriminate against a disabled person—
  - (a) in the arrangements which he makes for the purpose of determining to whom he should offer employment;
  - (b) in the terms on which he offers that person employment; or
  - (c) by refusing to offer, or deliberately not offering, him employment.
- (2) It is unlawful for an employer to discriminate against a disabled person whom he employs—
  - (a) in the terms of employment which he affords him;
  - (b) in the opportunities which he affords him for promotion, a transfer, training or receiving any other benefit;
  - (c) by refusing to afford him, or deliberately not affording him, any such opportunity; or
  - (d) by dismissing him, or subjecting him to any other detriment.
- (3) Subsection (2) does not apply to benefits of any description if the employer is concerned with the provision (whether or not for payment) of benefits of that description to the public, or to a section of the public which includes the employee in question, unless—
  - (a) that provision differs in a material respect from the provision of the benefits by the employer to his employees; or
  - (b) the provision of the benefits to the employee in question is regulated by his contract of employment; or
  - (c) the benefits relate to training.

*Status: Point in time view as at 02/12/1996. This version of this cross heading contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Disability Discrimination Act 1995, Cross Heading: Discrimination by employers. (See end of Document for details)*

- (4) In this Part “benefits” includes facilities and services.
- (5) In the case of an act which constitutes discrimination by virtue of section 55, this section also applies to discrimination against a person who is not disabled.
- (6) This section applies only in relation to employment at an establishment in Great Britain.

#### Extent Information

**E1** In its application to Northern Ireland, this section has effect subject to the modification set out in Sch. 8; see s. 70(6)

#### Modifications etc. (not altering text)

**C1** S. 4 modified (E.W.) (2.3.1998 subject to art. 1(2) of the amending S.I.) by S.I. 1998/218, arts. 1(2), 3(1), Sch. (with art. 3(2)(b))  
S. 4 modified (1.9.1999) by S.I. 1999/2256, art. 3, Sch.

VALID FROM 03/07/2003

### [<sup>F1</sup>4A Employers: duty to make adjustments

- (1) Where—
  - (a) a provision, criterion or practice applied by or on behalf of an employer, or
  - (b) any physical feature of premises occupied by the employer,
 places the disabled person concerned at a substantial disadvantage in comparison with persons who are not disabled, it is the duty of the employer to take such steps as it is reasonable, in all the circumstances of the case, for him to have to take in order to prevent the provision, criterion or practice, or feature, having that effect.
- (2) In subsection (1), “the disabled person concerned” means—
  - (a) in the case of a provision, criterion or practice for determining to whom employment should be offered, any disabled person who is, or has notified the employer that he may be, an applicant for that employment;
  - (b) in any other case, a disabled person who is—
    - (i) an applicant for the employment concerned, or
    - (ii) an employee of the employer concerned.
- (3) Nothing in this section imposes any duty on an employer in relation to a disabled person if the employer does not know, and could not reasonably be expected to know—
  - (a) in the case of an applicant or potential applicant, that the disabled person concerned is, or may be, an applicant for the employment; or
  - (b) in any case, that that person has a disability and is likely to be affected in the way mentioned in subsection (1).]

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*Changes to legislation: There are currently no known outstanding effects for the Disability Discrimination Act 1995, Cross Heading: Discrimination by employers. (See end of Document for details)*

#### Extent Information

- E2** This section extends to England and Wales and Scotland only until 1.10.2010; a separate s. 4A exists for Northern Ireland only from 21.2.2004 .

#### Textual Amendments

- F1** Ss. 4-4F and cross-headings substituted for ss. 4-6 (E.W.S) (3.7.2003 for certain purposes and 1.10.2004 otherwise) by [The Disability Discrimination Act 1995 \(Amendment\) Regulations 2003 \(S.I. 2003/1673\)](#), regs. 1(2)(3), **5**

#### Modifications etc. (not altering text)

- C2** Ss. 4-6 modified (E.) (1.9.2003) by [The Education \(Modification of Enactments Relating to Employment\) \(England\) Order 2003 \(S.I. 2003/1964\)](#), **art. 3**. {Sch.}
- C3** Ss. 4-6 modified (W.) (12.5.2006) by [The Education \(Modification of Enactments Relating to Employment\) \(Wales\) Order 2006 \(S.I. 2006/1073\)](#), **art. 3**, **Sch.**

## 5 Meaning of “discrimination”.

- (1) For the purposes of this Part, an employer discriminates against a disabled person if—
  - (a) for a reason which relates to the disabled person’s disability, he treats him less favourably than he treats or would treat others to whom that reason does not or would not apply; and
  - (b) he cannot show that the treatment in question is justified.
- (2) For the purposes of this Part, an employer also discriminates against a disabled person if—
  - (a) he fails to comply with a section 6 duty imposed on him in relation to the disabled person; and
  - (b) he cannot show that his failure to comply with that duty is justified.
- (3) Subject to subsection (5), for the purposes of subsection (1) treatment is justified if, but only if, the reason for it is both material to the circumstances of the particular case and substantial.
- (4) For the purposes of subsection (2), failure to comply with a section 6 duty is justified if, but only if, the reason for the failure is both material to the circumstances of the particular case and substantial.
- (5) If, in a case falling within subsection (1), the employer is under a section 6 duty in relation to the disabled person but fails without justification to comply with that duty, his treatment of that person cannot be justified under subsection (3) unless it would have been justified even if he had complied with the section 6 duty.
- (6) Regulations may make provision, for purposes of this section, as to circumstances in which—
  - (a) treatment is to be taken to be justified;
  - (b) failure to comply with a section 6 duty is to be taken to be justified;
  - (c) treatment is to be taken not to be justified;
  - (d) failure to comply with a section 6 duty is to be taken not to be justified.
- (7) Regulations under subsection (6) may, in particular—
  - (a) make provision by reference to the cost of affording any benefit; and

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- (b) in relation to benefits under occupational pension schemes, make provision with a view to enabling uniform rates of contributions to be maintained.

**Modifications etc. (not altering text)**

- C4** S. 5 modified (E.W.) (2.3.1998 subject to art. 1(2) of the amending S.I.) by S.I. 1998/218, arts. 1(2), 3(1), **Sch.** (with art. 3(2)(b))  
S. 5 modified (1.9.1999) by S.I. 1999/2256, art. 3, **Sch.**

**Commencement Information**

- II** S. 5 wholly in force at 2.12.1996; s. 5 not in force at Royal Assent see s. 70(3); s. 5(6)(7) in force (E.W.S.) at 6.6.1996 by S.I. 1996/1474, art. 2(1), **Sch. Pt. I**; s. 5(6)(7) in force (N.I.) at 11.7.1996 by S.R. 1996/280, art. 2(1); s. 5(1)-(5) in force (E.W.S.) at 2.12.1996 by S.I. 1996/1474, art. 2(3), **Sch. Pt. III**; s. 5(1)-(5) in force (N.I.) at 2.12.1996 by S.R. 1996/280, art. 2(2), **Sch. Pt. II**

**6 Duty of employer to make adjustments.**

- (1) Where—
- (a) any arrangements made by or on behalf of an employer, or
  - (b) any physical feature of premises occupied by the employer,
- place the disabled person concerned at a substantial disadvantage in comparison with persons who are not disabled, it is the duty of the employer to take such steps as it is reasonable, in all the circumstances of the case, for him to have to take in order to prevent the arrangements or feature having that effect.
- (2) Subsection (1)(a) applies only in relation to—
- (a) arrangements for determining to whom employment should be offered;
  - (b) any term, condition or arrangements on which employment, promotion, a transfer, training or any other benefit is offered or afforded.
- (3) The following are examples of steps which an employer may have to take in relation to a disabled person in order to comply with subsection (1)—
- (a) making adjustments to premises;
  - (b) allocating some of the disabled person's duties to another person;
  - (c) transferring him to fill an existing vacancy;
  - (d) altering his working hours;
  - (e) assigning him to a different place of work;
  - (f) allowing him to be absent during working hours for rehabilitation, assessment or treatment;
  - (g) giving him, or arranging for him to be given, training;
  - (h) acquiring or modifying equipment;
  - (i) modifying instructions or reference manuals;
  - (j) modifying procedures for testing or assessment;
  - (k) providing a reader or interpreter;
  - (l) providing supervision.
- (4) In determining whether it is reasonable for an employer to have to take a particular step in order to comply with subsection (1), regard shall be had, in particular, to—
- (a) the extent to which taking the step would prevent the effect in question;

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- (b) the extent to which it is practicable for the employer to take the step;
- (c) the financial and other costs which would be incurred by the employer in taking the step and the extent to which taking it would disrupt any of his activities;
- (d) the extent of the employer's financial and other resources;
- (e) the availability to the employer of financial or other assistance with respect to taking the step.

This subsection is subject to any provision of regulations made under subsection (8).

- (5) In this section, “the disabled person concerned” means—
  - (a) in the case of arrangements for determining to whom employment should be offered, any disabled person who is, or has notified the employer that he may be, an applicant for that employment;
  - (b) in any other case, a disabled person who is—
    - (i) an applicant for the employment concerned; or
    - (ii) an employee of the employer concerned.
- (6) Nothing in this section imposes any duty on an employer in relation to a disabled person if the employer does not know, and could not reasonably be expected to know—
  - (a) in the case of an applicant or potential applicant, that the disabled person concerned is, or may be, an applicant for the employment; or
  - (b) in any case, that that person has a disability and is likely to be affected in the way mentioned in subsection (1).
- (7) Subject to the provisions of this section, nothing in this Part is to be taken to require an employer to treat a disabled person more favourably than he treats or would treat others.
- (8) Regulations may make provision, for the purposes of subsection (1)—
  - (a) as to circumstances in which arrangements are, or a physical feature is, to be taken to have the effect mentioned in that subsection;
  - (b) as to circumstances in which arrangements are not, or a physical feature is not, to be taken to have that effect;
  - (c) as to circumstances in which it is reasonable for an employer to have to take steps of a prescribed description;
  - (d) as to steps which it is always reasonable for an employer to have to take;
  - (e) as to circumstances in which it is not reasonable for an employer to have to take steps of a prescribed description;
  - (f) as to steps which it is never reasonable for an employer to have to take;
  - (g) as to things which are to be treated as physical features;
  - (h) as to things which are not to be treated as such features.
- (9) Regulations made under subsection (8)(c), (d), (e) or (f) may, in particular, make provision by reference to the cost of taking the steps concerned.
- (10) Regulations may make provision adding to the duty imposed on employers by this section, including provision of a kind which may be made under subsection (8).
- (11) This section does not apply in relation to any benefit under an occupational pension scheme or any other benefit payable in money or money's worth under a scheme or arrangement for the benefit of employees in respect of—

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- (a) termination of service;
  - (b) retirement, old age or death;
  - (c) accident, injury, sickness or invalidity; or
  - (d) any other prescribed matter.
- (12) This section imposes duties only for the purpose of determining whether an employer has discriminated against a disabled person; and accordingly a breach of any such duty is not actionable as such.

#### **Modifications etc. (not altering text)**

- C5** S. 6 modified (E.W.) (2.3.1998) by S.I. 1998/218, art. 3, **Sch.** (with art. 1(2))  
S. 6 modified (1.9.1999) by S.I. 1999/2256, art. 3, **Sch.**

#### **Commencement Information**

- I2** S. 6 wholly in force at 2.12.1996; s. 6 not in force at Royal Assent see s. 70(3); s. 6(8)(9)(10) in force (E.W.S.) at 6.6.1996 by S.I. 1996/1474, art. 2(1), **Sch. Pt. I**; s. 6(8)(9)(10) in force (N.I.) at 11.7.1996 by S.R. 1996/280, art. 2(1), **Sch. Pt. I**; s. 6(1)-(7)(11)(12) in force (E.W.S.) at 2.12.1996 by S.I. 1996/1474, art. 2(3), **Sch. Pt. III**; s. 6(1)-(7)(11)(12) in force (N.I.) at 2.12.1996 by S.R. 1996/280, art. 2(2), **Sch. Pt. II**

## **7 Exemption for small businesses.**

- (1) Nothing in this Part applies in relation to an employer who has fewer than 20 employees.
- (2) The Secretary of State may by order amend subsection (1) by substituting a different number (not greater than 20) for the number for the time being specified there.
- (3) In this section—
  - “anniversary” means the anniversary of the coming into force of this section; and
  - “review” means a review of the effect of this section.
- (4) Before making any order under subsection (2), the Secretary of State shall conduct a review.
- (5) Unless he has already begun or completed a review under subsection (4), the Secretary of State shall begin to conduct a review immediately after the fourth anniversary.
- (6) Any review shall be completed within nine months.
- (7) In conducting any review, the Secretary of State shall consult—
  - (a) such organisations representing the interests of employers as he considers appropriate; and
  - (b) such organisations representing the interests of disabled persons in employment or seeking employment as he considers appropriate.
- (8) If, on completing a review, the Secretary of State decides to make an order under subsection (2), he shall make such an order to come into force not later than one year after the commencement of the review.

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- (9) If, on completing a review, the Secretary of State decides not to make such an order, he shall not later than one year after the commencement of the review lay before Parliament a report—
- (a) summarising the results of the review; and
  - (b) giving the reasons for his decision.
- (10) Any report made by the Secretary of State under subsection (9) shall include a summary of the views expressed to him in his consultations.

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**Extent Information**

- E3** In its application to Northern Ireland, this section has effect subject to the modifications set out in Sch. 8; see s. 70(6)

**Status:**

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**Changes to legislation:**

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