



# Disability Discrimination Act 1995

## 1995 CHAPTER 50

### PART IV

#### EDUCATION

#### [<sup>F1</sup>CHAPTER 1

#### SCHOOLS]

#### *[<sup>F1</sup>Duties of responsible bodies]*

#### Textual Amendments

**F1** Pt. IV Ch. 1: Cross-heading and s. 28A inserted (E.W.S.) (1.9.2002) by 2001 c. 10, s. 11(1) (with s. 43(13)); S.I. 2002/2217, art. 3, Sch. 1 Pt. 1

#### [<sup>F2</sup>28A Discrimination against disabled pupils and prospective pupils

- (1) It is unlawful for the body responsible for a school to discriminate against a disabled person—
  - (a) in the arrangements it makes for determining admission to the school as a pupil;
  - (b) in the terms on which it offers to admit him to the school as a pupil; or
  - (c) by refusing or deliberately omitting to accept an application for his admission to the school as a pupil.
- (2) It is unlawful for the body responsible for a school to discriminate against a disabled pupil in the education or associated services provided for, or offered to, pupils at the school by that body.
- (3) The Secretary of State may by regulations prescribe services which are, or services which are not, to be regarded for the purposes of subsection (2) as being—

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- (a) education; or
  - (b) an associated service.
- (4) It is unlawful for the body responsible for a school to discriminate against a disabled pupil by excluding him from the school, whether permanently or temporarily.
- (5) The body responsible for a school is to be determined in accordance with Schedule 4A, and in the remaining provisions of this Chapter is referred to as the “responsible body”.
- (6) 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.]

#### Textual Amendments

**F2** S. 28A inserted (E.W.S.) (1.9.2002) by 2001 c. 10, s. 11(1) (with s. 43(13)); S.I. 2002/2217, art. 3, Sch. 1 Pt. 1

#### [<sup>F3</sup>28B Meaning of “discrimination”

- (1) For the purposes of section 28A, 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 section 28A, a responsible body also discriminates against a disabled person if—
- (a) it fails, to his detriment, to comply with section 28C; 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) Subsections (6) to (8) apply in determining whether, for the purposes of this section—
- (a) less favourable treatment of a person, or
  - (b) failure to comply with section 28C,
- is justified.
- (6) Less favourable treatment of a person is justified if it is the result of a permitted form of selection.
- (7) Otherwise, less favourable treatment, or a failure to comply with section 28C, is justified only if the reason for it is both material to the circumstances of the particular case and substantial.

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- (8) If, in a case falling within subsection (1)—
- (a) the responsible body is under a duty imposed by section 28C in relation to the disabled person, but
  - (b) it fails without justification to comply with that duty,
- its treatment of that person cannot be justified under subsection (7) unless that treatment would have been justified even if it had complied with that duty.]

#### Textual Amendments

**F3** S. 28B inserted (E.W.S.) (1.9.2002) by 2001 c. 10, s. 12 (with s. 43(13)); S.I. 2002/2217, art. 3, Sch. 1 Pt. 1

### [<sup>F4</sup>28C Disabled pupils not to be substantially disadvantaged

- (1) The responsible body for a school must 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 the admission of pupils to the school, disabled persons are not placed at a substantial disadvantage in comparison with persons who are not disabled; and
  - (b) in relation to education and associated services provided for, or offered to, pupils at the school by it, disabled pupils are not placed at a substantial disadvantage in comparison with pupils who are not disabled.
- (2) That does not require the responsible body to—
- (a) remove or alter a physical feature (for example, one arising from the design or construction of the school premises or the location of resources); or
  - (b) provide auxiliary aids or services.
- (3) Regulations may make provision, for the purposes of this section—
- (a) as to circumstances in which it is reasonable for a responsible body to have to take steps of a prescribed description;
  - (b) as to steps which it is always reasonable for a responsible body to have to take;
  - (c) as to circumstances in which it is not reasonable for a responsible body to have to take steps of a prescribed description;
  - (d) as to steps which it is never reasonable for a responsible body to have to take.
- (4) In considering whether it is reasonable for it to have to take a particular step in order to comply with its duty under subsection (1), a responsible body must have regard to any relevant provisions of a code of practice issued under [<sup>F5</sup>section 14 of the Equality Act 2006.]
- (5) Subsection (6) applies if, in relation to a person, a confidentiality request has been made of which a responsible body is aware.
- (6) 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 subsection (1), regard shall be had to the extent to which taking the step in question is consistent with compliance with that request.

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- (7) “Confidentiality request” means a request which asks for the nature, or asks for the existence, of a disabled person’s disability to be treated as confidential and which satisfies either of the following conditions—
- (a) it is made by that person’s parent; or
  - (b) it is made by that person himself and the responsible body reasonably believes that he has sufficient understanding of the nature of the request and of its effect.
- (8) This section 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.]

#### Textual Amendments

- F4** S. 28C inserted (E.W.S.) (1.9.2002) by 2001 c. 10, s. 13 (with s. 43(13)); S.I. 2002/2217, art. 3, Sch. 1 Pt. 1
- F5** Words in s. 28C(4) substituted (1.10.2007) by Equality Act 2006 (c. 3), ss. 40, 93, Sch. 3 para. 46 (with s. 92); S.I. 2007/2603, art. 2 (subject to art. 3)

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

- C1** S. 28C: Functions of a local education authority made exercisable by authorised persons (1.4.2002) by S.I. 2002/928, art. 3, Sch. 3 para. (q)

### [<sup>F6</sup>28D Accessibility strategies and plans

- (1) Each local education authority must prepare, in relation to schools for which they are the responsible body—
  - (a) an accessibility strategy;
  - (b) further such strategies at such times as may be prescribed.
- (2) An accessibility strategy is a strategy for, over a prescribed period—
  - (a) increasing the extent to which disabled pupils can participate in the schools’ curriculums;
  - (b) improving the physical environment of the schools for the purpose of increasing the extent to which disabled pupils are able to take advantage of education and associated services provided or offered by the schools; and
  - (c) improving the delivery to disabled pupils—
    - (i) within a reasonable time, and
    - (ii) in ways which are determined after taking account of their disabilities and any preferences expressed by them or their parents, of information which is provided in writing for pupils who are not disabled.
- (3) An accessibility strategy must be in writing.
- (4) Each local education authority must keep their accessibility strategy under review during the period to which it relates and, if necessary, revise it.
- (5) It is the duty of each local education authority to implement their accessibility strategy.
- (6) [<sup>F7</sup>An inspection under section 38 of the Education Act 1997 (inspections of local education authorities) may extend to the performance by a local education authority

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of their functions in relation to the preparation, review, revision and implementation of their accessibility strategy.]

- (7) Subsections (8) to (13) apply to—
- (a) maintained schools [<sup>F8</sup>and maintained nursery schools];
  - (b) independent schools ; and
  - (c) special schools which are not maintained special schools but which are approved by the Secretary of State, or by the [<sup>F9</sup>Welsh Ministers], under section 342 of the Education Act 1996.
- (8) The responsible body must prepare—
- (a) an accessibility plan;
  - (b) further such plans at such times as may be prescribed.
- (9) An accessibility plan is a plan for, over a prescribed period—
- (a) increasing the extent to which disabled pupils can participate in the school’s curriculum;
  - (b) improving the physical environment of the school for the purpose of increasing the extent to which disabled pupils are able to take advantage of education and associated services provided or offered by the school; and
  - (c) improving the delivery to disabled pupils—
    - (i) within a reasonable time, and
    - (ii) in ways which are determined after taking account of their disabilities and any preferences expressed by them or their parents,of information which is provided in writing for pupils who are not disabled.
- (10) An accessibility plan must be in writing.
- (11) During the period to which the plan relates, the responsible body must keep its accessibility plan under review and, if necessary, revise it.
- (12) It is the duty of the responsible body to implement its accessibility plan.
- (13) An inspection under the [<sup>F10</sup>Part 1 of the Education Act 2005] may extend to the performance by the responsible body of its functions in relation to the preparation, publication, review, revision and implementation of its accessibility plan.
- (14) For a maintained school [<sup>F11</sup>or maintained nursery school], the duties imposed by subsections (8) to (12) are duties of the governing body.
- (15) Regulations may prescribe services which are, or services which are not, to be regarded for the purposes of this section as being—
- (a) education; or
  - (b) an associated service.
- (16) In this section and in section 28E, “local education authority” has the meaning given in section 12 of the Education Act 1996.
- [<sup>F12</sup>(17) In this section—
- “prescribed” means prescribed in regulations;
  - “regulations” means—
    - (a) in relation to England, regulations made by the Secretary of State, and
    - (b) in relation to Wales, regulations made by the [<sup>F9</sup>Welsh Ministers].]

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- (18) “Disabled pupil” includes a disabled person who may be admitted to the school as a pupil.
- (19) “Maintained school” and “independent school” have the meaning given in section 28Q(5).]

#### Textual Amendments

- F6** S. 28D inserted (E.W.S.) (1.7.2002 for specified purposes and otherwise 1.9.2002 for E.S and 8.10.2003 for W.) by 2001 c. 10, ss. 14(1), 43(3) (with s. 43(13)); S.I. 2002/1721, art. 4, Sch. Pt. II; S.I. 2002/2217, art. 4, Sch. 1 Pt. II; S.I. 2003/2532, art. 2, Sch.
- F7** S. 28D(6) repealed (E.W.) (1.4.2005 for E. and 31.7.2008 for W.) by Children Act 2004 (c. 31), ss. 64, 67, Sch. 5 Pt. 3; S.I. 2005/394, art. 2(2)(g); S.I. 2008/1904, art. 2(c)
- F8** Words in s. 28D(7)(a) inserted (W.) (31.10.2005) by The Education Act 2002 (Transitional Provisions and Consequential Amendments) (Wales) Regulations 2005 (S.I. 2005/2913), reg. 3
- F9** S. 28D(7)(c)(17)(b): words substituted by The Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order (S.I. 2007/1388), arts. 1, 3, {Sch. 1 para. 51(3)}, the amending provision coming into force immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) - see s. 161(5) of the Government of Wales Act 2006.
- F10** Words in s. 28D(13) substituted (1.9.2005 for E. and 1.9.2006 for W.) by Education Act 2005 (c. 18), ss. 61, 125, Sch. 9 para. 8; S.I. 2005/2034, art. 4; S.I. 2006/1338, art. 3, Sch.
- F11** Words in s. 28D(14) inserted (1.9.2003 except in relation to W. and 31.10.2005 for W.) by 2002 c. 32, ss. 215(1), 216, Sch. 21 para. 26 (with ss. 210(8), 214(4)); S.I. 2003/1667, art. 4; S.I. 2005/2910, art. 4, Sch.
- F12** S. 28D(17) substituted (30.6.2005) by Disability Discrimination Act 2005 (c. 13), ss. 19(1), 20(3)-(6), Sch. 1 para. 24(2); S.I. 2005/1676, art. 2(1)(c)

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

- C2** S. 28D(1)-(3)(5)(6): Functions of a local education authority made exercisable by authorised persons (E.) (1.4.2002) by S.I. 2002/928, art. 3, Sch. 3 para. (r)

### [<sup>F13</sup>28E Accessibility strategies and plans: procedure

- (1) In preparing their accessibility strategy, a local education authority must have regard to—
- (a) the need to allocate adequate resources for implementing the strategy; and
  - (b) any guidance issued as to—
    - (i) the content of an accessibility strategy;
    - (ii) the form in which it is to be produced; and
    - (iii) the persons to be consulted in its preparation.
- (2) A local education authority must have regard to any guidance issued as to compliance with the requirements of section 28D(4).
- (3) Guidance under subsection (1)(b) or (2) may be issued—
- (a) for England, by the Secretary of State; and
  - (b) for Wales, by the [<sup>F14</sup>Welsh Ministers].
- (4) In preparing an accessibility plan, the responsible body must have regard to the need to allocate adequate resources for implementing the plan.

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- (5) If the Secretary of State asks for a copy of—
- (a) the accessibility strategy prepared by a local education authority in England, or
  - (b) the accessibility plan prepared by the proprietor of an independent school (other than [<sup>F15</sup>an Academy]) in England,
- the strategy or plan must be given to him.
- (6) If the [<sup>F16</sup>Welsh Ministers ask] for a copy of—
- (a) the accessibility strategy prepared by a local education authority in Wales, or
  - (b) the accessibility plan prepared by the proprietor of an independent school [<sup>F17</sup>(other than an Academy)] in Wales,
- the strategy or plan must be given to [<sup>F18</sup>them].
- (7) If asked to do so, a local education authority must make a copy of their accessibility strategy available for inspection at such reasonable times as they may determine.
- (8) If asked to do so, the proprietor of an independent school which is not [<sup>F19</sup>an Academy] must make a copy of his accessibility plan available for inspection at such reasonable times as he may determine.]

#### Textual Amendments

- F13** S. 28E inserted (E.W.S.) (1.7.2002 for specified purposes and otherwise 1.9.2002 for E.S. and 8.10.2003. for W.) by 2001 c. 10, ss. 15, 43(3) (with s. 43(13)); S.I. 2002/1721, art. 4, Sch. Pt. II; S.I. 2002/2217, art. 4, Sch. 1 Pt. II; S.I. 2003/2532, **art. 2**, Sch.
- F14** Words in s. 28E(3)(b) substituted by The Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007 (S.I. 2007/1388), arts. 1, 3, **Sch. 1 para. 52(2)**, the amending provision coming into force immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) - see s. 161(5) of the Government of Wales Act 2006.
- F15** Words in s. 28E(5)(b) substituted (26.7.2002) by 2002 c. 32, s. 65, **Sch. 7 para. 5(2)(a)** (with ss. 210(8), 214(4)); S.I. 2002/2002, **art. 2**
- F16** Words in s. 28E(6) substituted by The Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007 (S.I. 2007/1388), arts. 1, 3, **Sch. 1 para. 52(3)**, the amending provision coming into force immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) - see s. 161(5) of the Government of Wales Act 2006.
- F17** Words in s. 28E(6)(b) inserted (26.7.2002) by 2002 c. 32, s. 65, **Sch. 7 para. 5(2)(b)** (with ss. 210(8), 214(4)); S.I. 2002/2002, **art. 2**
- F18** Word in s. 28E(6) substituted by The Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order (S.I. 2007/1388), arts. 1, 3, {Sch. 1 para. 52(3)}, the amending provision coming into force immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) - see s. 161(5) of the Government of Wales Act 2006.
- F19** Words in s. 28E(8) substituted (26.7.2002) by 2002 c. 32, s. 65, **Sch. 7 para. 5(2)(c)** (with ss. 210(8), 214(4)); S.I. 2002/2002, **art. 2**

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