



# Disability Discrimination Act 1995

## 1995 CHAPTER 50

### PART IV

#### EDUCATION

#### [<sup>F1</sup>CHAPTER 2

#### FURTHER AND HIGHER EDUCATION]

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#### Textual Amendments

- F1** Pt. IV Ch. 2: Chapter heading, cross-heading and s. 28R inserted (E.W.S) (30.5.2002 for certain purposes and otherwise 1.9.2002) by 2001 c. 10, s. 26 (with s. 43(13)); S.I. 2002/1647, art. 3; S.I. 2002/2217, art. 3, Sch. 1 Pt. 1

#### [<sup>F2</sup>Duties of responsible bodies]

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#### Textual Amendments

- F2** Pt. IV Ch. 2: Cross-heading and s. 28R inserted (30.5.2002 for certain purposes and otherwise 1.9.2002) by 2001 c. 10, s. 26 (with s. 43(13)); S.I. 2002/1647, art. 3; S.I. 2002/2217, art. 3, Sch. 1 Pt. 1

#### [<sup>F3</sup>28R Discrimination against disabled students and prospective students

- (1) It is unlawful for the body responsible for an educational institution to discriminate against a disabled person—
- in the arrangements it makes for determining admissions to the institution;
  - in the terms on which it offers to admit him to the institution; or

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- (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 excluding him from the institution, whether permanently or temporarily.
- (4) 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.
- (5) The body responsible for an educational institution is to be determined in accordance with Schedule 4B, and in the remaining provisions of this Chapter is referred to as the “responsible body”.
- (6) “Educational institution”, in relation to England and Wales, means an institution—
  - (a) within the higher education sector;
  - (b) within the further education sector; or
  - (c) designated in an order made by the Secretary of State.
- (7) “Educational institution”, in relation to Scotland, means—
  - (a) an institution within the higher education sector (within the meaning of section 56(2) of the Further and Higher Education (Scotland) Act 1992);
  - (b) a college of further education with a board of management within the meaning of section 36 of that Act;
  - (c) a central institution within the meaning of section 135 of the Education (Scotland) Act 1980;
  - (d) a college of further education maintained by an education authority in the exercise of their further education functions in providing courses of further education within the meaning of section 1(5)(b)(ii) of that Act;
  - (e) an institution designated in an order made by the Secretary of State.
- (8) Subsection (6) is to be read with section 91 of the Further and Higher Education Act 1992.
- (9) The Secretary of State may not make an order under subsection (6)(c) or (7)(e) unless he is satisfied that the institution concerned is wholly or partly funded from public funds.
- (10) Before making an order under subsection (7)(e), the Secretary of State must consult the Scottish Ministers.
- (11) “Student services” means services of any description which are provided wholly or mainly for students.
- (12) Regulations may make provision as to services which are, or are not, to be regarded for the purposes of subsection (2) as student services.]

#### **Textual Amendments**

**F3** S. 28R inserted (30.5.2002 for certain purposes and otherwise 1.9.2002) by 2001 c. 10, s. 26 (with s. 43(13)); S.I. 2002/1647, art. 3; S.I. 2002/2217, art. 3, Sch. 1 Pt. 1

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## [<sup>F4</sup>28S Meaning of “discrimination”

- (1) For the purposes of section 28R, 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 28R, a responsible body also discriminates against a disabled person if—
  - (a) it fails, to his detriment, to comply with section 28T; 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 (9) apply in determining whether, for the purposes of this section—
  - (a) less favourable treatment of a person, or
  - (b) failure to comply with section 28T,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 section 28T, 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 subsection (1)—
  - (a) the responsible body is under a duty imposed by section 28T 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 subsection (8) unless that treatment would have been justified even if it had complied with that duty.]

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#### Textual Amendments

**F4** S. 28S inserted (1.9.2002) by 2001 c. 10, s. 27 (with s. 43(13)); S.I. 2002/2217, art. 3, Sch. 1 Pt. 1

VALID FROM 30/06/2006

#### [<sup>F5</sup>28SA Meaning of “harassment“

- (1) For the purposes of this Chapter, a responsible body subjects a disabled person to harassment where, for a reason which relates to the disabled person's disability, that body engages in unwanted conduct which has the purpose or effect of—
  - (a) violating the disabled person's dignity, or
  - (b) creating an intimidating, hostile, degrading, humiliating or offensive environment for him.
- (2) Conduct shall be regarded as having the effect referred to in subsection (1) (a) or (b) only if, having regard to all the circumstances, including in particular the perception of the disabled person, it should reasonably be considered as having that effect.]

#### Textual Amendments

**F5** S. 28SA inserted (30.6.2006 for certain purposes and otherwise 1.9.2006) by The Disability Discrimination Act 1995 (Amendment) (Further and Higher Education) Regulations 2006 (S.I. 2006/1721), regs. 1, 7

#### [<sup>F6</sup>28T Disabled students not to be substantially disadvantaged

- (1) The responsible body for an educational institution 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 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 subsection (1), a responsible body must have regard to any relevant provisions of a code of practice issued under section 53A.
- (3) Subsection (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 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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- (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 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

**F6** S. 28T inserted (1.9.2002) by 2001 c. 10, s. 28 (with s. 43(13)); S.I. 2002/2217, arts. 5, 6

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

**C1** S. 28T: 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. (s)

**C2** S. 28T(1) applied (with modifications) (temp. from 28.8.2002) by S.I. 2002/2217, art. 6, Sch. 2

*[<sup>F7</sup> Other providers of further education or training facilities]*

#### Textual Amendments

**F7** Pt. IV Ch. 2: Cross-heading and s. 28U inserted (1.9.2002) by 2001 c. 10, s. 29 (with s. 43(13)); S.I. 2002/2217, art. 3, Sch. 1 Pt. 1

### **[<sup>F8</sup>28U Further education etc. provided by local education authorities and schools**

- (1) Part 1 of Schedule 4C modifies this Chapter for the purpose of its application in relation to—
- (a) higher education secured by a local education authority;
  - (b) further education—
    - (i) secured by a local education authority; or
    - (ii) provided by the governing body of a maintained school;
  - (c) recreational or training facilities secured by a local education authority.
- (2) Part 2 of that Schedule modifies this Chapter for the purpose of its application in relation to—
- (a) further education, within the meaning of section 1(5)(b)(iii) of the Education (Scotland) Act 1980;
  - (b) facilities whose provision is secured by an education authority under section 1(3) of that Act.]

#### Textual Amendments

**F8** S. 28U inserted (1.9.2002) by 2001 c. 10, s. 29 (with s. 43(13)); S.I. 2002/2217, art. 3, Sch. 1 Pt. 1

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VALID FROM 30/06/2006

*[<sup>F9</sup>Other unlawful acts]*

**Textual Amendments**

- F9** Cross-heading inserted after s. 28U (30.6.2006 for certain purposes and otherwise 1.9.2006) by [The Disability Discrimination Act 1995 \(Amendment\) \(Further and Higher Education\) Regulations 2006 \(S.I. 2006/1721\)](#), regs. 1, **11**

**[<sup>F10</sup>28UARelationships which have come to an end**

- (1) This section applies where—
  - (a) there has been a relevant relationship between a disabled person and a responsible body, and
  - (b) that relationship has come to an end.
- (2) In this section a “relevant relationship” is 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 any preceding provision of this Chapter.
- (3) It is unlawful for the responsible body—
  - (a) to discriminate against the disabled person by subjecting him to a detriment, or
  - (b) to subject the disabled person to harassment,
 where the discrimination or harassment arises out of and is closely connected to the relevant relationship.
- (4) This subsection applies where—
  - (a) a provision, criterion or practice applied by the responsible body to the disabled person in relation to any matter arising out of the relevant relationship, or
  - (b) a physical feature of premises which are occupied by the responsible body, places the disabled person at a substantial disadvantage in comparison with persons who are not disabled but are in the same position as the disabled person in relation to the responsible body.
- (5) Where subsection (4) applies, it is the duty of the responsible body 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.
- (6) Subsection (5) 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.
- (7) Nothing in subsection (5) imposes any duty on the responsible body if it does not know and could not reasonably be expected to know, that the person has a disability and is likely to be affected in the way mentioned in that subsection.

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- (8) In subsection (2), reference to an act of discrimination or harassment which is unlawful includes, in the case of a relationship which has come to an end before the commencement of this section, reference to such an act which would, after the commencement of this section, be unlawful.]

#### Textual Amendments

- F10** S. 28UA inserted (30.6.2006 for certain purposes and otherwise 1.9.2006) by [The Disability Discrimination Act 1995 \(Amendment\) \(Further and Higher Education\) Regulations 2006 \(S.I. 2006/1721\)](#), regs. 1, 12

#### [<sup>F11</sup>28UB] Instructions and pressure to discriminate

- (1) It is unlawful for a responsible body to instruct another person to do any act which is unlawful under this Chapter or to procure or attempt to procure the doing of any such unlawful act by that other person.
- (2) It is also unlawful for a responsible body to induce, or attempt to induce, another person to do any act which is unlawful under this Chapter by —
- (a) providing or offering to provide that person with any benefit, or
  - (b) subjecting or threatening to subject that person to any detriment.
- (3) An attempted inducement is not prevented from falling within subsection (2) because it is not made directly to the person in question, if it is made in such a way that he is likely to hear of it.
- (4) Proceedings in respect of a contravention of subsection (1) may be brought only—
- (a) by the Commission for Equality and Human Rights, and
  - (b) in accordance with section 25 of the Equality Act 2006.]

#### Textual Amendments

- F11** S. 28UB inserted (30.6.2006 for certain purposes and otherwise 1.9.2006) by [The Disability Discrimination Act 1995 \(Amendment\) \(Further and Higher Education\) Regulations 2006 \(S.I. 2006/1721\)](#), regs. 1, 13

#### [<sup>F12</sup>28UC] Discriminatory advertisements

- (1) It is unlawful for a responsible body to publish or cause to be published an advertisement which—
- (a) invites applications in relation to any course or student service provided or offered by it, or any qualification conferred by it, and
  - (b) indicates, or might reasonably be understood to indicate, that such an application will or may be determined to any extent by reference to—
    - (i) the applicant not having any disability, or any particular disability, or

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(ii) any reluctance on the part of the person determining the application to comply with a duty imposed on it by section 28T.

- (2) Subsection (1) does not apply where it would not in fact be unlawful under this Chapter for an application to be determined in the manner indicated (or understood to be indicated) in the advertisement.
- (3) In this section, “advertisement” includes every form of advertisement or notice, whether to the public or not.
- (4) Proceedings in respect of a contravention of subsection (1) may be brought only—
  - (a) by the Commission for Equality and Human Rights, and
  - (b) in accordance with section 25 of the Equality Act 2006.]

#### Textual Amendments

**F12** S. 28UC inserted (30.6.2006 for certain purposes and otherwise 1.9.2006) by [The Disability Discrimination Act 1995 \(Amendment\) \(Further and Higher Education\) Regulations 2006 \(S.I. 2006/1721\)](#), [regs. 1, 14](#)

[<sup>F13</sup>Enforcement, etc.]

#### Textual Amendments

**F13** Pt. IV Ch. 2: Cross-heading and s. 28V inserted (1.9.2002) by [2001 c. 10, s. 30](#) (with [s. 43\(13\)](#)); [S.I. 2002/2217](#), art. 3, [Sch. 1 Pt. 1](#)

### [<sup>F14</sup>28V Enforcement, remedies and procedure

- (1) A claim by a person—
  - (a) that a responsible body has discriminated against him in a way which is unlawful under this Chapter,
  - (b) that a responsible body is by virtue of section 57 or 58 to be treated as having discriminated against him in such a way, or
  - (c) that a person is by virtue of section 57 to be treated as having discriminated against him in such a way,
 may be made the subject of civil proceedings in the same way as any other claim in tort or (in Scotland) in reparation for breach of statutory duty.
- (2) For the avoidance of doubt it is hereby declared that damages in respect of discrimination in a way which is unlawful under this Chapter may include compensation for injury to feelings whether or not they include compensation under any other head.
- (3) Proceedings in England and Wales may be brought only in a county court.
- (4) Proceedings in Scotland may be brought only in a sheriff court.
- (5) The remedies available in such proceedings are those which are available in the High Court or (as the case may be) the Court of Session.



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- (6) The fact that a person who brings proceedings under this Part against a responsible body may also be entitled to bring proceedings against that body under Part 2 is not to affect the proceedings under this Part.
- (7) Part 4 of Schedule 3 makes further provision about the enforcement of this Part and about procedure.]

#### Textual Amendments

**F14** S. 28V inserted (1.9.2002) by 2001 c. 10, s. 30 (with s. 43(13)); S.I. 2002/2217, art. 3, Sch. 1 Pt. 1

### [<sup>F15</sup>28W Occupation of premises by educational institutions

- (1) This section applies if—
- (a) premises are occupied by an educational institution under a lease;
  - (b) but for this section, the responsible body would not be entitled to make a particular alteration to the premises; and
  - (c) the alteration is one which the responsible body proposes to make in order to comply with section 28T.
- (2) Except to the extent to which it expressly so provides, the lease has effect, as a result of this subsection, as if it provided—
- (a) for the responsible body to be entitled to make the alteration with the written consent of the lessor;
  - (b) for the responsible body to have to make a written application to the lessor for consent if it wishes to make the alteration;
  - (c) if such an application is made, for the lessor not to withhold his consent unreasonably; and
  - (d) for the lessor to be entitled to make his consent subject to reasonable conditions.
- (3) In this section—
- “lease” includes a tenancy, sub-lease or sub-tenancy and an agreement for a lease, tenancy, sub-lease or sub-tenancy; and
  - “sub-lease” and “sub-tenancy” have such meaning as may be prescribed.
- (4) If the terms and conditions of a lease—
- (a) impose conditions which are to apply if the responsible body alters the premises, or
  - (b) entitle the lessor to impose conditions when consenting to the responsible body’s altering the premises,
- the responsible body is to be treated for the purposes of subsection (1) as not being entitled to make the alteration.
- (5) Part 3 of Schedule 4 supplements the provisions of this section.]

#### Textual Amendments

**F15** S. 28W inserted (E.W.S.) (30.5.2002) by 2001 c. 10, s. 31 (with s. 43(13)); S.I. 2002/1649, art. 3

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

- C3** S. 28W modified (28.6.2002) by S.I. 2002/1458, reg. 7 (which Regulations were revoked (1.5.2005) by S.I. 2005/1070, reg. 8)
- C4** S. 28W modified (1.5.2005) by The Disability Discrimination (Educational Institutions) (Alteration of Leasehold Premises) Regulations 2005 (S.I. 2005/1070), reg. 7

**[<sup>F16</sup>28X Validity and revision of agreements**

Section 28P applies for the purposes of this Chapter as it applies for the purposes of Chapter 1, but with the substitution, for paragraphs (a) and (b) of subsection (2), of “under section 28V”.]

**Textual Amendments**

- F16** S. 28X inserted (1.9.2002) by 2001 c. 10, s. 32 (with s. 43(13)); S.I. 2002/2217, art. 3, Sch. 1 Pt. 1

**29 Education of disabled persons.**

<sup>F17</sup> .....

**Extent Information**

- E1** In the application of the Act to Northern Ireland, this section is omitted; see s. 70(6), Sch. 8 paras. 1, 15

**Textual Amendments**

- F17** S. 29 repealed (E.W.S.) (1.9.2002) by 2001 c. 10, s. 40(1), Sch. 9 (with s. 43(13)); S.I. 2002/2217, art. 3, Sch. 1 Pt. 1

*[<sup>F18</sup>Duties of funding councils]*

**Textual Amendments**

- F18** Pt. IV Ch. 2: Cross-heading inserted before s. 30 (E.W.S.) (1.9.2002) by 2001 c. 10, s. 34(4) (with s. 43(13)); S.I. 2002/2217, art. 3, Sch. 1 Pt. 1

**30 Further and higher education of disabled persons. 1992 c.13.**

(1) The Further and Higher Education Act 1992 is amended as set out in subsections (2) to (6).

<sup>F19</sup>(2) .....

<sup>F19</sup>(3) .....

<sup>F19</sup>(4) .....

(5) In section 62 (establishment of higher education funding councils), after subsection (7) insert—

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“(7A) In exercising their functions, each council shall have regard to the requirements of disabled persons.

(7B) In subsection (7A) “disabled persons” means persons who are disabled persons for the purposes of the Disability Discrimination Act 1995.”

[<sup>F20</sup>(6) In section 65 (administration of funds by higher education funding councils), after subsection (4) insert—

“(4A) Without prejudice to the power to impose conditions given by subsection (3) above, the conditions subject to which a council makes grants, loans or other payments under this section to the governing body of a higher education institution shall require the governing body to publish disability statements at such intervals as may be specified.

(4B) For the purposes of subsection (4A) above—

“disability statement” means a statement containing information of a specified description about the provision of facilities for education and research made by the institution in respect of persons who are disabled persons for the purposes of the Disability Discrimination Act 1995; and

“specified” means specified in the conditions subject to which grants, loans or other payments are made by a council under this section.”]

<sup>F21</sup>(7) .....

<sup>F21</sup>(8) .....

<sup>F21</sup>(9) .....

#### Extent Information

**E2** In the application of the Act to Northern Ireland, this section is omitted; see [s. 70\(6\)](#), [Sch. 8 paras. 1, 15](#)

#### Textual Amendments

**F19** [S. 30\(2\)-\(4\)](#) repealed (1.4.2001) by [2000 c. 21, s. 153](#), [Sch. 11](#) (with [s. 150](#)); [S.I. 2001/654, art. 2\(2\)](#), [Sch. Pt. II](#) (with savings and transitional provisions in [art. 3](#)); [S.I. 2001/1274, art. 2\(1\)](#), [Sch. Pt. I](#)

**F20** [S. 30\(6\)](#) repealed (E.W.S) (1.9.2002) by [2001 c. 10, ss. 34\(5\), 42\(6\)](#), [Sch. 9](#) (with [s. 43\(13\)](#)); [S.I. 2002/2217, art. 3](#), [Sch. 1 Pt. 1](#)

**F21** [S. 30\(7\)-\(9\)](#) repealed (1.11.1996) by [1996 c. 56, ss. 582\(2\), 583\(2\)](#), [Sch. 38 Pt. I](#) (with [ss. 1\(4\), 561, 562](#), [Sch. 39](#))

#### Commencement Information

**I1** [S. 30\(1\)-\(6\)](#) in force at 31.7.1996 by [S.I. 1996/1474, art. 2\(2\)](#), [Sch. Pt. II](#)

### 31 Further and higher education of disabled persons: Scotland. 1992 c. 37.

(1) The Further and Higher Education (Scotland) Act 1992 is amended as follows.

(2) In section 37 (establishment of Scottish Higher Education Funding Council) after subsection (4) insert—

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“(4A) In exercising their functions, the Council shall have regard to the requirements of disabled persons.

(4B) In subsection (4A) above, “disabled persons” means persons who are disabled persons for the purpose of the Disability Discrimination Act 1995.”

[<sup>F22</sup>(3) In section 40 (administration of funds by the Council), after subsection (4) insert—

“(5) Without prejudice to the power to impose conditions given by subsection (3) above, the conditions subject to which the Council make grants, loans or other payments under this section to the governing body of an institution within the higher education sector shall require the governing body to publish disability statements at such intervals as may be specified.

(6) For the purposes of subsection (5) above—

“disability statement” means a statement containing information of a specified description about the provision of facilities for education and research made by the institution in respect of persons who are disabled persons for the purpose of the Disability Discrimination Act 1995; and

“specified” means specified in the conditions subject to which grants, loans or other payments are made by the Council under this section.”]

#### Extent Information

**E3** In the application of the Act to Northern Ireland, this section is omitted; see [s. 70\(6\)](#), [Sch. 8 paras. 1, 15](#)

#### Textual Amendments

**F22** [S. 31\(3\)](#) repealed (E.W.S.) (1.9.2002) by [2001 c. 10](#), [ss. 34\(6\), 42\(6\)](#), [Sch. 9](#) (with [s. 43\(13\)](#)); [S.I. 2002/2217](#), [art. 3](#), [Sch. 1 Pt. 1](#)

### [<sup>F23</sup> Interpretation of Chapter 2]

#### Textual Amendments

**F23** [Pt. IV Ch. 2](#): Cross-heading and [s. 31A](#) inserted (E.W.S.) (1.9.2002) by [2001 c. 10](#), [s. 33](#) (with [s. 43\(13\)](#)); [S.I. 2002/2217](#), [art. 3](#), [Sch. 1 Pt. 1](#)

### [<sup>F24</sup> 31A Interpretation

- (1) Subsections (2) to (4) apply for the purpose of interpreting this Chapter.
- (2) “Disabled student” means a student who is a disabled person.
- (3) “Student” means a person who is attending, or undertaking a course of study at, an educational institution.
- (4) “Educational institution”, “responsible body” and “student services” have the meaning given in section 28R.]

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**Textual Amendments**

**F24** S. 31A and cross-heading inserted (E.W.S.) (1.9.2002) by 2001 c. 10, s. 33 (with s. 43(13)); S.I. 2002/2217, art. 3, Sch. 1 Pt. 1

**Status:**

Point in time view as at 01/09/2002. This version of this chapter 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, Chapter 2.