



Disability Discrimination Act 1995

1995 CHAPTER 50

PART IV

EDUCATION

[^{F1}CHAPTER 2

FURTHER AND HIGHER EDUCATION]

[^{F1}Duties of responsible bodies]

Textual Amendments

- F1** 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

[^{F2}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—
 - (a) in the arrangements it makes for determining admissions to the institution;
 - (b) in the terms on which it offers to admit him to the institution; or
 - (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.

Status: Point in time view as at 30/06/2006.

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

- [It is unlawful for the body responsible for an educational institution to discriminate^{F3}(3A) against a disabled person—
- (a) in the arrangements which it makes for the purpose of determining upon whom to confer a qualification;
 - (b) in the terms on which it is prepared to confer a qualification on him;
 - (c) by refusing or deliberately omitting to grant any application by him for a qualification; or
 - (d) by withdrawing a qualification from him or varying the terms on which he holds it.
- (3B) It is unlawful for the body responsible for an educational institution to subject to harassment a disabled person who—
- (a) holds or applies for a qualification conferred by the institution;
 - (b) is a student at the institution; or
 - (c) seeks admission as a student to the institution.]

(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.

Status: Point in time view as at 30/06/2006.

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

- (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

- F2** 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
- F3** S. 28R(3A)(3B) 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, 5

[^{F4}28S Meaning of “discrimination”

- (1) For the purposes of [^{F5}this Chapter], a responsible body discriminates against a disabled person if—
- 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
 - it cannot show that the treatment in question is justified.

[^{F6}(2) For the purposes of this Chapter, a responsible body also discriminates against a disabled person if it fails to comply with a duty imposed on it by section 28T or 28UA(5) in relation to the disabled person.]

- (3) In relation to a failure to take a particular step, a responsible body does not discriminate against a person 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; and
 - that its failure to take the step was attributable to that lack of knowledge.

(4) ^{F7}.....

[^{F8}(5) Treatment, other than the application of a competence standard, is (subject to subsections (7) to (9)), justified for the purposes of subsection (1)(b) if, but only if, the reason for it is both material to the circumstances of the particular case and substantial.

- (6) The application by a responsible body of a competence standard to a disabled person is (subject to subsections (8) and (9)) justified for the purposes of subsection (1)(b) if, but only if, the body can show that—
- the standard is, or would be, applied equally to persons who do not have his particular disability, and
 - its application is a proportionate means of achieving a legitimate aim.

(7) If in a case falling within subsection (1), other than a case where the treatment is the application of a competence standard, a responsible body is under a duty under section 28T or 28UA(5) in relation to the disabled person, but fails to comply with that duty, its treatment of that person cannot be justified under subsection (5) unless that treatment would have been justified even if it had complied with that duty.

(8) Subject to subsection (9), regulations may make provision, for purposes of this section, as to circumstances in which treatment is, or as to circumstances in which treatment is not, to be taken to be justified.

Status: Point in time view as at 30/06/2006.

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

- (9) Treatment of a disabled person by a responsible body cannot be justified under subsection (5), (6) or (8) if it amounts to direct discrimination falling within subsection (10).
- (10) A responsible body directly discriminates against a disabled person if, on the ground of the disabled person's disability, it treats the disabled person less favourably than it treats or would treat a person not having that particular disability whose relevant circumstances, including his abilities, are the same as, or not materially different from, those of the disabled person.
- (11) In this section and section 28T, “competence standard” means an academic, medical or other standard applied by or on behalf of a responsible body for the purpose of determining whether or not a person has a particular level of competence or ability.]]

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**
- F5** Words in s. 28S(1) substituted (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, **6(1)**
- F6** S. 28S(2) substituted (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, **6(2)**
- F7** S. 28S(4) omitted (30.6.2006 for certain purposes and otherwise 1.9.2006) by virtue of [The Disability Discrimination Act 1995 \(Amendment\) \(Further and Higher Education\) Regulations 2006](#) (S.I. 2006/1721), regs. 1, **6(3)**
- F8** S. 28S(5)-(11) substituted for s. 28S(5)-(9) (30.6.2006 for certain purposes and otherwise 1.9.2006) by [The Disability Discrimination Act 1995 \(Amendment\) \(Further and Higher Education\) Regulations](#) (S.I. 2006/1721), regs. 1, {6(4)}

[^{F9}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

- F9** 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**

Status: Point in time view as at 30/06/2006.

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

[^{F10}[^{F11}28] Responsible bodies' duties to make adjustments

(1) Where—

- (a) a provision, criterion or practice, other than a competence standard, is applied by or on behalf of a responsible body,
- (b) it is a provision, criterion or practice relating to—
 - (i) the arrangements it makes for determining admissions to the institution, or
 - (ii) student services provided for, or offered to, students by the responsible body, and
- (c) that provision, criterion or practice places disabled persons at a substantial disadvantage in comparison with persons who are not disabled,

it is the duty of the responsible body to take such steps as it is reasonable, in all the circumstances of the case, for it to have to take in order to prevent the provision, criterion or practice having that effect.

(1A) Where—

- (a) a provision, criterion or practice, other than a competence standard, is applied by or on behalf of a responsible body,
- (b) it is a provision, criterion or practice for determining on whom a qualification is to be conferred,
- (c) a disabled person is, or has notified the body that he may be, an applicant for the conferment of that qualification, and
- (d) the provision, criterion or practice places the disabled person at a substantial disadvantage in comparison with persons who are not disabled,

it is the duty of the responsible body to take such steps as it is reasonable, in all the circumstances of the case, for it to have to take in order to prevent the provision, criterion or practice having that effect.

(1B) Where—

- (a) a provision, criterion or practice, other than a competence standard, is applied by or on behalf of a responsible body,
- (b) it is a provision, criterion or practice other than one mentioned in subsection (1)(b) or (1A)(b), and
- (c) it places a disabled person who—
 - (i) holds a qualification conferred by the responsible body, or
 - (ii) applies for a qualification which the responsible body confers,at a substantial disadvantage in comparison with persons who are not disabled,

it is the duty of the responsible body to take such steps as it is reasonable, in all the circumstances of the case, for it to have to take in order to prevent the provision, criterion or practice having that effect.

(1C) Where any physical feature of premises occupied by a responsible body places disabled persons at a substantial disadvantage in comparison with persons who are not disabled in relation to—

- (a) the arrangements which that body makes for determining admissions to the institution, or
- (b) student services provided for, or offered to, students by that body,

it is the duty of the body to take such steps as it is reasonable, in all the circumstances of the case, for it to have to take in order to prevent the feature having that effect.

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- (1D) Where any physical feature of premises occupied by a responsible body places a disabled person who—
- (a) applies for a qualification which that body confers, or
 - (b) holds a qualification which was conferred by that body,
- at a substantial disadvantage in comparison with persons who are not disabled, it is the duty of the body to take such steps as it is reasonable, in all the circumstances of the case, for it to have to take in order to prevent the feature having that effect.]
- (2) In considering whether it is reasonable for it to have to take a particular step in order to comply with its duty under [^{F12}any of subsections (1) to (1D)], 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 [^{F13}any of subsections (1) to (1D)], regard shall be had to the extent to which taking the step in question is consistent with compliance with that request.
- (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

- F10** S. 28T inserted (1.9.2002) by 2001 c. 10, s. 28 (with s. 43(13)); S.I. 2002/2217, arts. 5, 6
- F11** S. 28T(1)(1A)-(1D) and section heading substituted for s. 28T(1) and section heading (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, 8
- F12** Words in s. 28T(2) substituted (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, 9
- F13** Words in s. 28T(4) substituted (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, 9

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](#)

Status:

Point in time view as at 30/06/2006.

Changes to legislation:

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Cross Heading: Duties of responsible bodies.