



# Disability Discrimination Act 1995

## 1995 CHAPTER 50

### PART IV

#### EDUCATION

#### CHAPTER 2A

##### GENERAL QUALIFICATIONS BODIES

#### **31AA General qualifications bodies: discrimination and harassment**

- (1) It is unlawful for a general qualifications body to discriminate against a disabled person—
  - (a) in the arrangements which it makes for the purpose of determining upon whom to confer a relevant qualification;
  - (b) in the terms on which it is prepared to confer a relevant qualification on him;
  - (c) by refusing or deliberately omitting to grant any application by him for such a qualification; or
  - (d) by withdrawing such a qualification from him or varying the terms on which he holds it.
- (2) It is also unlawful for a general qualifications body, in relation to a relevant qualification conferred by it, to subject to harassment a disabled person who holds or applies for such a qualification.
- (3) 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.
- (4) In this section and section 31AD, “relevant qualification” means an authorisation, qualification, approval or certification of a prescribed description.
- (5) But an authorisation, qualification, approval or certification may not be prescribed under subsection (4) if it is a professional or trade qualification (within the meaning given by section 14A(5)).

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- (6) In this Chapter—
- (a) “general qualifications body” means any authority or body which can confer a relevant qualification, but it does not include—
    - (i) a responsible body (within the meaning of Chapter 1 or 2 of this Part),
    - (ii) a local education authority in England or Wales,
    - (iii) an education authority (within the meaning of section 135(1) of the Education (Scotland) Act 1980), or
    - (iv) an authority or body of a prescribed description or in prescribed circumstances;
  - (b) references (however expressed) to the conferment of a qualification on a person include—
    - (i) the renewal or extension of a qualification, and
    - (ii) the authentication of a qualification awarded to him by another person.

VALID FROM 01/09/2007

### **[<sup>F1</sup>31AB Meaning of “discrimination”**

- (1) For the purposes of section 31AA, a body discriminates against a disabled person if—
  - (a) for a reason which relates to the disabled person’s 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 31AA, a body also discriminates against a disabled person if it fails to comply with a duty imposed on it by section 31AD in relation to the disabled person.
- (3) Treatment, other than the application of a competence standard, is (subject to subsections (5) to (7)) 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.
- (4) The application by a body of a competence standard to a disabled person is (subject to subsections (6) and (7)) justified for the purposes of subsection (1)(b) if, but only if, the body can show that—
  - (a) the standard is, or would be, applied equally to persons who do not have his particular disability; and
  - (b) its application is a proportionate means of achieving a legitimate aim.
- (5) If, in a case falling within subsection (1) other than a case where the treatment is the application of a competence standard, a body is under a duty under section 31AD in relation to the disabled person but fails to comply with that duty, its treatment of that person cannot be justified under subsection (3) unless it would have been justified even if the body had complied with that duty.
- (6) 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 (but see subsection (7)).

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- (7) Treatment of a disabled person cannot be justified under subsection (3), (4) or (6) if it amounts to direct discrimination falling within subsection (8).
- (8) A 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.
- (9) In this section, "competence standard" means an academic, medical or other standard applied by or on behalf of a general qualifications body for the purpose of determining whether or not a person has a particular level of competence or ability.

#### Textual Amendments

- F1** Pt. 4 Ch. 2A (ss. 31AA-31AF) inserted (E.W.S) (11.6.2007 for ss. 31AA, 31AD and 31AE for certain purposes, and for s. 31AF, otherwise in force for all provisions at 1.9.2007) by [Disability Discrimination Act 2005 \(c. 13\)](#), **ss. 15, 20(3)-(6)**; S.I 2007/1555, arts. 2, 3(a)

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#### 31AC Meaning of "harassment"

- (1) For the purposes of section 31AA, a body subjects a disabled person to harassment where, for a reason which relates to the disabled person's disability, the 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 paragraph (a) or (b) of subsection (1) 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

- F1** Pt. 4 Ch. 2A (ss. 31AA-31AF) inserted (E.W.S) (11.6.2007 for ss. 31AA, 31AD and 31AE for certain purposes, and for s. 31AF, otherwise in force for all provisions at 1.9.2007) by [Disability Discrimination Act 2005 \(c. 13\)](#), **ss. 15, 20(3)-(6)**; S.I 2007/1555, arts. 2, 3(a)

#### 31AD General qualifications bodies: duty to make adjustments

- (1) Where—
  - (a) a provision, criterion or practice, other than a competence standard, is applied by or on behalf of a general qualifications body,
  - (b) it is a provision, criterion or practice for determining on whom a relevant qualification is to be conferred,

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- (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 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.

(2) Where—

- (a) a provision, criterion or practice, other than a competence standard, is applied by or on behalf of a general qualifications body,
- (b) it is a provision, criterion or practice other than one for determining on whom a relevant qualification is to be conferred, and
- (c) it places a disabled person who—
  - (i) holds a relevant qualification conferred by the body, or
  - (ii) applies for a relevant qualification which the body confers,
 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 provision, criterion or practice having that effect.

(3) Where any physical feature of premises occupied by a general qualifications body places a disabled person who—

- (a) holds a relevant qualification conferred by the body, or
- (b) applies for a relevant qualification which the body confers,

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.

(4) Nothing in subsection (1), (2) or (3) imposes a duty on a general qualifications body in relation to a disabled person if the body does not know, and could not reasonably be expected to know—

- (a) in the case of an applicant or potential applicant for the conferment of a relevant qualification, that the disabled person concerned is, or may be, such an applicant; or
- (b) in any case, that that person has a disability and is likely to be affected in the way mentioned in that subsection.

(5) In this section—

- (a) “provision, criterion or practice” includes (subject to any provision under subsection (6)(e)) any arrangements;
- (b) “competence standard” has the meaning given by section 31AB(9).

(6) Regulations may make provision, for purposes of this section—

- (a) as to circumstances in which a provision, criterion or practice is to be taken to have, or as to circumstances in which a provision, criterion or practice is to be taken not to have, the effect mentioned in subsection (1)(d) or (2)(c);
- (b) as to circumstances in which a physical feature is to be taken to have, or as to circumstances in which a physical feature is to be taken not to have, the effect mentioned in subsection (3);

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- (c) as to circumstances in which it is, or as to circumstances in which it is not, reasonable for a body to have to take steps of a prescribed description;
  - (d) as to steps which it is always, or as to steps which it is never, reasonable for a body to have to take;
  - (e) as to what is, or as to what is not, to be included within the meaning of “provision, criterion or practice”;
  - (f) as to things which are, or as to things which are not, to be treated as physical features.
- (7) This section imposes duties only for the purpose of determining whether a body has, for the purposes of section 31AA, discriminated against a disabled person; and accordingly a breach of any such duty is not actionable as such.

VALID FROM 01/09/2007

### **[<sup>F2</sup>31AD] Enforcement, remedies and procedures**

- (1) (1) A claim by a person—
- (a) that a general qualifications body has discriminated against him, or subjected him to harassment, in a way which is unlawful under this Chapter,
  - (b) that a general qualifications body is by virtue of section 57 or 58 to be treated as having done so, or
  - (c) that a person is by virtue of section 57 to be treated as having done so,
- 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) Where—
- (a) a claim is brought under subsection (1), and
  - (b) the claimant (or pursuer, in Scotland) proves facts from which the court could, apart from this subsection, conclude in the absence of an adequate explanation that the defendant (or defender, in Scotland) has acted in a way which is unlawful under this Chapter,
- the court shall uphold the claim unless the defendant (or defender, in Scotland) proves that he did not so act.
- (3) 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.
- (4) Proceedings in England and Wales may be brought only in a county court.
- (5) Proceedings in Scotland may be brought only in a sheriff court.
- (6) 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.
- (7) Part 5 of Schedule 3 makes further provision about the enforcement of this Part and about procedure and evidence.]

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### Textual Amendments

- F1** Pt. 4 Ch. 2A (ss. 31AA-31AF) inserted (E.W.S) (11.6.2007 for ss. 31AA, 31AD and 31AE for certain purposes, and for s. 31AF, otherwise in force for all provisions at 1.9.2007) by [Disability Discrimination Act 2005 \(c. 13\)](#), [ss. 15, 20\(3\)-\(6\)](#); S.I 2007/1555, arts. 2, 3(a)
- F2** [S. 31ADA](#) inserted (1.9.2007) by [The Disability Discrimination Act 1995 \(Amendment etc.\) \(General Qualifications Bodies\) \(Alteration of Premises and Enforcement\) Regulations 2007 \(S.I. 2007/2405\)](#), [regs. 1\(2\), 3](#)

VALID FROM 01/09/2007

### [<sup>F3</sup>31AD] Alterations to premises occupied under leases]

- (1) (1) This section applies where—
- (a) a general qualifications body occupies premises under a lease;
  - (b) but for this section, the general qualifications body would not be entitled to make a particular alteration to the premises; and
  - (c) the alteration is one which the general qualifications body proposes to make in order to comply with the duty imposed by section 31AD(3).
- (2) Except to the extent to which it expressly so provides, the lease shall have effect by virtue of this subsection as if it provided—
- (a) for the general qualifications body to be entitled to make the alteration with the written consent of the lessor;
  - (b) for the general qualifications 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 and in Part 4 of Schedule 4—“lease” includes a tenancy, sub-lease or sub-tenancy and an agreement for a lease, tenancy, sub-lease or sub-tenancy; “sub-lease” means any sub-term created out of, or deriving from, a leasehold interest; and “sub-tenancy” means any tenancy created out of, or deriving from, a superior tenancy.
- (4) For the purposes of subsection (1), the general qualifications body is to be treated as not being entitled to make the alteration, if the terms and conditions of the lease—
- (a) impose conditions which are to apply if the general qualifications body alters the premises, or
  - (b) entitle the lessor to impose conditions when consenting to the general qualifications body's altering the premises.
- (5) Part 4 of Schedule 4 supplements the provisions of this section.]

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### Textual Amendments

- F1** Pt. 4 Ch. 2A (ss. 31AA-31AF) inserted (E.W.S) (11.6.2007 for ss. 31AA, 31AD and 31AE for certain purposes, and for s. 31AF, otherwise in force for all provisions at 1.9.2007) by [Disability Discrimination Act 2005 \(c. 13\)](#), [ss. 15, 20\(3\)-\(6\)](#); S.I 2007/1555, arts. 2, 3(a)
- F3** S. 31ADB inserted (1.9.2007) by [The Disability Discrimination Act 1995 \(Amendment etc.\) \(General Qualifications Bodies\) \(Alteration of Premises and Enforcement\) Regulations 2007 \(S.I. 2007/2405\)](#), [regs. 1\(2\), 5](#) (with regs. 8-13)

## 31AE Chapter 2A: claims, leased premises and certain agreements

- (1) Regulations may make provision for, or in connection with, the making of a claim by a person—
- that a general qualifications body has discriminated against him, or subjected him to harassment, in a way which is unlawful under this Chapter;
  - that a general qualifications body is by virtue of section 57 or 58 to be treated as having done so; or
  - that a person is by virtue of section 57 to be treated as having done so.
- (2) Regulations may, in relation to a case where premises are occupied by a general qualifications body under a lease—
- make provision modifying the lease, or make provision for its modification, in connection with the making of alterations to the premises in pursuance of a duty imposed on the body by section 31AD;
  - make provision in connection with the determination of questions that are about the body's compliance with any such duty and are related to the making of alterations to the premises.
- (3) Any term in a contract or other agreement made by or on behalf of a general qualifications body is void so far as it purports to—
- require a person to do anything which would contravene any provision of, or made under, this Chapter;
  - exclude or limit the operation of any provision of, or made under, this Chapter; or
  - prevent any person making a claim of a kind mentioned in subsection (1).
- (4) Regulations may—
- make provision for subsection (3)(b) or (c) not to apply to an agreement settling a claim of a kind mentioned in subsection (1);
  - make provision modifying an agreement to which subsection (3) applies, or make provision for the modification of such an agreement, in order to take account of the effect of that subsection.
- (5) The provision that may be made under subsection (1), (2) or (4) includes (in particular)
- provision as to the court or tribunal to which a claim, or an application in connection with a modification, may be made;
  - provision for the determination of claims or matters otherwise than by the bringing of proceedings before a court or tribunal;

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- (c) provision for a person who is a lessor in relation to a lease under which a general qualifications body occupies premises to be made a party to proceedings;
  - (d) provision as to remedies;
  - (e) provision as to procedure;
  - (f) provision as to appeals;
  - (g) provision as to time limits;
  - (h) provision as to evidence;
  - (i) provision as to costs or expenses.
- (6) Provision under subsection (1), (2) or (4) may take the form of amendments of this Act.
- (7) Regulations may make provision as to the meaning of “lease” or “lessor” in this section.
- (8) Except as provided in regulations under subsection (1), no civil or criminal proceedings may be brought against any person in respect of an act merely because the act is unlawful under this Chapter.
- (9) Subsection (8) does not prevent the making of an application for judicial review.

### **31AF Chapter 2A: duty to consult before making regulations**

- (1) Before making regulations under this Chapter, the Secretary of State shall consult such persons as it appears to him to be appropriate to consult, having regard to the substance and effect of the regulations in question.
- (2) Without prejudice to the generality of subsection (1), the Secretary of State shall consult the [<sup>F4</sup>Welsh Ministers] and the Scottish Ministers before making regulations under this Chapter.

#### **Textual Amendments**

- F4** Words in s. 31AF(2) 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. 56(5)**, 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.



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