

SPECIAL EDUCATIONAL NEEDS AND DISABILITY ACT 2001

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – Disability Discrimination in Education

Chapter 3 – Miscellaneous

Sections 35 to 40 and Schedule 7

Section 35 and Schedule 7: Extension of Role of Disability Rights Commission

123. This section extends the role of the DRC in respect of the provisions of this Act to the extent provided for in Schedule 7, including, for example, allowing the DRC to: issue non-discrimination notices and make agreements in lieu of enforcement action; apply for an injunction or interdict in respect of persistent discrimination; and, give assistance in relation to proceedings under this Act, at SENDIST, the county court or the sheriff court. The DRC has similar powers and duties in respect of the provisions of Parts 2 & 3 DDA, conferred by sections 2 to 8 of the DRCA.

Section 36: Codes of Practice

124. This section amends section 53A of the DDA to allow the DRC to prepare Codes of Practice in respect of the new duties in Part 4 of the DDA, apart from those duties inserted into the DDA by sections 14 & 15 of this Act which place LEAs and schools under a duty to plan. It is intended that there will be two Codes of Practice - one for schools (Chapter 1) and one for further and higher education (Chapter 2), which will be modelled on the DDA Part 3 Code in that they will explain and illustrate how the legislation aims to stop disability discrimination and how service providers can comply with the duties. The DRC already has the power, by virtue of section 9 of the DRCA, to prepare Codes in respect of Parts 2 & 3 DDA.

Section 37: Conciliation for Disputes under Part 4 of the 1995 Act

125. This amends the DDA by inserting a new section 31B to extend the DRC's power to make arrangements for the provision of conciliation services. The DRC already has power to make these arrangements in respect of disputes under Part 3 of the DDA. Disputes under Part 2 of the DDA are dealt with by ACAS.

Section 38: Relationship with other Parts of the 1995 Act

126. This section amends the DDA to establish the relationship of the new Part 4 duties with other sections of the DDA.
127. Subsections (5) and (6) remove the exemption of education from Part 3 of the DDA and provide that nothing in Part 3 applies to services that are now covered by Part 4.

Section 39: Application to the Isles of Scilly

128. This section inserts a new section 31C in the DDA. This modifies the application of Part 4 of the DDA (as amended by the Act) to the Isles of Scilly. Under section 581 of the EA the Isles are treated, for the purposes of that Act, as a separate non-metropolitan council, and the Council of the Isles of Scilly is treated as a County Council. This allows the Council of the Isles of Scilly to be treated as an LEA for the purposes of the EA. An equivalent provision is needed to allow the Council of the Isles of Scilly to be caught by the disability duties imposed on LEAs by the Act.

Section 40: Duty of Teacher Training Agency

129. This section makes no substantive changes to the law, but re-enacts the duty on the Teacher Training Agency since that duty has no place in the restructured Part 4.