



# Special Educational Needs and Disability Act 2001

## 2001 CHAPTER 10

### PART 2

#### DISABILITY DISCRIMINATION IN EDUCATION

#### CHAPTER 1

#### SCHOOLS

##### *Duties of responsible bodies*

#### **11 Discrimination against disabled pupils and prospective pupils**

- (1) In Part 4 of the Disability Discrimination Act 1995 (“the 1995 Act”), before section 29, insert the following section—

#### “CHAPTER 1

#### SCHOOLS

##### *Duties of responsible bodies*

#### **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;

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- (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—
- (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.”
- (2) In the 1995 Act, insert the Schedule set out in Schedule 2.

## 12 Meaning of “discrimination”

In the 1995 Act, insert the following section—

### “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.

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- (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.
- (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.”

### 13 Disabled pupils not to be substantially disadvantaged

In the 1995 Act, insert the following section—

#### “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;

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- (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 section 53A.
- (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.
- (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.”

## 14 Accessibility strategies and plans

- (1) In the 1995 Act, insert the following section—

### “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,

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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) 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 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;
  - (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 National Assembly, 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 School Inspections Act 1996 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.

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- (14) For a maintained 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.
- (17) In relation to Wales—
- “prescribed” means prescribed in regulations; and
- “regulations” means regulations made by the National Assembly.
- (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).”

<sup>F1</sup>(2) .....

#### Textual Amendments

- F1** S. 14(2) repealed (1.9.2005) by [Education Act 2005 \(c. 18\)](#), s. 125(4), [Sch. 19 Pt. 4](#); [S.I. 2005/2034](#), art. 5 (with [Sch. para. 2](#))

#### Commencement Information

- I1** S. 14 partly in force; s. 14 not in force at Royal Assent see s. 43(3); s. 14(1) in force for specified purposes (otherwise than as respects W.) at 1.7.2002 by [S.I. 2002/1721](#), [art. 4](#), [Sch. Pt. II](#); s. 14 in force in so far as not already in force (other than as respects W.) at 1.9.2002 by [S.I. 2002/2217](#), [art. 4](#), [Sch. 1 Pt. 2](#)
- I2** S. 14 in force at 8.10.2003 for W. by [S.I. 2003/2532](#), [art. 2](#), [Sch.](#)

## 15 Accessibility strategies and plans: procedure

In the 1995 Act, insert the following section—

### “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).

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- (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 National Assembly.
- (4) In preparing an accessibility plan, the responsible body must have regard to the need to allocate adequate resources for implementing the plan.
- (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 a city academy) in England,the strategy or plan must be given to him.
- (6) If the National Assembly asks 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 in Wales,the strategy or plan must be given to it.
- (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 a city academy must make a copy of his accessibility plan available for inspection at such reasonable times as he may determine.”

#### **Commencement Information**

- I3** S. 15 partly in force; s. 15 not in force at Royal Assent see s. 43(3); s. 15 in force for specified purposes (other than as respects W.) at 1.7.2002 by [S.I. 2002/1721](#), [art. 4](#), [Sch. Pt. II](#); s. 15 in force in so far as not already in force (other than as respects W.) at 1.9.2002 by [S.I. 2002/2217](#), [art. 4](#), [Sch. 1 Pt. 2](#)
- I4** S. 15 in force at 8.10.2003 for W. by [S.I. 2003/2532](#), [art. 2](#), [Sch.](#)

## **16 Residual duty of education authorities**

In the 1995 Act, insert the following sections—

*“ Residual duty of education authorities*

### **28F Duty of education authorities not to discriminate**

- (1) This section applies to—
  - (a) the functions of a local education authority under the Education Acts; and
  - (b) the functions of an education authority under—
    - (i) the Education (Scotland) Act 1980;
    - (ii) the Education (Scotland) Act 1996; and

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(iii) the Standards in Scotland's Schools etc. Act 2000.

- (2) But it does not apply to any prescribed function.
- (3) In discharging a function to which this section applies, it is unlawful for the authority to discriminate against—
  - (a) a disabled pupil; or
  - (b) a disabled person who may be admitted to a school as a pupil.
- (4) But an act done in the discharge of a function to which this section applies is unlawful as a result of subsection (3) only if no other provision of this Chapter makes that act unlawful.
- (5) 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.
- (6) In this section and section 28G, “local education authority” has the meaning given in section 12 of the Education Act 1996.
- (7) “The Education Acts” has the meaning given in section 578 of the Education Act 1996.
- (8) In this section and section 28G, “education authority” has the meaning given in section 135(1) of the Education (Scotland) Act 1980.

### **28G Residual duty: supplementary provisions**

- (1) Section 28B applies for the purposes of section 28F as it applies for the purposes of section 28A with the following modifications—
  - (a) references to a responsible body are to be read as references to an authority; and
  - (b) references to section 28C are to be read as references to subsections (2) to (4).
- (2) Each authority must take such steps as it is reasonable for it to have to take to ensure that, in discharging any function to which section 28F applies—
  - (a) disabled persons who may be admitted to a school as pupils are not placed at a substantial disadvantage in comparison with persons who are not disabled; and
  - (b) disabled pupils are not placed at a substantial disadvantage in comparison with pupils who are not disabled.
- (3) That does not require the authority to—
  - (a) remove or alter a physical feature; or
  - (b) provide auxiliary aids or services.
- (4) This section imposes duties only for the purpose of determining whether an authority has discriminated against a disabled person; and accordingly a breach of any such duty is not actionable as such.
- (5) A reference in sections 28I, 28K(1), 28M(6) and 28P to a responsible body is to be read as including a reference to a local education authority in relation to a function to which section 28F applies.



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- (6) A reference in section 28N and 28P to a responsible body is to be read as including a reference to an education authority in relation to a function to which section 28F applies.
- (7) “Authority” means—
- (a) in relation to England and Wales, a local education authority; and
  - (b) in relation to Scotland, an education authority.”

### *Enforcement*

## **17 Special Educational Needs and Disability Tribunal**

- (1) In the 1995 Act, insert the following section—

*“Enforcement: England and Wales*

### **28H Special Educational Needs and Disability Tribunal**

- (1) The Special Educational Needs Tribunal—
- (a) is to continue to exist; but
  - (b) after the commencement date is to be known as the Special Educational Needs and Disability Tribunal.
- (2) It is referred to in this Chapter as “the Tribunal”.
- (3) In addition to its jurisdiction under Part 4 of the Education Act 1996, the Tribunal is to exercise the jurisdiction conferred on it by this Chapter.
- (4) “Commencement date” means the day on which section 17 of the Special Educational Needs and Disability Act 2001 comes into force.”
- (2) Section 10 of the Disabled Persons (Services, Consultation and Representation) Act 1986 (c. 33) (consultation on appointments) is not to apply to appointments to the lay panel.
- (3) “The lay panel” has the meaning given in section 333(2)(c) of the 1996 Act.

## **18 Jurisdiction and powers of the Tribunal**

In the 1995 Act, insert the following section—

### **“28I Jurisdiction and powers of the Tribunal**

- (1) A claim that a responsible body—
- (a) has discriminated against a person (“A”) in a way which is made unlawful under this Chapter, or
  - (b) is by virtue of section 58 to be treated as having discriminated against a person (“A”) in such a way,
- may be made to the Tribunal by A’s parent.
- (2) But this section does not apply to a claim to which section 28K or 28L applies.

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- (3) If the Tribunal considers that a claim under subsection (1) is well founded—
  - (a) it may declare that A has been unlawfully discriminated against; and
  - (b) if it does so, it may make such order as it considers reasonable in all the circumstances of the case.
- (4) The power conferred by subsection (3)(b)—
  - (a) may, in particular, be exercised with a view to obviating or reducing the adverse effect on the person concerned of any matter to which the claim relates; but
  - (b) does not include power to order the payment of any sum by way of compensation.”

## 19 Procedure

- (1) In the 1995 Act, insert the following section—

### “28J Procedure

- (1) Regulations may make provision about—
  - (a) the proceedings of the Tribunal on a claim of unlawful discrimination under this Chapter; and
  - (b) the making of a claim.
- (2) The regulations may, in particular, include provision—
  - (a) as to the manner in which a claim must be made;
  - (b) if the jurisdiction of the Tribunal is being exercised by more than one tribunal—
    - (i) for determining by which tribunal any claim is to be heard, and
    - (ii) for the transfer of proceedings from one tribunal to another;
  - (c) for enabling functions which relate to matters preliminary or incidental to a claim (including, in particular, decisions under paragraph 10(3) of Schedule 3) to be performed by the President, or by the chairman;
  - (d) enabling hearings to be conducted in the absence of any member other than the chairman;
  - (e) as to the persons who may appear on behalf of the parties;
  - (f) for granting any person such disclosure or inspection of documents or right to further particulars as might be granted by a county court;
  - (g) requiring persons to attend to give evidence and produce documents;
  - (h) for authorising the administration of oaths to witnesses;
  - (i) for the determination of claims without a hearing in prescribed circumstances;
  - (j) as to the withdrawal of claims;
  - (k) for enabling the Tribunal to stay proceedings on a claim;
  - (l) for the award of costs or expenses;
  - (m) for taxing or otherwise settling costs or expenses (and, in particular, for enabling costs to be taxed in the county court);
  - (n) for the registration and proof of decisions and orders; and

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- (o) for enabling prescribed decisions to be reviewed, or prescribed orders to be varied or revoked, in such circumstances as may be determined in accordance with the regulations.
  - (3) Proceedings before the Tribunal are to be held in private, except in prescribed circumstances.
  - (4) Unless made with the agreement of the National Assembly, regulations made under this section do not apply to Wales.
  - (5) The Secretary of State may pay such allowances for the purpose of or in connection with the attendance of persons at the Tribunal as he may, with the consent of the Treasury, determine.
  - (6) In relation to Wales, the power conferred by subsection (5) may be exercised only with the agreement of the National Assembly.
  - (7) Part 1 of the Arbitration Act 1996 does not apply to proceedings before the Tribunal but regulations may make provision, in relation to such proceedings, corresponding to any provision of that Part.
  - (8) The regulations may make provision for a claim under this Chapter to be heard, in prescribed circumstances, with an appeal under Part 4 of the Education Act 1996.
  - (9) A person who without reasonable excuse fails to comply with—
    - (a) a requirement in respect of the disclosure or inspection of documents imposed by the regulations by virtue of subsection (2)(f), or
    - (b) a requirement imposed by the regulations by virtue of subsection (2)(g),is guilty of an offence.
  - (10) A person guilty of an offence under subsection (9) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
  - (11) Part 3 of Schedule 3 makes further provision about enforcement of this Chapter and about procedure.”
- (2) In Schedule 3 to the 1995 Act (enforcement and procedure), insert the provisions set out in paragraph 1 of Schedule 3.

#### Commencement Information

**I5** S. 19 wholly in force at 1.9.2002; s. 19 not in force at Royal Assent see s. 43(3); s. 19(1) in force (1.7.2002) for specified purposes by S.I. 2002/1721, art. 3, Sch. Pt. I; s. 19 in force (1.9.2002) in so far as not already in force by S.I. 2002/2217, art. 3, Sch. 1 Pt. 1

## 20 Admissions

In the 1995 Act, insert the following section—

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### **“28K Admissions**

- (1) If the condition mentioned in subsection (2) is satisfied, this section applies to a claim in relation to an admissions decision that a responsible body—
  - (a) has discriminated against a person (“A”) in a way which is made unlawful under this Chapter; or
  - (b) is by virtue of section 58 to be treated as having discriminated against a person (“A”) in such a way.
- (2) The condition is that arrangements (“appeal arrangements”) have been made—
  - (a) under section 94 of the School Standards and Framework Act 1998, or
  - (b) under an agreement entered into between the responsible body for a city academy and the Secretary of State under section 482 of the Education Act 1996,
 enabling an appeal to be made against the decision by A’s parent.
- (3) The claim must be made under the appeal arrangements.
- (4) The body hearing the claim has the powers which it has in relation to an appeal under the appeal arrangements.
- (5) “Admissions decision” means—
  - (a) a decision of a kind mentioned in section 94(1) or (2) of the School Standards and Framework Act 1998;
  - (b) a decision as to the admission of a person to a city academy taken by the responsible body or on its behalf.”

## **21 Exclusions**

In the 1995 Act, insert the following section—

### **“28L Exclusions**

- (1) If the condition mentioned in subsection (2) is satisfied, this section applies to a claim in relation to an exclusion decision that a responsible body—
  - (a) has discriminated against a person (“A”) in a way which is made unlawful under this Chapter; or
  - (b) is by virtue of section 58 to be treated as having discriminated against a person (“A”) in such a way.
- (2) The condition is that arrangements (“appeal arrangements”) have been made—
  - (a) under section 67(1) of the School Standards and Framework Act 1998, or
  - (b) under an agreement entered into between the responsible body for a city academy and the Secretary of State under section 482 of the Education Act 1996,
 enabling an appeal to be made against the decision by A or by his parent.
- (3) The claim must be made under the appeal arrangements.

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- (4) The body hearing the claim has the powers which it has in relation to an appeal under the appeal arrangements.
- (5) “Exclusion decision” means—
  - (a) a decision of a kind mentioned in section 67(1) of the School Standards and Framework Act 1998;
  - (b) a decision not to reinstate a pupil who has been permanently excluded from a city academy by its head teacher, taken by the responsible body or on its behalf.
- (6) “Responsible body”, in relation to a maintained school, includes the discipline committee of the governing body if that committee is required to be established as a result of regulations made under paragraph 4 of Schedule 11 to the School Standards and Framework Act 1998.
- (7) “Maintained school” has the meaning given in section 28Q(5).”

## 22 Roles of the Secretary of State and the National Assembly

In the 1995 Act, insert the following section—

### “28M Roles of the Secretary of State and the National Assembly

- (1) If the appropriate authority is satisfied (whether on a complaint or otherwise) that a responsible body—
  - (a) has acted, or is proposing to act, unreasonably in the discharge of a duty imposed by or under section 28D or 28E, or
  - (b) has failed to discharge a duty imposed by or under either of those sections,it may give that body such directions as to the discharge of the duty as appear to it to be expedient.
- (2) Subsection (3) applies in relation to—
  - (a) special schools which are not maintained special schools but which are approved by the Secretary of State, or by the National Assembly, under section 342 of the Education Act 1996; and
  - (b) city academies.
- (3) If the appropriate authority is satisfied (whether on a complaint or otherwise) that a responsible body—
  - (a) has acted, or is proposing to act, unreasonably in the discharge of a duty which that body has in relation to—
    - (i) the provision to the appropriate authority of copies of that body’s accessibility plan, or
    - (ii) the inspection of that plan, or
  - (b) has failed to discharge that duty,it may give that body such directions as to the discharge of the duty as appear to it to be expedient.
- (4) Directions may be given under subsection (1) or (3) even if the performance of the duty is contingent upon the opinion of the responsible body.

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- (5) Subsection (6) applies if the Tribunal has made an order under section 28I(3).
- (6) If the Secretary of State is satisfied (whether on a complaint or otherwise) that the responsible body concerned—
- (a) has acted, or is proposing to act, unreasonably in complying with the order, or
  - (b) has failed to comply with the order,
- he may give that body such directions as to compliance with the order as appear to him to be expedient.
- (7) Directions given under subsection (1), (3) or (6)—
- (a) may be varied or revoked by the directing authority; and
  - (b) may be enforced, on the application of the directing authority, by a mandatory order obtained in accordance with section 31 of the Supreme Court Act 1981.
- (8) “Appropriate authority” means—
- (a) in relation to England, the Secretary of State; and
  - (b) in relation to Wales, the National Assembly.
- (9) “Directing authority” means—
- (a) the Secretary of State in relation to a direction given by him; and
  - (b) the National Assembly in relation to a direction given by it.”

#### Commencement Information

- 16** S. 22 partly in force; s. 22 not in force at Royal Assent see s. 43(3); s. 22 in force for specified purposes for at 1.9.2002 by S.I. 2002/2217, art. 3, Sch. 1 Pt. 1
- 17** S. 22 in force at 8.10.2003 for W. in so far as not already in force by S.I. 2003/2532, art. 2, Sch.

## 23 Enforcement procedure: Scotland

In the 1995 Act, insert the following section—

*“Enforcement: Scotland*

### 28N Civil proceedings

- (1) A claim that a responsible body in Scotland—
- (a) has discriminated against a person in a way which is unlawful under this Chapter, or
  - (b) is by virtue of section 58 to be treated as having discriminated against a person in such a way,
- may be made the subject of civil proceedings in the same way as any other claim for the enforcement of a statutory duty.
- (2) Proceedings in Scotland may be brought only in a sheriff court.
- (3) The remedies available in such proceedings are those which are available in the Court of Session other than an award of damages.

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*Status: Point in time view as at 01/09/2005.*

*Changes to legislation: There are currently no known outstanding effects for the Special Educational Needs and Disability Act 2001, Chapter 1. (See end of Document for details)*

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- (4) Part 3 of Schedule 3 makes further provision about the enforcement of this Chapter and about procedure.
- (5) In relation to civil proceedings in Scotland, in that Part of that Schedule—
  - (a) references to sections 28I, 28K and 28L, or any of them, are to be construed as a reference to this section;
  - (b) references to the Tribunal are to be construed as references to the sheriff court.”

## **24 Validity and revision of agreements of responsible bodies**

In the 1995 Act, insert the following section—

*“ Agreements relating to enforcement*

### **28P Validity and revision of agreements of responsible bodies**

- (1) Any term in a contract or other agreement made by or on behalf of a responsible body is void so far as it purports to—
  - (a) require a person to do anything which would contravene any provision of, or made under, this Chapter;
  - (b) exclude or limit the operation of any provision of, or made under, this Chapter; or
  - (c) prevent any person from making a claim under this Chapter.
- (2) Paragraphs (b) and (c) of subsection (1) do not apply to an agreement settling a claim—
  - (a) under section 28I or 28N; or
  - (b) to which section 28K or 28L applies.
- (3) On the application of any person interested in an agreement to which subsection (1) applies, a county court or a sheriff court may make such order as it thinks just for modifying the agreement to take account of the effect of subsection (1).
- (4) No such order may be made unless all persons affected have been—
  - (a) given notice of the application; and
  - (b) afforded an opportunity to make representations to the court.
- (5) Subsection (4) applies subject to any rules of court providing for notice to be dispensed with.
- (6) An order under subsection (3) may include provision as respects any period before the making of the order.”

## **25 Interpretation**

In the 1995 Act, insert the following section—

*Status: Point in time view as at 01/09/2005.*

*Changes to legislation: There are currently no known outstanding effects for the Special Educational Needs and Disability Act 2001, Chapter 1. (See end of Document for details)*

### “ Interpretation of Chapter 1

#### 28Q Interpretation

- (1) This section applies for the purpose of interpreting this Chapter.
- (2) “Disabled pupil” means a pupil who is a disabled person.
- (3) “Pupil”—
  - (a) in relation to England and Wales, has the meaning given in section 3(1) of the Education Act 1996; and
  - (b) in relation to Scotland, has the meaning given in section 135(1) of the Education (Scotland) Act 1980.
- (4) Except in relation to Scotland (when it has the meaning given in section 135(1) of the Education (Scotland) Act 1980) “school” means—
  - (a) a maintained school;
  - (b) a maintained nursery school;
  - (c) an independent school;
  - (d) a special school which is not a maintained special school but which is approved by the Secretary of State, or by the National Assembly, under section 342 of the Education Act 1996;
  - (e) a pupil referral unit.
- (5) In subsection (4)—
 

“maintained school” has the meaning given in section 20(7) of the School Standards and Framework Act 1998;

“maintained nursery school” has the meaning given in section 22(9) of the School Standards and Framework Act 1998;

“independent school” has the meaning given in section 463 of the Education Act 1996; and

“pupil referral unit” has the meaning given in section 19(2) of the Education Act 1996.
- (6) “Responsible body” has the meaning given in section 28A(5).
- (7) “Governing body”, in relation to a maintained school, means the body corporate (constituted in accordance with Schedule 9 to the School Standards and Framework Act 1998) which the school has as a result of section 36 of that Act.
- (8) “Parent”—
  - (a) in relation to England and Wales, has the meaning given in section 576 of the Education Act 1996; and
  - (b) in relation to Scotland, has the meaning given in section 135(1) of the Education (Scotland) Act 1980.
- (9) In relation to England and Wales “permitted form of selection” means—
  - (a) if the school is a maintained school which is not designated as a grammar school under section 104 of the School Standards and Framework Act 1998, any form of selection mentioned in section 99(2) or (4) of that Act;



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- (b) if the school is a maintained school which is so designated, any of its selective admission arrangements;
  - (c) if the school is an independent school, any arrangements which make provision for any or all of its pupils to be selected by reference to general or special ability or aptitude, with a view to admitting only pupils of high ability or aptitude.
- (10) In relation to Scotland, “permitted form of selection” means—
- (a) if the school is managed by an education authority, such arrangements as have been approved by the Scottish Ministers for the selection of pupils for admission;
  - (b) if the school is an independent school or a self-governing school, any arrangements which make provision for any or all of its pupils to be selected by reference to general or special ability or aptitude, with a view to admitting only pupils of high ability or aptitude.
- (11) In subsection (10), “education authority”, “independent school” and “self-governing school” have the meaning given in section 135(1) of the Education (Scotland) Act 1980.
- (12) “City academy” means a school which is known as a city academy as a result of subsection (3) or (3A) of section 482 of the Education Act 1996.
- (13) “Accessibility strategy” and “accessibility plan” have the meaning given in section 28D.
- (14) “The National Assembly” means the National Assembly for Wales.”

**Status:**

Point in time view as at 01/09/2005.

**Changes to legislation:**

There are currently no known outstanding effects for the Special Educational Needs and Disability Act 2001, Chapter 1.