

Status: Point in time view as at 01/09/2007. This version of this part 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 2005, Part 1. (See end of Document for details)

SCHEDULES

SCHEDULE 1

MINOR AND CONSEQUENTIAL AMENDMENTS

PART 1

AMENDMENTS OF THE 1995 ACT

- 1 The 1995 Act shall have effect with the following amendments.
- 2 (1) Section 2 (past disabilities) is amended as follows.
- (2) In subsection (1) (Parts 1 to 4 apply also to persons who have had a disability), after “to 4” there is inserted “;and 5A ”.
- (3) In subsection (3) (regulations and orders may include provision about persons who have had a disability), after “made under this Act” there is inserted “;by the Secretary of State, the Scottish Ministers or the National Assembly for Wales ”.
- (4) In subsection (4) (timing issues under Part 2, 3 or 4), for “II, 3 or 4” there is substituted “;2, 3, 4 or 5A ”.

Commencement Information

- II** Sch. 1 para. 2 wholly in force at 4.12.2006; Sch. 1 para. 2 not in force at Royal Assent see s. 20(3); Sch. 1 para. 2(1)(3) in force at 30.6.2005 by S.I. 2005/1676, art. 2(1)(c); Sch. 1 para. 2(2) in force at 5.12.2005 by S.I. 2005/2774, art. 3(j); Sch. 1 para. 2 fully in force at 4.12.2006 by S.I. 2005/2774, art. 4(f)

- 3 (1) Section 3 (guidance) is amended as follows.
- (2) Before subsection (1) there is inserted—
- “(A1) The Secretary of State may issue guidance about matters to be taken into account in determining whether a person is a disabled person.”
- (3) In subsection (1) (power to issue guidance about particular matters)—
- (a) at the beginning there is inserted “;Without prejudice to the generality of subsection (A1),” and
- (b) after “may” there is inserted “; in particular, ”.
- (4) In subsection (2) (elaboration of the power under subsection (1)), for “The guidance” there is substituted “;Without prejudice to the generality of subsection (A1), guidance about the matters mentioned in subsection (1) ”.
- (5) In subsection (3) (duty of adjudicating body to take guidance into account), for the words from “an impairment” to “activities” there is substituted “;a person is a disabled person ”.

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I2 Sch. 1 para. 3 wholly in force at 5.12.2005; Sch. 1 para. 3 not in force at Royal Assent see s. 20(3); Sch. 1 para. 3(1)-(4) in force at 30.6.2005 by S.I. 2005/1676, art. 2(1)(c); Sch. 1 para. 3 fully in force at 5.12.2005 by S.I. 2005/2774, art. 3(j)

- 4 In the heading to Part 2, after “THE EMPLOYMENT FIELD” there is inserted “;AND MEMBERS OF LOCALLY-ELECTABLE AUTHORITIES ”.
- 5 In section 4C(2) (provisions whose application to an office or post prevents sections 4D and 4E applying), for “and section 14C” there is substituted “; section 14C and section 15B(3)(b) ”.
- 6 For section 14C(3) (provisions about practical work experience do not apply where certain other provisions operate) there is substituted—
- “(3) This section and section 14D do not apply—
- (a) to anything which is unlawful under any provision of section 4, sections 19 to 21A, sections 21F to 21J or Part 4; or
- (b) to anything which would be unlawful under any such provision but for the operation of any provision in or made under this Act.”
- 7 In section 16A(2) (meaning of “relevant relationship” in section 16A)—
- (a) in paragraph (a) (relationships during which certain acts are unlawful under preceding provisions of Part 2), after “under any preceding provision of this Part” there is inserted “; other than sections 15B and 15C ”, and
- (b) in paragraph (b) (which refers to employment services within the meaning of Part 3), the words “(within the meaning of Part 3)” are omitted.

Commencement Information

I3 Sch. 1 para. 7 wholly in force at 4.12.2006; Sch. 1 para. 7 not in force at Royal Assent see s. 20(3); Sch. 1 para. 7(a) in force for certain purposes at 5.12.2005 by S.I. 2005/2774, art. 3(j); Sch. 1 para. 7 fully in force at 4.12.2006 by S.I. 2005/2774, art. 4(f)

- 8 (1) Section 16B (discriminatory advertisements) is amended as follows.
- (2) After subsection (2B) (which is inserted by section 10 of this Act) there is inserted—
- “(2C) Subsection (1) does not apply in relation to an advertisement so far as it invites persons to apply, in their capacity as members of an authority to which sections 15B and 15C apply, for a relevant appointment or benefit which the authority is intending to make or confer.”
- (3) In subsection (3)(i) (which refers to employment services within the meaning of Part 3), the words “(within the meaning of Part 3)” are omitted.

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I4 Sch. 1 para. 8 wholly in force at 4.12.2006; Sch. 1 para. 8 not in force at Royal Assent see s. 20(3); Sch. 1 para. 8(1)(2) in force for certain purposes at 5.12.2005 by S.I. 2005/2774, art. 3(j); Sch. 1 para. 8 fully in force at 4.12.2006 by S.I. 2005/2774, art. 4(f)

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- 9 Section 17A(1B) (which defines “enactment” in section 17A(1A) but is unnecessary given the definition of “enactment” in section 68(1)) is omitted.
- 10 (1) Section 17B (enforcement of sections 16B and 16C) is amended as follows.
- (2) In subsections (1), (3) and (4)(a), and in the section’s heading, for “16B” there is substituted “ 16B(1) ”.
- (3) In subsection (4)(c), for “that section” there is substituted “ ;section 16B(1) or (as the case may be) section 16C ”.
- 11 In section 18D(2) (interpretation of Part 2)—
- (a) in the definition of “duty to make reasonable adjustments”, after “14D” there is inserted “ ;, 15C ”, and
- (b) in the definition of “physical feature”, after “in relation to any premises, includes” there is inserted “ ;(subject to any provision under section 15C(4)(e)) ”.
- 12 In Part 2 (the employment field and members of locally-electable authorities), after section 18D there is inserted—

“18E Premises provided otherwise than in course of a Part 2 relationship

- (1) This Part does not apply in relation to the provision, otherwise than in the course of a Part 2 relationship, of premises by the regulated party to the other party.
- (2) For the purposes of subsection (1)—
- (a) “Part 2 relationship” means 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 sections 4 to 15C; and
- (b) in relation to a Part 2 relationship, “regulated party” means the party whose acts of discrimination, or harassment, are made unlawful by sections 4 to 15C.”
- 13 (1) Section 19 (discrimination in relation to goods, facilities and services) is amended as follows.
- (2) In subsection (2) (interpretation of sections 19 to 21), for “and 21” there is substituted “ ;to 21ZA ”.
- (3) For subsection (5) (services to which sections 19 to 21 do not apply) there is substituted—
- “(5) Regulations may provide for subsection (1) and section 21(1), (2) and (4) not to apply, or to apply only to a prescribed extent, in relation to a service of a prescribed description.”
- (4) For subsection (5A) (relationship between Parts 3 and 4 of the 1995 Act) there is substituted—
- “(5A) Nothing in this section or sections 20 to 21A applies to the provision of a service in relation to which discrimination is unlawful under Part 4.”

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- I5** Sch. 1 para. 13 wholly in force at 4.12.2006; Sch. 1 para. 13 not in force at Royal Assent see s. 20(3); Sch. 1 para. 13(1)-(3) in force at 30.6.2005 by S.I. 2005/1676, art. 2(1)(c); Sch. 1 para. 13 fully in force at 4.12.2006 by S.I. 2005/2774, art. 4(f)
- 14 In section 20(7) (regulations may provide for a person’s lack of capacity not to justify discrimination where another person has been appointed to act on that person’s behalf), for paragraph (c) (appointments under the law of Scotland) there is substituted—
 “(c) powers are exercisable in relation to a disabled person’s property or affairs in consequence of the appointment, under the law of Scotland, of a guardian, tutor or judicial factor.”
- 15 (1) Section 21A (employment services) is amended as follows.
 (2) In subsection (1) (meaning of “employment services” in Part 3), for “this Part” there is substituted “;this Act ”.
 (3) In subsection (4) (application of section 19 in relation to employment services), for paragraph (c) (application of section 19(2)) there is substituted—
 “(c) in subsection (2), for “sections 20 to 21ZA” there is substituted “ sections 20 to 21A ”.”
- 16 In section 22 (discrimination in relation to premises), after subsection (3) there is inserted—
 “(3A) Regulations may make provision, for purposes of subsection (3)—
 (a) as to who is to be treated as being, or as to who is to be treated as not being, a person who manages premises;
 (b) as to who is to be treated as being, or as to who is to be treated as not being, a person occupying premises.”
- 17 After section 22 there is inserted—

“22A Commonholds

- (1) It is unlawful for any person whose licence or consent is required for the disposal of an interest in a commonhold unit by the unit-holder to discriminate against a disabled person by withholding his licence or consent for the disposal of the interest in favour of, or to, the disabled person.
- (2) Where it is not possible for an interest in a commonhold unit to be disposed of by the unit-holder unless some other person is a party to the disposal of the interest, it is unlawful for that other person to discriminate against a disabled person by deliberately not being a party to the disposal of the interest in favour of, or to, the disabled person.
- (3) Regulations may provide for subsection (1) or (2) not to apply, or to apply only, in cases of a prescribed description.
- (4) Regulations may make provision, for purposes of this section—
 (a) as to what is, or as to what is not, to be included within the meaning of “dispose” (and “disposal”);

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- (b) as to what is, or as to what is not, to be included within the meaning of “interest in a commonhold unit”.
- (5) In this section “commonhold unit”, and “unit-holder” in relation to such a unit, have the same meaning as in Part 1 of the Commonhold and Leasehold Reform Act 2002.
- (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.
- (7) This section applies only in relation to premises in England and Wales.”

Commencement Information

I6 Sch. 1 para. 17 wholly in force at 4.12.2006; Sch. 1 para. 17 not in force at Royal Assent see s. 20(3); Sch. 1 para. 17 in force for certain purposes at 30.6.2005 by S.I. 2005/1676, art. 2(2)(g); Sch. 1 para. 17 fully in force at 4.12.2006 by S.I. 2005/2774, art. 4(f)

- 18 In section 23(6) (meaning of “relevant occupier”), after paragraph (a) there is inserted—
- “(aa) in a case falling within section 22(3), the person managing the premises, or a near relative of his;”.
- 19 (1) Section 24 (meaning of “discrimination” in section 22) is amended as follows.
- (2) In subsection (1) (which defines discrimination for the purposes of section 22), for “section 22” there is substituted “;sections 22 and 22A ”.
- (3) In subsection (3) (justifications), after paragraph (d) there is inserted—
- “(e) in a case to which subsection (3A) applies, the terms are less favourable in order to recover costs which—
 - (i) as a result of the disabled person having a disability, are incurred in connection with the disposal of the premises, and
 - (ii) are not costs incurred in connection with taking steps to avoid liability under section 24G(1);
 - (f) in a case to which subsection (3B) applies, the disabled person is subjected to the detriment in order to recover costs which—
 - (i) as a result of the disabled person having a disability, are incurred in connection with the management of the premises, and
 - (ii) are not costs incurred in connection with taking steps to avoid liability under section 24A(1) or 24G(1).”
- (4) After that subsection there is inserted—
- “(3A) This subsection applies to a case if—
 - (a) the case falls within section 22(1)(a);
 - (b) the premises are to let;
 - (c) the person with power to dispose of the premises is a controller of them; and
 - (d) the proposed disposal of the premises would involve the disabled person becoming a person to whom they are let.

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(3B) This subsection applies to a case if—

- (a) the case falls within section 22(3)(c);
- (b) the detriment is not eviction;
- (c) the premises are let premises;
- (d) the person managing the premises is a controller of them; and
- (e) the disabled person is a person to whom the premises are let or, although not a person to whom they are let, is lawfully under the letting an occupier of them.

(3C) Section 24G(3) and (4) apply for the purposes of subsection (3A) as for those of section 24G; and section 24A(3) and (4) apply for the purposes of subsection (3B) as for those of section 24A.”

(5) After subsection (4) there is inserted—

“(4A) Regulations may make provision for the condition specified in subsection (3) (b) not to apply in prescribed circumstances.”

Commencement Information

I7 Sch. 1 para. 19 wholly in force at 4.12.2006; Sch. 1 para. 19 not in force at Royal Assent see s. 20(3); Sch. 1 para. 19(1)(5) in force at 30.6.2005 by S.I. 2005/1676, art. 2(1)(c); Sch. 1 para. 19 fully in force at 4.12.2006 by S.I. 2005/2774, art. 4(f)

20 After section 24L (which is inserted by section 13 of this Act) there is inserted—

“24M Premises provisions do not apply where other provisions operate

(1) Sections 22 to 24L do not apply—

- (a) in relation to the provision of premises by a provider of services where he provides the premises in providing services to members of the public;
- (b) in relation to the provision, in the course of a Part 2 relationship, of premises by the regulated party to the other party;
- (c) in relation to the provision of premises to a student or prospective student—
 - (i) by a responsible body within the meaning of Chapter 1 or 2 of Part 4, or
 - (ii) by an authority in discharging any functions mentioned in section 28F(1); or
- (d) to anything which is unlawful under section 21F or which would be unlawful under that section but for the operation of any provision in or made under this Act.

(2) Subsection (1)(a) has effect subject to any prescribed exceptions.

(3) In subsection (1)(a) “provider of services”, and providing services, have the same meaning as in section 19.

(4) For the purposes of subsection (1)(b)—

- (a) “Part 2 relationship” means a relationship during the course of which an act of discrimination against, or harassment of, one party to the

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relationship by the other party to it is unlawful under sections 4 to 15C; and

- (b) in relation to a Part 2 relationship, “regulated party” means the party whose acts of discrimination, or harassment, are made unlawful by sections 4 to 15C.

(5) In subsection (1)(c) “student” includes pupil.”

21 In section 25 (enforcement etc. of Part 3), for subsections (7) and (8) (claims in relation to employment services to be made to employment tribunal) there is substituted—

“(7) Subsection (1) does not apply in relation to a claim by a person that another person—

- (a) has discriminated against him in relation to the provision of employment services; or
(b) is by virtue of section 57 or 58 to be treated as having discriminated against him in relation to the provision of employment services.

(8) A claim—

- (a) of the kind referred to in subsection (6A) or (7), or
(b) by a person that another—
(i) has subjected him to harassment in a way which is unlawful under section 21A(2), or
(ii) is by virtue of section 57 or 58 to be treated as having subjected him to harassment in such a way,

may be presented as a complaint to an employment tribunal.”

22 In section 26 (validity and revision of certain agreements), for subsection (1A) there is substituted—

“(1A) Subsection (1) does not apply to—

- (a) any term in a contract for the provision of employment services;
(b) any term in a contract which is a group insurance arrangement; or
(c) a term which—
(i) is in an agreement which is not a contract of either of those kinds, and
(ii) relates to the provision of employment services or the provision under a group insurance arrangement of facilities by way of insurance.”

23 In section 27 (alterations to premises occupied under leases), in subsection (1) (circumstances in which section applies)—

- (a) in paragraph (a), after “provider of services” there is inserted “; a public authority (within the meaning given by section 21B) or an association to which section 21F applies ”,
(b) in paragraph (b), for “he” there is substituted “;the occupier” , and
(c) in paragraph (c), at the end there is inserted “;or a duty imposed under section 21E or 21H ”.

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18 Sch. 1 para. 23 wholly in force at 4.12.2006; Sch. 1 para. 23 not in force at Royal Assent see s. 20(3); Sch. 1 para. 23 in force for certain purposes at 30.6.2005 by S.I. 2005/1676, art. 2(2)(g); Sch. 1 para. 23 fully in force at 4.12.2006 by S.I. 2005/2774, art. 4(f)

- 24 (1) Chapter 1 of Part 4 (schools) is amended as follows.
- (2) In section 28D (accessibility strategies and plans), for subsection (17) (interpretation of section in its application to Wales) there is substituted—
- “(17) In this section—
- “prescribed” means prescribed in regulations;
- “regulations” means—
- (a) in relation to England, regulations made by the Secretary of State, and
- (b) in relation to Wales, regulations made by the National Assembly.”
- (3) In section 28N(5) (enforcement in Scotland of Chapter 1 of Part 4: application of Part 3 of Schedule 3)—
- (a) for “that Part” there is substituted “;paragraph 10 ”,
- (b) in paragraph (a), for “sections 28I, 28K and 28L, or any of them,” there is substituted “;section 28I ”,and
- (c) in paragraph (b), after “Tribunal” there is inserted “;or Welsh Tribunal ”.
- 25 In section 31B (conciliation for disputes under Chapter 1 or 2 of Part 4), for subsections (9) and (10) (meaning of “dispute”) there is substituted—
- “(9) “Dispute” means a dispute arising under an earlier Chapter of this Part concerning an allegation of discrimination or harassment, and here—
- (a) “discrimination” means anything which is made unlawful discrimination by a provision of the Chapter concerned, and
- (b) “harassment” means anything which is made unlawful harassment by a provision of the Chapter concerned.”
- 26 (1) Section 33 (hire car services at designated transport facilities) is amended as follows.
- (2) In subsection (2), and in the definition in subsection (4) of “designated”, for “Secretary of State” there is substituted “ appropriate national authority ”.
- (3) In subsection (3), for “Secretary of State” there is substituted “ ;authority making the regulations ”.
- (4) In subsection (4), before the definition of “designated” there is inserted—
- “;appropriate national authority means—
- (a) in relation to transport facilities in England and Wales, the Secretary of State, and
- (b) in relation to transport facilities in Scotland, the Scottish Ministers (but see subsection (5));”.

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(5) In that subsection, in the definition of hire car” for “prescribed” there is substituted “;specified by regulations made by the appropriate national authority”.

(6) After that subsection there is inserted—

“(5) The Secretary of State may, for the purposes mentioned in section 2(2) of the European Communities Act 1972 (implementation of Community obligations etc. of the United Kingdom), exercise the powers conferred by this section on the Scottish Ministers.”

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27 In section 46 (rail vehicle accessibility regulations)—
(a) subsections (3) and (4) (offence of using rail vehicle that does not conform with accessibility regulations) are omitted, and
(b) in the definition of “regulated rail vehicle” in subsection (6), for “the” there is substituted “;provisions of”.

28 (1) Section 53A (codes of practice) is amended as follows.

(2) In subsection (1) (persons to whom codes may be issued)—

(a) after paragraph (b) there is inserted—

“(ba) public authorities within the meaning given by section 21B;
(bb) associations to which section 21F applies;” and

(b) in paragraph (d), after “Chapter 2” there is inserted “;or 2A”.

(3) After subsection (1B) there is inserted—

“(1C) The Commission may prepare and issue codes of practice giving practical guidance to persons subject to duties under section 49A or 49D on how to perform those duties.”

(4) After subsection (4) there is inserted—

“(4A) Where a draft of a code of practice that deals with performance of duties under section 49A or 49D is submitted to the Secretary of State for approval, he shall consult the Scottish Ministers and the National Assembly for Wales before deciding whether to approve it.”

(5) After subsection (6) there is inserted—

“(6A) Before appointing a day under subsection (6)(a) for the coming into effect of a code of practice that deals with performance of duties under section 49A or 49D, the Secretary of State shall consult the Scottish Ministers and the National Assembly for Wales.”

(6) In subsection (8A) (account may be taken of code of practice in proceedings under Part 2, 3 or 4), for “or 4” there is substituted “; 4 or 5A, or any proceedings relating to a relevant improvement,”.

(7) In subsection (9), after the definition of “40 day period” there is inserted—

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““relevant improvement” means an improvement (within the meaning of section 49G(9)) to premises which, having regard to the disability which a disabled person who lawfully occupies or is intended lawfully to occupy the premises has, is likely to facilitate his enjoyment of the premises.”

Commencement Information

I9 Sch. 1 para. 28 wholly in force at 4.12.2006; Sch. 1 para. 28 not in force at Royal Assent see s. 20(3); Sch. 1 para. 28(1)-(5)(7) in force at 30.6.2005 by S.I. 2005/1676, art. 2(1)(c); Sch. 1 para. 28 fully in force at 4.12.2006 by S.I. 2005/2774, art. 4(f)

- 29 (1) Section 55 (victimisation) is amended as follows.
- (2) In subsection (1) (victimisation is discrimination for the purposes of Parts 2, 3 and 4 of the 1995 Act), for “Part II, Part 3 or Part 4,” there is substituted “; Part 2 or Part 4, or Part 3 other than sections 24A to 24L, ”.
- (3) In subsection (2)(a)(iii) (discrimination on account of something done under the Act), after “done anything under” there is inserted “; or by reference to, ”.
- (4) In subsection (5) (provisions of Part 2 under which discrimination includes victimisation of a non-disabled person), after “14C” there is inserted “; 15B ”.
- (5) Subsection (6) is omitted.

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I10 Sch. 1 para. 29 wholly in force at 4.12.2006; Sch. 1 para. 29 not in force at Royal Assent see s. 20(3); Sch. 1 para. 29(1)(3)-(5) in force for certain purposes at 5.12.2005 by S.I. 2005/2774, art. 3(j); Sch. 1 para. 29 fully in force at 4.12.2006 by S.I. 2005/2774, art. 4(f)

- 30 In section 59(1) (statutory authority), for paragraphs (b) and (c) (acts done in pursuance of instruments made under enactments or to comply with conditions etc. imposed by virtue of enactments) there is substituted—
- “(b) in pursuance of any instrument made under any enactment by—
- (i) a Minister of the Crown,
- (ii) a member of the Scottish Executive, or
- (iii) the National Assembly for Wales; or
- (c) to comply with any condition or requirement—
- (i) imposed by a Minister of the Crown (whether before or after the passing of this Act) by virtue of any enactment,
- (ii) imposed by a member of the Scottish Executive (whether before or after the coming into force of this sub-paragraph) by virtue of any enactment, or
- (iii) imposed by the National Assembly for Wales (whether before or after the coming into force of this sub-paragraph) by virtue of any enactment.”

- 31 (1) Section 64 (application to Crown etc) is amended as follows.

- (2) Before subsection (1) there is inserted—

“(A1) The following provisions bind the Crown—

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- (a) sections 21B to 21E and Part 5A, and
 - (b) the other provisions of this Act so far as applying for the purposes of provisions mentioned in paragraph (a);
- and sections 57 and 58 shall apply for purposes of provisions mentioned in paragraph (a) as if service as a Crown servant were employment by the Crown.”
- (3) In subsection (1) (Act applies to certain acts done on behalf of the Crown as to acts done by private persons), after “This Act” there is inserted “; other than the provisions mentioned in paragraphs (a) and (b) of subsection (A1),”.
- (4) In subsection (2A) (subsections (1) and (2) have effect subject to section 64A), for “(1) and” there is substituted “;(A1) to”.

Commencement Information

III Sch. 1 para. 31 wholly in force at 4.12.2006; Sch. 1 para. 31 not in force at Royal Assent see s. 20(3); Sch. 1 para. 31 in force for certain purposes at 5.12.2005 by S.I. 2005/2774, art. 3(j); Sch. 1 para. 31 fully in force at 4.12.2006 by S.I. 2005/2774, art. 4(f)

- 32 In section 65(5) (which refers to proceedings before employment tribunals under Part 2 of the Act), for “Part II” there is substituted “;Part 2 or 3”.
- 33 (1) Section 67 (regulations and orders) is amended as follows.
- (2) In subsection (1) (powers to be exercised by statutory instrument), after “Any power under this Act” there is inserted “;of the Secretary of State, the Scottish Ministers or the National Assembly for Wales”.
 - (3) In subsection (3)(a) (power to make such incidental etc. provision as appears to the Secretary of State to be expedient), for “Secretary of State” there is substituted “;person by whom the power is exercisable”.
 - (4) After subsection (3) there is inserted—
 - “(3A) Where regulations under section 21D(7)(b) provide for the omission of section 21D(5), the provision that may be made by the regulations in exercise of the power conferred by subsection (3)(a) includes provision amending section 21D for the purpose of omitting references to section 21D(5).
 - (3B) The provision that may be made by regulations under section 21G(5)(b) in exercise of the power conferred by subsection (3)(a) includes provision amending or repealing section 21G(4).
 - (3C) The provision that may be made by regulations under any of subsections (1) to (4) of section 49D in exercise of the power conferred by subsection (3)(a) includes provision amending or repealing an enactment.”
 - (5) For subsections (4) and (5) (instruments containing orders under section 50(3), which has been repealed, to be subject to affirmative procedure and, with certain exceptions, other instruments to be subject to annulment) there is substituted—
 - “(4) Subsection (4A) applies to—
 - (a) the first regulations to be made under section 21H(1);

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- (b) the first regulations to be made under each of subsections (1), (2) and (4) of section 31AE;
 - (c) regulations under section 31AE(1), (2) or (4) that amend this Act;
 - (d) regulations under section 31AE(1) that make provision as to remedies;
 - (e) regulations under section 47J(3);
 - (f) regulations under section 49D(1) or (2) that, in exercise of the power under subsection (3)(a), amend or repeal an enactment contained in an Act or in an Act of the Scottish Parliament;
 - (g) regulations under section 67A(3);
 - (h) regulations under paragraph 6A(2) of Schedule 1.
- (4A) No regulations to which this subsection applies shall be made unless a draft of the statutory instrument containing the regulations (whether containing the regulations alone or with other provisions) has been laid before, and approved by a resolution of, each House of Parliament.
- (4B) Subsection (4C) applies to regulations under section 49D(3) or (4) that, in exercise of the power under subsection (3)(a), amend or repeal any enactment contained in an Act or in an Act of the Scottish Parliament.
- (4C) No regulations to which this subsection applies shall be made unless a draft of the statutory instrument containing the regulations (whether containing the regulations alone or with other provisions) has been laid before, and approved by a resolution of, the Scottish Parliament.
- (4D) A statutory instrument—
- (a) that—
 - (i) contains regulations under section 49D(3) or (4), and
 - (ii) is not subject to the requirement in subsection (4C) that a draft of the instrument be laid before, and approved by, the Scottish Parliament, or
 - (b) that contains regulations or an order made by the Scottish Ministers under section 33,
- shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (5) A statutory instrument—
- (a) that—
 - (i) contains regulations made by the Secretary of State under this Act, and
 - (ii) is not subject to the requirement in subsection (4A) that a draft of the instrument be laid before, and approved by a resolution of, each House of Parliament, or
 - (b) that contains an order made by the Secretary of State under this Act that is not an order under section 3(9), 47(1), 53A(6)(a) or 70(3),
- shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5A) A statutory instrument that contains an order under section 47(1), if made without a draft having been laid before, and approved by a resolution of, each House of Parliament, shall be subject to annulment in pursuance of a

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resolution of either House, but the exercise of the discretion conferred by this subsection is subject to section 67A.”

Commencement Information

I12 Sch. 1 para. 33 wholly in force at 5.12.2005; Sch. 1 para. 33 not in force at Royal Assent see s. 20(3); Sch. 1 para. 33(1)-(3) in force at 30.6.2005 by S.I. 2005/1676, art. 2(1)(c); Sch. 1 para. 33(4)(5) in force for certain purposes at 30.6.2005 by S.I. 2005/1676, art. 2(2)(g); Sch. 1 para. 33 fully in force at 5.12.2005 by S.I. 2005/2774, art. 3(j)

- 34 (1) Section 68 (interpretation) is amended as follows.
- (2) In subsection (1), at the appropriate places there are inserted—
- ““criminal investigation” has the meaning given in subsection (1A);”
- ““criminal proceedings” includes—
- (a) proceedings on dealing summarily with a charge under the Army Act 1955 or the Air Force Act 1955 or on summary trial under the Naval Discipline Act 1957;
 - (b) proceedings before a summary appeal court constituted under any of those Acts;
 - (c) proceedings before a court-martial constituted under any of those Acts or a disciplinary court constituted under section 52G of the Naval Discipline Act 1957;
 - (d) proceedings before the Courts-Martial Appeal Court; and
 - (e) proceedings before a Standing Civilian Court;”
- ““employment services” has the meaning given in section 21A(1);”
- ““public investigator functions” has the meaning given in subsection (1B);”.
- (3) In subsection (1), in the definition of “enactment”, the words “(except in section 56(5))” are omitted.
- (4) In subsection (1), in the definition of “mental impairment”—
- (a) the words “or the Mental Health (Scotland) Act 1984” are omitted, and
 - (b) for “either of those Acts” there is substituted “;that Act”.
- (5) In subsection (1), in the definition of “prescribed”, after “regulations there is inserted “; except in section 28D (where it has the meaning given by section 28D(17))”.
- (6) In subsection (1), in the definition of “regulations”, after “Secretary of State” there is inserted “; except in sections 2(3), 28D, 28L(6), 28Q(7), 33, 49D to 49F and 67 (provisions where the meaning of “regulations is apparent)”.
- (7) After subsection (1) there is inserted—
- “(1A) In this Act “criminal investigation” means—
- (a) any investigation which a person in carrying out functions to which section 21B(1) applies has a duty to conduct with a view to it being ascertained whether a person should be charged with, or in Scotland

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prosecuted for, an offence, or whether a person charged with or prosecuted for an offence is guilty of it;

- (b) any investigation which is conducted by a person in carrying out functions to which section 21B(1) applies and which in the circumstances may lead to a decision by that person to institute criminal proceedings which the person has power to conduct; or
- (c) any investigation which is conducted by a person in carrying out functions to which section 21B(1) applies and which in the circumstances may lead to a decision by that person to make a report to the procurator fiscal for the purpose of enabling him to determine whether criminal proceedings should be instituted.

(1B) In this Act “public investigator functions” means functions of conducting criminal investigations or charging offenders.

(1C) In subsections (1A) and (1B)—

“offence” includes any offence of a kind triable by court-martial under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957, and

“offender” is to be construed accordingly.”

Commencement Information

I13 Sch. 1 para. 34 wholly in force at 4.12.2006; Sch. 1 para. 34 not in force at Royal Assent see s. 20(3); Sch. 1 para. 34(1)(5) in force at 30.6.2005 by S.I. 2005/1676, art. 2(1)(c); s. 12 in force for certain purposes at 10.10.2005 by S.I. 2005/2774, art. 2(b); Sch. 1 para. 34(2) in force for certain purposes at 5.12.2005 by S.I. 2005/2774, art. 3(j); Sch. 1 para. 34(3)(4) in force at 5.12.2005 by S.I. 2005/2774, art. 3(j); Sch. 1 para. 34 fully in force at 4.12.2006 by S.I. 2005/2774, art. 4(f)

35 In section 70(5A) (certain provisions extend to England and Wales only), for “and 7B” there is substituted “ 7B, 49G, 49H and 53A(1D) and (1E) ”.

36 In Schedule 1 (provisions supplementing section 1), in paragraph 8 (progressive conditions), in sub-paragraph (1)(a), for “infection by the human immunodeficiency virus” there is substituted “ ;HIV infection ”.

37 (1) Schedule 2 (modifications with which provisions mentioned in section 2(1) apply to persons who have had a disability) is amended as follows.

(2) In paragraph 2 (references in Parts 2 to 4 to a disabled person), before “to a disabled person” there is inserted “ ;and 5A ”.

(3) In paragraph 2C (reference in section 3A(5) to “not having that particular disability”), for “section 3A(5)” there is substituted “ ;sections 3A(5) and 31AB(8) ”.

(4) In paragraph 3 (past disabilities: modification of references to “not disabled”)—

(a) after “14D(1)” there is inserted “ ;, 15C(1) ”, and

(b) before “after “not disabled”” there is inserted “ ;and section 31AD(1)(d), (2) (c) and (3), ”.

(5) In paragraph 4 (past disabilities: modification of references to “has a disability”)—

(a) after “14D(3)(b)” there is inserted “ ;, 15C(3)(a) ”, and

(b) for “and 16A(6),” there is substituted “ ;, 16A(6) and 31AD(4)(b), ”.

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(6) After paragraph 4 there is inserted—

“4ZA In section 24(3)(e)(i) and (f)(i), after “having” insert “;had”.

4ZB In sections 24D(2)(a) and 24J(3)(b), for “did not have” substitute “;had not had”.

Commencement Information

I14 Sch. 1 para. 37 wholly in force at 1.9.2007; Sch. 1 para. 37 not in force at Royal Assent see s. 20(3); Sch. 1 para. 37(1)(2) in force at 5.12.2005 by S.I. 2005/2774, art. 3(j); Sch. 1 para. 37(4)(a)(5)(a)(6) in force at 4.12.2006 by S.I. 2005/2774, art. 4(f); Sch. 1 para. 37(3)(4)(b)(5)(b) in force at 1.9.2007 by S.I. 2007/1555, art. 3(b)

38 (1) Schedule 3 (enforcement and procedure) is amended as follows.

(2) In paragraph 2 (restriction on proceedings for breach of Part 2 of the Act), after sub-paragraph (2) there is inserted—

“(3) Sub-paragraph (1) does not prevent the bringing of proceedings in respect of an offence under section 16B(2B).”

(3) In paragraph 4 (evidence in proceedings under section 17A or 25(8) as to conditions or requirements imposed by a Minister), after sub-paragraph (1) there is inserted—

“(1A) In any proceedings under section 17A or 25(8), a certificate signed by or on behalf of the Scottish Ministers and certifying that any conditions or requirements specified in the certificate—

- (a) were imposed by a member of the Scottish Executive, and
 - (b) were in operation at a time or throughout a time so specified,
- shall be conclusive evidence of the matters certified.

(1B) In any proceedings under section 17A or 25(8), a certificate signed by or on behalf of the National Assembly for Wales and certifying that any conditions or requirements specified in the certificate—

- (a) were imposed by the Assembly, and
 - (b) were in operation at a time or throughout a time so specified,
- shall be conclusive evidence of the matters certified.”

(4) In paragraph 4(2) (status of certificates under sub-paragraph (1)), after “purporting to be such a certificate” there is inserted “;as is mentioned in sub-paragraph (1), (1A) or (1B)”.

(5) In Part 2 (claims under section 25 to enforce Part 3 of the Act), after paragraph 6 there is inserted—

“Staying or sisting proceedings on section 21B claim affecting criminal matters

6A (1) Sub-paragraph (2) applies where a party to proceedings under section 25 which have arisen by virtue of section 21B(1) has applied for a stay or sist of those proceedings on the grounds of prejudice to—

- (a) particular criminal proceedings;
- (b) a criminal investigation; or

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(c) a decision to institute criminal proceedings.

(2) The court shall grant the stay or sist unless it is satisfied that the continuance of the proceedings under section 25 would not result in the prejudice alleged.

Restriction of remedies for section 21B claim relating to criminal matters

6B (1) Sub-paragraph (2) applies to a remedy other than—

- (a) damages; or
- (b) a declaration or, in Scotland, a declarator.

(2) In proceedings under section 25, the remedy shall be obtainable in respect of a relevant discriminatory act only if the court is satisfied that—

- (a) no criminal investigation,
- (b) no decision to institute criminal proceedings, and
- (c) no criminal proceedings,

would be prejudiced by the remedy.

(3) In sub-paragraph (2) “relevant discriminatory act” means an act—

- (a) which is done, or by virtue of section 57 or 58 is treated as done, by a person—
 - (i) in carrying out public investigator functions, or
 - (ii) in carrying out functions as a public prosecutor; and
- (b) which is unlawful by virtue of section 21B(1).”

(6) In paragraph 8 (evidence in proceedings under section 25 as to conditions or requirements imposed by a Minister), after sub-paragraph (2) there is inserted—

“(3) In any proceedings under section 25, a certificate signed by or on behalf of the Scottish Ministers and certifying that any conditions or requirements specified in the certificate—

- (a) were imposed by a member of the Scottish Executive, and
- (b) were in operation at a time or throughout a time so specified,

shall be conclusive evidence of the matters certified.

(4) In any proceedings under section 25, a certificate signed by or on behalf of the National Assembly for Wales and certifying that any conditions or requirements specified in the certificate—

- (a) were imposed by the Assembly, and
- (b) were in operation at a time or throughout a time so specified,

shall be conclusive evidence of the matters certified.

(5) A document purporting to be such a certificate as is mentioned in sub-paragraph (3) or (4) shall be received in evidence and, unless the contrary is proved, be deemed to be such a certificate.”

(7) In paragraph 9(1) (restriction on proceedings for breach of Chapter 1 of Part 4 of the Act), for “and 28L” there is substituted “; 28L and 28N ”.

(8) In paragraph 9, after sub-paragraph (2) there is inserted—

“(3) Sub-paragraph (1) does not prevent the bringing of proceedings in respect of an offence under section 28J(9).”

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- (9) In paragraph 11(1) (evidence in proceedings under section 28I, 28K or 28L as to conditions or requirements imposed by a Minister), for “or 28L” there is substituted “; 28L or 28N”.
- (10) In paragraph 11, after sub-paragraph (1) there is inserted—
- “(1A) In any proceedings under section 28N, a certificate signed by or on behalf of the Scottish Ministers and certifying that any conditions or requirements specified in the certificate—
- (a) were imposed by a member of the Scottish Executive, and
- (b) were in operation at a time or throughout a time so specified,
- shall be conclusive evidence of the matters certified.
- (1B) In any proceedings under section 28I, 28K or 28L, a certificate signed by or on behalf of the National Assembly for Wales and certifying that any conditions or requirements specified in the certificate—
- (a) were imposed by the Assembly, and
- (b) were in operation at a time or throughout a time so specified,
- shall be conclusive evidence of the matters certified.”
- (11) In paragraph 11(2) (status of certificates under sub-paragraph (1)), after “purporting to be such a certificate” there is inserted “;as is mentioned in sub-paragraph (1), (1A) or (1B)”.
- (12) In paragraph 15 (evidence in proceedings under section 28V as to conditions or requirements imposed by a Minister), after sub-paragraph (1) there is inserted—
- “(1A) In any proceedings under section 28V, a certificate signed by or on behalf of the Scottish Ministers and certifying that any conditions or requirements specified in the certificate—
- (a) were imposed by a member of the Scottish Executive, and
- (b) were in operation at a time or throughout a time so specified,
- is conclusive evidence of the matters certified.
- (1B) In any proceedings under section 28V, a certificate signed by or on behalf of the National Assembly for Wales and certifying that any conditions or requirements specified in the certificate—
- (a) were imposed by the Assembly, and
- (b) were in operation at a time or throughout a time so specified,
- is conclusive evidence of the matters certified.”
- (13) In paragraph 15(2) (status of certificates under sub-paragraph (1)), after “purporting to be such a certificate” there is inserted “;as is mentioned in sub-paragraph (1), (1A) or (1B)”.

Commencement Information

I15 Sch. 1 para. 38 wholly in force at 4.12.2006; Sch. 1 para. 38 not in force at Royal Assent see s. 20(3); Sch. 1 para. 38(1)(3)(4)(6)-(13) in force at 30.6.2005 by S.I. 2005/1676, art. 2(1)(c); Sch. 1 para. 38(2) in force at 5.12.2005 by S.I. 2005/2774, art. 3(j); Sch. 1 para. 38 fully in force at 4.12.2006 by S.I. 2005/2774, art. 4(f)

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- 39 (1) Schedule 3A (validity of contracts etc.) is amended as follows.
- (2) In paragraph 2(3) (meaning of “relevant independent adviser”), after paragraph (c) there is inserted “; or
- (d) if he is a person of a description specified in an order made by the Secretary of State.”
- (3) For paragraph 11 (application of Schedule to Part 3 of the 1995 Act so far as relating to employment services) there is substituted—
- “11 Any reference in this Schedule to this Part of this Act shall be taken to include a reference to Part 3 of this Act, to the extent that it relates to—
- (a) the provision of employment services; or
- (b) the provision under a group insurance arrangement of facilities by way of insurance.
- 12 Where a term to which section 26(1A)(c) applies is a term in an agreement which is not a contract, Part 1 of this Schedule shall have effect as if the agreement were a contract.”

Commencement Information

I16 Sch. 1 para. 39 wholly in force at 5.12.2005; Sch. 1 para. 39 not in force at Royal Assent see s. 20(3); Sch. 1 para. 39(1)(2) in force at 30.6.2005 by S.I. 2005/1676, art. 2(1)(c); Sch. 1 para. 39 fully in force at 5.12.2005 by S.I. 2005/2774, art. 3(j)

- 40 (1) Schedule 4 (premises occupied under leases) is amended as follows.
- (2) In paragraph 2(joining lessors in tribunal proceedings)—
- (a) in the heading, the words “or 25(8)” are omitted, and
- (b) in sub-paragraph (1), for “under section 17A or 25(8)” there is substituted “;on a complaint under section 17A ”.
- (3) In the heading to Part 2 (occupation by provider of services), for “provider of services” there is substituted “;persons subject to a duty under section 21, 21E or 21H ”.
- (4) In paragraph 5 (failure to obtain consent to alteration), after “section 21 duty” there is inserted “;or a duty imposed under section 21E or 21H ”.
- (5) In paragraph 7(1) (joining lessors in proceedings under section 25), for “under section 25, in a case to which this Part of this Schedule applies,” there is substituted “;under section 25 in a case to which section 27 applies, other than a claim presented as a complaint under section 25(8), ”.
- (6) After paragraph 7 there is inserted—

*“Joining lessors in proceedings relating to
group insurance or employment services*

- 7A (1) In any proceedings on a complaint under section 25(8) in a case to which section 27 applies, the complainant or the occupier may ask the tribunal hearing the complaint to direct that the lessor be joined or sisted as a party to the proceedings.

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- (2) The request shall be granted if it is made before the hearing of the complaint begins.
- (3) The tribunal may refuse the request if it is made after the hearing of the complaint begins.
- (4) The request may not be granted if it is made after the tribunal has determined the complaint.
- (5) Where a lessor has been so joined or sisted as a party to the proceedings, the tribunal may determine—
 - (a) whether the lessor has—
 - (i) refused consent to the alteration, or
 - (ii) consented subject to one or more conditions; and
 - (b) if so, whether the refusal or any of the conditions was unreasonable.
- (6) If, under sub-paragraph (5), the tribunal determines that the refusal or any of the conditions was unreasonable it may take one or more of the following steps—
 - (a) make such declaration as it considers appropriate;
 - (b) make an order authorising the occupier to make the alteration specified in the order;
 - (c) order the lessor to pay compensation to the complainant.
- (7) An order under sub-paragraph (6)(b) may require the occupier to comply with conditions specified in the order.
- (8) Any step taken by the tribunal under sub-paragraph (6) may be in substitution for, or in addition to, any step taken by the tribunal under section 17A(2).
- (9) If the tribunal orders the lessor to pay compensation it may not make an order under section 17A(2) ordering the occupier to do so.”

Commencement Information

I17 Sch. 1 para. 40 wholly in force at 4.12.2006; Sch. 1 para. 40 not in force at Royal Assent see s. 20(3); Sch. 1 para. 40(1)(2)(5)(6) in force at 5.12.2005 by S.I. 2005/2774, art. 3(j); Sch. 1 para. 40 fully in force at 4.12.2006 by S.I. 2005/2774, art. 4(f)

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Changes to legislation:

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