

2004 No. 1168

DISABLED PERSONS

**The Disability Discrimination (Questions and Replies)
Order 2004**

Made - - - - - *20th April 2004*

Laid before Parliament *27th April 2004*

Coming into force - - *1st October 2004*

The Secretary of State for Work and Pensions, in exercise of the powers conferred upon him by section 56(2) and (4) and section 67(3) of the Disability Discrimination Act 1995(a) hereby makes the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Disability Discrimination (Questions and Replies) Order 2004 and shall come into force on 1st October 2004.

(2) This Order does not extend to Northern Ireland.

(3) In this Order—

“the Act” means the Disability Discrimination Act 1995;

“tribunal” means an employment tribunal.

Revocation

2. The Disability Discrimination (Questions and Replies) Order 1996(b) is hereby revoked.

Forms for questions and replies

3. The forms respectively set out in Schedules 1 and 2 to this Order or forms to the like effect with such variation as the circumstances may require are, respectively, hereby prescribed for the purposes of section 56 of the Act as forms—

(a) by which a complainant may question a respondent on his reasons for doing any relevant act, or any other matter which is or may be relevant; and

(b) by which the respondent may if he wishes reply to any questions.

Period for service of questions

4. In proceedings before a tribunal, a question shall only be admissible as evidence in pursuance of section 56(3) of the Act—

(a) where it was served before a complaint had been presented to a tribunal, if it was so served—

(i) within the period of three months beginning when the act complained of was done; or

(a) 1995 c. 50. Section 56 is amended by regulation 22 of the Disability Discrimination Act 1995 (Amendment) Regulations 2003 (S.I. 2003/1673) as from 1st October 2004.

(b) S.I. 1996/2793.

- (ii) where the period under paragraph 3 of Schedule 3 to the Act within which proceedings must be brought is extended by regulation 15 of the Employment Act 2002 (Dispute Resolution) Regulations 2004^(a), within that extended period;
- (b) where it was served after a complaint had been presented to a tribunal—
 - (i) if it was served within the period of twenty eight days beginning with the day on which the complaint was presented, or
 - (ii) if it was served with the leave of a tribunal, within the period specified by that tribunal.

Manner of service of questions and replies

5. A question, or as the case may be, a reply may be duly served—
- (a) where the person to be served is the respondent, by delivering the question to him, or by sending it by post to him at his usual or last known residence or place of business; or
 - (b) where the person to be served is the complainant, by delivering the reply to him, or sending it by post to him at his address for reply as stated by him in the document containing the questions or, if no address is so stated, at his usual or last known residence; or
 - (c) where the person to be served is a body corporate or is a trade union or employers' association within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992^(b), by delivering it to the secretary or clerk of the body, union, or association at its registered or principal office or by sending it by post to the secretary or clerk at that office; or
 - (d) where the person to be served is acting by a solicitor, by delivering it at, or by sending it by post to, the solicitor's address for service.

Signed by authority of the Secretary of State for Work and Pensions.

20th April 2004

Maria Eagle
Parliamentary Under-Secretary of State,
Department for Work and Pensions

^(a) S.I. 2004/752.
^(b) 1992, c. 52.

THE DISABILITY DISCRIMINATION ACT 1995 s.56(2)(a)

Questionnaire of complainant

To _____

(name of person to be questioned (the respondent))

of _____

(address)

1. I _____

(name of complainant)

of _____

(address)

*consider that you may have discriminated against me contrary to the Disability Discrimination Act 1995 ("the Act") by

- * (a) (i) directly discriminating against me, or
(ii) otherwise treating me less favourably for a reason relating to my disability in circumstances in which that treatment cannot be justified,

* (b) failing to comply with a duty to make a reasonable adjustment which applied to you in my case,

* (c) victimising me

* and/or

* consider that you may have subjected me to harassment contrary to the Act.

2. (Give details, including a factual description of the treatment received, the effect of the treatment received (if the complaint relates to harassment), or the failure complained of. Describe any relevant circumstances leading up to this and include any relevant dates or approximate dates).

3. I consider this treatment or failure on your part may have been unlawful [because.....]. (complete if you wish to give reasons, otherwise delete).

4. Do you agree that the statement in paragraph 2 above is an accurate description of what happened? If not, in what respect do you disagree or what is your version of what happened?

5. Do you accept that your treatment of me or any failure complained of was unlawful? If not, why not?

6. (Any other questions you wish to ask.)

7. Please send your reply to *[the above address] *[the following address]

(address)

(signature of complainant)

(date)

* delete as appropriate

Notes

(1) Under section 56(3) of the Act (as amended by the Disability Discrimination Act 1995 (Amendment) Regulations 2003), this questionnaire and any reply are admissible in evidence in employment tribunal proceedings brought under Part 2 of the Act or - in cases concerning employment services - under Part 3.

(2) Section 56(3)(b) allows a tribunal to draw any inference it considers is just and equitable from

- a failure, without reasonable excuse, to reply to the questions within eight weeks, or
- an evasive or equivocal reply.

This could include an inference that the person questioned has discriminated against the complainant or subjected the complainant to harassment in a way which is unlawful under Part 2 of the Act or under Part 3 if the case concerns employment services.

SCHEDULE 2

Article 2

THE DISABILITY DISCRIMINATION ACT 1995 s.56(2)(b)

Reply by the respondent

To _____

(name of complainant)

of _____

(address)

1. I _____

(name of respondent)

of _____

(address)

hereby acknowledge receipt of the questionnaire signed by you and dated _____ which was served on me on _____ *(date)*.

2. * I agree that the statement in paragraph 2 of the questionnaire is an accurate description of what happened.

* I disagree with the statement in paragraph 2 of the questionnaire in that

(State which parts of the statement in paragraph 2 you disagree with and why)

3. * I accept

* I dispute

that my treatment of you or any failure on my part to comply with a duty to make a reasonable adjustment was unlawful.

* My reasons for disputing this are _____

(Include any reasons which in your view explain or justify your treatment of the complainant or explain any failure on your part to comply with a duty to make a reasonable adjustment).

4. *(Replies to questions in paragraph 6 of the questionnaire).*

* 5. I have deleted (in whole or in part) the paragraph(s) numbered _____ above, since I am unable/unwilling to reply to the relevant questions for the following reasons:

(signature of the respondent)

(date)

* delete as appropriate

EXPLANATORY NOTE

(This note is not part of the Order)

This Order revokes and replaces the Disability Discrimination (Questions and Replies) Order 1996 which prescribed the form of a questionnaire which could be used by a person (“the complainant”) who considered that he may have been discriminated against by another (“the respondent”) contrary to any provision of Part 2 of the Disability Discrimination Act 1995. The 1996 Order also prescribed a form for the respondent’s reply and laid down specified periods within which the questions had to be served by the complainant in order to be admissible in proceedings before an employment tribunal.

This Order prescribes amended forms for questions and replies in consequence of the changes made to Part 2 and (in respect of employment services) Part 3 of the Disability Discrimination Act 1995 by the Disability Discrimination Act 1995 (Amendment) Regulations 2003 and the Disability Discrimination Act 1995 (Pensions) Regulations 2003 (S.I. 2003/2770), in order to implement Council Directive 2000/78/EC (O.J. No. L 303, 2.12.2000, p.16) so far as it relates to disability discrimination. The relevant changes include:

- an amended definition of discrimination;
- a specific prohibition of harassment;
- extension of the scope of Part 2 of the Act to cover, for example, partnerships;
- the requirement that the respondent reply to the questions served by the complainant within 8 weeks, in the absence of a reasonable excuse.

Article 3 of this Order prescribes the forms which may be used for the purposes mentioned in section 56 of the Act, as amended. The form set out in Schedule 1 is for use where the complainant considers that he may have been discriminated against or subjected to harassment in contravention of the Act and wishes to question the respondent. The form set out in Schedule 2 is for use by the respondent when replying.

Article 4 relates to the period within which questions must be served on the respondent if they are to be admissible as evidence in proceedings before an employment tribunal. Article 4(a) applies where a question is served before a complaint has been presented to a tribunal. Article 4(a)(ii) extends the period provided for in Article 4(a)(i) in cases where the 3-month time limit for bringing proceedings before an employment tribunal has been extended as a result of regulation 15 of the Employment Act 2002 (Dispute Resolution) Regulations 2004. Article 4(b) applies where a question is served after a complaint has been presented to an employment tribunal. It extends the period provided for in the 1996 Order from 21 to 28 days.

Article 5 relates to the manner of service of questions and replies.

No Regulatory Impact Assessment has been prepared in connection with this Order as it imposes negligible costs on business.

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Order 2004

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