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**STATUTORY INSTRUMENTS**

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**2003 No.**

**DISABILITY DISCRIMINATION**

**The Disability Discrimination Act 1995 (Amendment) Regulations 2003**

*Made* 2003

*Coming into force* 1<sup>st</sup> October 2004

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The Secretary of State for Work and Pensions, being a Minister designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to discrimination<sup>(a)</sup>, in exercise of the powers conferred by that section, hereby makes the following Regulations:—

PART 1

INTRODUCTORY

**Citation, commencement, extent and interpretation**

1.—(1) These Regulations may be cited as the Disability Discrimination Act 1995 (Amendment) Regulations 2003, and shall come into force on 1<sup>st</sup> October 2004.

(2) These Regulations shall not extend to Northern Ireland.

(3) In these Regulations—

“the 1995 Act” means the Disability Discrimination Act 1995<sup>(b)</sup>;

“the 1999 Act” means the Disability Rights Commission Act 1999<sup>(c)</sup>.

**Amendment of the 1995 Act, 1999 Act and other legislation**

2.—(1) The amendments to the 1995 Act set out in Part 2 of these Regulations shall have effect.

(2) The amendments to the 1999 Act set out in Part 3 of these Regulations shall have effect.

(3) The amendments set out in Part 5 of these Regulations (in relation to other legislation) shall have effect.

PART 2

AMENDMENTS TO THE 1995 ACT

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<sup>(a)</sup> See the European Communities (Designation) (No. 3) Order 2002 (S.I. 2002/1819).

<sup>(b)</sup> 1995 c.50.

<sup>(c)</sup> 1999 c.17.

**Meaning of “discrimination” and “harassment”**

3.—(1) In the heading to Part 2, for “EMPLOYMENT” substitute “THE EMPLOYMENT FIELD”.

(2) After the heading, and before section 4, insert the following sections—

*“Meaning of “discrimination” and “harassment”*

**3A Meaning of “discrimination”**

(1) For the purposes of this Part, a person discriminates against a disabled person if—

(a) for a reason which relates to the disabled person’s disability, he treats him less favourably than he treats or would treat others to whom that reason does not or would not apply, and

(b) he cannot show that the treatment in question is justified.

(2) Treatment is justified for the purposes of subsection (1)(b) if, but only if, the reason for it is both material to the circumstances of the particular case and substantial.

(3) Without prejudice to the generality of subsection (2), treatment of a disabled person cannot be justified if the reason for it—

(a) is not based on a consideration of that individual’s abilities, but

(b) is instead merely because he has a disability.

(4) For the purposes of this Part, a person also discriminates against a disabled person if he fails to comply with a duty to make reasonable adjustments imposed on him in relation to the disabled person.

(5) A provision of this Part imposing a duty to make reasonable adjustments applies only for the purpose of determining whether a person has discriminated against a disabled person; and accordingly a breach of any such duty is not actionable as such.

(6) If, in a case falling within subsection (1), a person is under a duty to make reasonable adjustments in relation to a disabled person but fails to comply with that duty, his treatment of that person cannot be justified under subsection (2) unless it would have been justified even if he had complied with that duty.

(7) Subject to the duty to make reasonable adjustments, nothing in this Part is to be taken to require a person to treat a disabled person more favourably than he treats or would treat others

- (8) Nothing in this Part is to be taken to require a disabled person to be recruited to or maintained in any employment or occupation the essential functions of which he is not able to perform (after any duty to make reasonable adjustments has been complied with).

### **3B Meaning of “harassment”**

- (1) For the purposes of this Part, a person subjects a disabled person to harassment where, for a reason which relates to the disabled person’s disability, he engages in unwanted conduct which has the purpose or effect of—
- (a) violating the disabled person’s dignity, or
  - (b) creating an intimidating, hostile, degrading, humiliating or offensive environment for him.
- (2) For the purposes of subsection (1), conduct shall be regarded as having the effect referred to in paragraph (a) or (b) of that subsection if, and only if, having regard to all the circumstances, including in particular the perception of the disabled person, it should reasonably be considered as having that effect.

## **Employment**

4. For sections 4 to 6 (and the preceding cross-heading), substitute the following sections—

### *“Employment*

#### **4 Employers: discrimination**

- (1) It is unlawful for an employer to discriminate against a disabled person—
- (a) in the arrangements which he makes for the purpose of determining to whom he should offer employment;
  - (b) in the terms on which he offers that person employment; or
  - (c) by refusing to offer, or deliberately not offering, him employment.
- (2) It is unlawful for an employer to discriminate against a disabled person whom he employs—
- (a) in the terms of employment which he affords him;

- (b) in the opportunities which he affords him for promotion, a transfer, training or receiving any other benefit;
  - (c) by refusing to afford him, or deliberately not affording him, any such opportunity; or
  - (d) by dismissing him, or subjecting him to any other detriment.
- (3) It is also unlawful for an employer to subject to harassment—
- (a) a disabled person whom he employs, or
  - (b) a disabled person who has applied to him for employment.
- (4) Subsection (2) does not apply to benefits of any description if the employer is concerned with the provision (whether or not for payment) of benefits of that description to the public, or to a section of the public which includes the employee in question, unless—
- (a) that provision differs in a material respect from the provision of the benefits by the employer to his employees; or
  - (b) the provision of the benefits to the employee in question is regulated by his contract of employment; or
  - (c) the benefits relate to training.
- (5) The references in subsection (2) to the dismissal of a person include references—
- (a) to the termination of that person's employment by the expiration of any period (including a period expiring by reference to an event or circumstance), not being a termination immediately after which the employment is renewed on the same terms; and
  - (b) to the termination of that person's employment by any act of his (including the giving of notice) in circumstances such that he is entitled to terminate it without notice by reason of the conduct of the employer.
- (6) This section applies only in relation to employment at an establishment in Great Britain.

#### **4A Employers: duty to make adjustments**

- (1) Where—
- (a) a provision, criterion or practice applied by or on behalf of an

employer, or

(b) any physical feature of premises occupied by the employer,

places the disabled person concerned at a substantial disadvantage in comparison with persons who are not disabled, it is the duty of the employer to take such steps as it is reasonable, in all the circumstances of the case, for him to have to take in order to prevent the provision, criterion or practice, or feature, having that effect.

(2) In subsection (1), “the disabled person concerned” means—

(a) in the case of a provision, criterion or practice for determining to whom employment should be offered, any disabled person who is, or has notified the employer that he may be, an applicant for that employment;

(b) in any other case, a disabled person who is—

(i) an applicant for the employment concerned, or

(ii) an employee of the employer concerned.

(3) Nothing in this section imposes any duty on an employer in relation to a disabled person if the employer does not know, and could not reasonably be expected to know—

(a) in the case of an applicant or potential applicant, that the disabled person concerned is, or may be, an applicant for the employment; or

(b) in any case, that that person has a disability and is likely to be affected in the way mentioned in subsection (1).

#### **4B Contract workers**

(1) It is unlawful for a principal, in relation to contract work, to discriminate against a disabled person—

(a) in the terms on which he allows him to do that work;

(b) by not allowing him to do it or continue to do it;

(c) in the way he affords him access to any benefits or by refusing or deliberately omitting to afford him access to them; or

(d) by subjecting him to any other detriment.

(2) It is also unlawful for a principal, in relation to contract work, to subject a disabled contract worker to harassment.

(3) Where a contract worker who is disabled is likely to be placed at a

similar substantial disadvantage by—

- (a) a provision, criterion or practice applied by or on behalf of, or
- (b) a physical feature of premises occupied by,

all or most of the principals to whom he is or might be supplied, his employer must take such steps as he would under section 4A have to take if the provision, criterion or practice were made by him or on his behalf or (as the case may be) if the premises were occupied by him.

- (4) Subsection (1) does not apply to benefits of any description if the principal is concerned with the provision (whether or not for payment) of benefits of that description to the public, or to a section of the public which includes the contract worker in question, unless that provision differs in a material respect from the provision of the benefits by the principal to contract workers.
- (5) Section 4A applies to any principal, in relation to contract work, as if he were, or would be, the employer of the contract worker and as if any contract worker supplied to do work for him were an employee of his.
- (6) However, for the purposes of section 4A as applied by subsection (5), a principal is not required to take a step in relation to a contract worker if under that section the worker's employer is required to take the step in relation to the worker.
- (7) This section applies only in relation to contract work done at an establishment in Great Britain (the provisions of section 68 about the meaning of "employment at an establishment in Great Britain" applying for the purposes of this subsection with the appropriate modifications).
- (8) In this section—

"principal" means a person ("A") who makes work available for doing by individuals who are employed by another person who supplies them under a contract made with A;

"contract work" means work so made available; and

"contract worker" means any individual who is supplied to the principal under such a contract.

#### **4C Police**

- (1) For the purposes of this Part, the holding of the office of constable shall be treated as employment—
  - (a) by the chief officer of police as respects any act done by him in relation to a constable or that office;

- (b) by the police authority as respects any act done by them in relation to a constable or that office.
- (2) For the purposes of section 58, the holding of the office of constable shall be treated as employment by the chief officer of police (and as not being employment by any other person).
- (3) There shall be paid out of the police fund—
  - (a) any compensation, costs or expenses awarded against a chief officer of police in any proceedings brought against him under this Part, and any costs or expenses incurred by him in any such proceedings so far as not recovered by him in the proceedings; and
  - (b) any sum required by a chief officer of police for the settlement of any claim made against him under this Part if the settlement is approved by the police authority.
- (4) Any proceedings under this Part which, by virtue of subsection (1), would lie against a chief officer of police shall be brought against the chief officer of police for the time being or, in the case of a vacancy in that office, against the person for the time being performing the functions of that office; and references in subsection (3) to the chief officer of police shall be construed accordingly.
- (5) Subsections (1) and (2) apply to a police cadet and appointment as a police cadet as they apply to a constable and the office of constable.
- (6) In this section—
  - “chief officer of police”—
    - (a) in relation to a person appointed, or an appointment falling to be made, under a specified Act, has the same meaning as in the Police Act 1996<sup>(d)</sup>,
    - (b) in relation to a person appointed, or an appointment falling to be made, under section 9(1)(b) or 55(1)(b) of the Police Act 1997<sup>(e)</sup> (police members of the National Criminal Intelligence Service and the National Crime Squad) means the Director General of the National Criminal Intelligence Service or, as the case may be, the Director General of the National Crime Squad,
    - (c) in relation to a person appointed, or an appointment falling to be made, under the Police (Scotland) Act 1967<sup>(f)</sup>, means the chief constable of the relevant police force,

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<sup>(d)</sup> 1996 c.16.

<sup>(e)</sup> 1997 c.50.

<sup>(f)</sup> 1967 c.77.

- (d) in relation to any other person or appointment means the officer who has the direction and control of the body of constables or cadets in question;

“police authority”—

- (a) in relation to a person appointed, or an appointment falling to be made, under a specified Act, has the same meaning as in the Police Act 1996,
- (b) in relation to a person appointed, or an appointment falling to be made, under the Police (Scotland) Act 1967, has the meaning given in that Act,
- (c) in relation to any other person or appointment, means the authority by whom the person in question is or on appointment would be paid;

“police cadet” means any person appointed to undergo training with a view to becoming a constable;

“police fund”—

- (a) in relation to a chief officer of police within paragraph (a) of the above definition of that term, has the same meaning as in the Police Act 1996,
- (b) in relation to a chief officer of police within paragraph (b) of that definition, means the service fund established under section 16 or (as the case may be) section 61 of the Police Act 1997, and
- (c) in any other case means money provided by the police authority;

“specified Act” means the Metropolitan Police Act 1829(g), the City of London Police Act 1839(h) or the Police Act 1996.

#### **4D Occupational pension schemes: discrimination**

- (1) It is unlawful for the trustees or managers of an occupational pension scheme to discriminate against a disabled person—
  - (a) in the terms on which they are prepared to admit him to membership of the scheme;
  - (b) by refusing to accept, or deliberately not accepting, his application for membership; or

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(a) 1829 c.44.  
(b) 1839 c...

- (c) by subjecting him to any other detriment in relation to the scheme.
- (2) It is also unlawful for trustees or managers of an occupational pension scheme to subject a disabled person to harassment.
- (3) In determining for the purposes of subsection (1) whether the application of an apparently neutral provision, criterion or practice to a disabled person constitutes discrimination within the meaning of section 3A(1)—
  - (a) its application is justified for the purposes of section 3A(1)(b) if, but only if, the trustees or managers can show that—
    - (i) the provision, criterion or practice is, or would be, applied equally to persons who do not have his particular disability, and
    - (ii) its application is a proportionate means of achieving a legitimate aim; and
  - (b) section 3A(2) and (3) do not apply.
- (4) For the purposes of subsection (1) the trustees or managers do not discriminate against a disabled person by applying to that person any provision, criterion or practice, if they can show that they—
  - (a) cannot alter, and
  - (b) did not set,the provision, criterion or practice.
- (5) For the purposes of subsection (4), where a provision, criterion or practice can be altered by the trustees or managers with the consent of another person, the trustees or managers shall not be able to show that they cannot alter it if they have failed to seek that consent.

#### **4E Occupational pension schemes: duty to make adjustments**

- (1) This section applies where the trustees or managers of an occupational pension scheme provide information relating to the terms and conditions of the scheme or the benefits provided thereunder.
- (2) Where the format in which information falling within subsection (1) is provided places a disabled person at a substantial disadvantage in comparison with persons who are not disabled, it is the duty of the trustees and managers to take such steps as it is reasonable, in all the circumstances of the case, for them to have to take in order to prevent the format having that effect.

- (3) This section does not apply in relation to a disabled person if the trustees and managers do not know, and could not reasonably be expected to know, that the disabled person—
- (a) has a disability; or
  - (b) is, or is interested in becoming, a member of the scheme.

**4F Insurance services: discrimination**

- (1) This section applies where a provider of insurance services (“the insurer”) enters into arrangements with an employer under which the employer’s employees, or a class of his employees—

- (a) receive insurance services provided by the insurer; or
- (b) are given an opportunity to receive such services.

- (2) Subject to subsections (3) and (4), the insurer is to be taken, for the purposes of this Part, to discriminate unlawfully against a disabled person who is a relevant employee if he acts in relation to that employee in a way which would be unlawful discrimination for the purposes of Part 3 if—

- (a) he were providing the service in question to members of the public; and
- (b) the employee was provided with, or was trying to secure the provision of, that service as a member of the public;

and section 3A shall not apply for the purposes of this section.

- (3) The insurer is not to be taken to discriminate unlawfully for the purposes of subsection (2) if he can show that he acted as the employer’s agent and with the employer’s authority.

- (4) In their application to insurance services to which this section applies, the provisions of sections 19 to 21 have effect as follows.

- (5) Section 19(1) has effect as if—

- (a) after paragraph (a), there were inserted the following paragraph—

“(aa) in failing to comply with a duty imposed on him by subsection (1) of section 21 in circumstances in which the effect of that failure is to place the disabled person at a substantial disadvantage in comparison with persons who are not disabled in relation to the provision of the service;”;

- (b) in paragraph (b), for “section 21” there were substituted “subsection (2) or (4) of section 21”;

(6) Section 20 has effect as if—

(a) after subsection (1), there were inserted the following subsection—

“(1A) For the purposes of section 19, a provider of services also discriminates against a disabled person if he fails to comply with a duty imposed on him by subsection (1) of section 21 in relation to the disabled person.”;

(b) in subsection (2)(a), for “a section 21 duty imposed” there were substituted “a duty imposed by subsection (2) or (4) of section 21”;

(c) after subsection (2), there were inserted the following paragraph—

“(2A) For the purposes of subsection (1), treatment is only justified if one or more of the conditions mentioned in subsection (4) are satisfied.”;

(d) in subsection (3), for “this section” there were substituted “subsection (2)”;

(e) in subsection (4), for paragraph (e) there were substituted the following paragraph—

“(e) in a case falling within section 19(1)(a), (c) or (d), where the treatment consists of the application of a relevant rule to the disabled person, that—

- (i) the relevant rule is, or would be, applied equally to persons who do not have his particular disability, and
- (ii) its application is a proportionate means of achieving a legitimate aim.”;

(f) for subsection (5), there were substituted the following subsection—

“(5) In subsection (4)(e), “relevant rule” means a provision, criterion or practice which applies for determining whether a person should receive, or be given the opportunity to receive, benefits under the insurance service concerned.”.

(7) Section 21 has effect as if—

(a) in subsection (1), for the words “makes it impossible or unreasonably difficult for disabled persons to make use of” there were substituted “places disabled persons at a substantial disadvantage in comparison with persons who are not disabled in relation to the provision of”;

(b) after subsection (1), there were inserted the following subsection—

“(1A) In subsection (1), “practice, policy or procedure”—

- (a) includes a provision or criterion, but
  - (b) it does not include a relevant rule (within the meaning of section 20(4)(e)).”.
- (8) It is unlawful for the insurer to subject to harassment—
- (a) a disabled person who is a relevant employee to whom he is providing insurance services, or
  - (b) a disabled person who is a relevant employee who has applied to him to be provided with such services.
- (9) In this section—
- “insurance services” means services for the provision of benefits in respect of—
- (a) termination of service;
  - (b) retirement, old age or death; or
  - (c) accident, injury, sickness or invalidity; and
- “relevant employee” means—
- (a) in the case of an arrangement which applies to employees of the employer in question, an employee of his;
  - (b) in the case of an arrangement which applies to a class of employees of the employer, an employee who is in that class.
- (10) For the purposes of the definition of “relevant employee” in subsection (9), “employee”, in relation to an employer, includes a person who has applied for, or is contemplating applying for, employment by that employer or (as the case may be) employment by him in the class in question.

## **Partnerships**

5. After section 6, insert the following sections—

### *“Partnerships*

#### **6A Partnerships: discrimination**

- (1) It is unlawful for a firm, in relation to a position as partner in the firm, to discriminate against a disabled person—

- (a) in the arrangements they make for the purpose of determining who should be offered that position; or
  - (b) in the terms on which they offer him that position; or
  - (c) by refusing or deliberately omitting to offer him that position; or
  - (d) in a case where the person already holds that position—
    - (i) in the way they afford him access to any benefits or by refusing or deliberately omitting to afford him access to them; or
    - (ii) by expelling him from that position, or subjecting him to any other detriment.
- (2) Subsection (1) does not apply to benefits of any description if the firm is concerned with the provision (whether or not for payment) of benefits of that description to the public, or to a section of the public which includes the partner in question, unless that provision differs in a material respect from the provision of the benefits to other partners.
- (3) It is also unlawful for a firm, in relation to a position as partner in the firm, to subject to harassment a disabled person who holds or has applied for that position.
- (4) Subsections (1) and (3) and section 6B apply in relation to persons proposing to form themselves into a partnership as they apply in relation to a firm.
- (5) In the case of a limited partnership, references in this section and in section 6B to a partner shall be construed as references to a general partner as defined in section 3 of the Limited Partnerships Act 1907(i).
- (6) This section and section 6B apply to a limited liability partnership as they apply to a firm; and, in the application of those sections to a limited liability partnership, references to a partner in a firm are references to a member of the limited liability partnership.
- (7) In this section and in section 6B, “firm” has the meaning given by section 4 of the Partnership Act 1890(j).
- (8) References in this section to the expulsion of a person from a position as partner include references—
- (a) to the termination of that person’s partnership by the expiration of any period (including a period expiring by reference to an event or circumstance), not being a termination immediately after which the partnership is renewed on the same terms; and

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(i) 1907 c.24  
(j) 1890 c.39

- (b) to the termination of that person's partnership by any act of his (including the giving of notice) in circumstances such that he is entitled to terminate it without notice by reason of the conduct of the other partners.

**6B Partnerships: duty to make adjustments**

(1) Where—

- (a) a provision, criterion or practice applied by or on behalf of a firm, or
- (b) any physical feature of premises occupied by the firm,

places the disabled person concerned at a substantial disadvantage in comparison with persons who are not disabled, it is the duty of the firm to take such steps as it is reasonable, in all the circumstances of the case, for them to have to take in order to prevent the provision, criterion or practice, or feature having that effect.

(2) Subsection (1)(a) applies only in relation to a provision, criterion or practice—

- (a) for determining to whom the position of partner should be offered or the terms on which that position is offered, or
- (b) applying in relation to any working condition, training or other benefit offered or afforded in connection with that position.

(3) In this section, “the disabled person concerned” means—

- (a) in the case of a provision, criterion or practice for determining to whom the position of partner should be offered, any disabled person who is, or has notified the firm that he may be, a candidate for that position;
- (b) in any other case, a disabled person who is—
  - (i) a partner, or
  - (ii) a candidate for the position of partner.

(4) Nothing in this section imposes any duty on a firm in relation to a disabled person if the firm does not know, and could not reasonably be expected to know—

- (a) in the case of a candidate or potential candidate, that the disabled person concerned is, or may be, a candidate for the position of partner; or
- (b) in any case, that that person has a disability and is likely to be affected

in the way mentioned in subsection (1).

- (5) Where a firm is required by this section to take any steps in relation to the disabled person concerned, the cost of taking those steps shall be treated as an expense of the firm; and the extent to which such cost should be borne by that person, where he is or becomes a partner in the firm, shall not exceed such amount as is reasonable, having regard in particular to the proportion in which he is entitled to share in the firm's profits."

### **Repeal of exemption for small businesses**

6. Omit section 7 (exemption for small businesses).

### **Barristers and advocates**

7. After section 7, insert the following sections—

#### *"Barristers and advocates*

##### **7A Barristers: discrimination**

- (1) It is unlawful for a barrister or a barrister's clerk, in relation to any offer of a pupillage or tenancy, to discriminate against a disabled person—
- (a) in the arrangements which are made for the purpose of determining to whom it should be offered;
  - (b) in respect of any terms on which it is offered; or
  - (c) by refusing, or deliberately omitting, to offer it to him.
- (2) It is unlawful for a barrister or a barrister's clerk, in relation to a disabled pupil or tenant in the set of chambers in question, to discriminate against him—
- (a) in respect of any terms applicable to him as a pupil or tenant;
  - (b) in the opportunities for training, or gaining experience, which are afforded or denied to him;
  - (c) in the benefits which are afforded or denied to him;
  - (d) by terminating his pupillage or by subjecting him to any pressure to leave the chambers; or
  - (e) by subjecting him to any other detriment.

- (3) It is unlawful for a barrister or barrister’s clerk to subject to harassment a disabled person who —
- (a) is a pupil or tenant in the set of chambers in question, or
  - (b) has applied to be a pupil or tenant in those chambers.
- (4) It is also unlawful for any person, in relation to the giving, withholding or acceptance of instructions to a barrister, to discriminate against a disabled person.
- (5) In this section and in section 7B—
- “barrister’s clerk” includes any person carrying out any of the functions of a barrister’s clerk; and
- “pupil”, “pupillage”, “set of chambers”, “tenancy” and “tenant” have the meanings commonly associated with their use in the context of barristers practising in independent practice.
- (6) This section and section 7B extend to England and Wales only.

**7B Barristers: duty to make adjustments**

- (1) Where—
- (a) a provision, criterion or practice applied by or on behalf of a barrister or barrister’s clerk, or
  - (b) any physical feature of premises occupied by a barrister or by a barrister’s clerk,
- places the disabled person concerned at a substantial disadvantage in comparison with persons who are not disabled, it is the duty of the barrister or barrister’s clerk to take such steps as it is reasonable, in all the circumstances of the case, for him to have to take in order to prevent the provision, criterion or practice, or feature, having that effect.
- (2) In a case where subsection (1) applies in relation to two or more barristers in a set of chambers, the duty in that subsection is a duty on each of them to take such steps as it is reasonable, in all of the circumstances of the case, for him to have to take in order to prevent the arrangement or feature having the effect in question.
- (3) Subsection (1)(a) applies only in relation to a provision, criterion or practice—
- (a) for determining—

- (i) to whom a pupillage or tenancy should be offered, or
  - (ii) the terms on which a pupillage or tenancy is offered; or
- (b) applying in relation to any working condition, training, opportunity for gaining experience or other benefit connected with pupillage or practice as a barrister.
- (4) In this section, “the disabled person concerned” means—
- (a) in the case of a provision, criterion or practice for determining to whom a pupillage or tenancy should be offered, any disabled person who is, or has notified the barrister or the barrister’s clerk concerned that he may be, an applicant for a pupillage or tenancy; or
  - (b) in any other case, a disabled person who is—
    - (i) a tenant;
    - (ii) a pupil, or
    - (iii) an applicant for a pupillage or tenancy.
- (5) Nothing in this section imposes any duty on a barrister or a barrister’s clerk in relation to a disabled person if he does not know, and could not reasonably be expected to know—
- (a) in the case of an applicant or potential applicant, that the disabled person concerned is, or may be, an applicant for a pupillage or tenancy; or
  - (b) in any case, that that person has a disability and is likely to be affected in the way mentioned in subsection (1).

**7C Advocates: discrimination**

- (1) It is unlawful for an advocate, in relation to taking any person as his pupil, to discriminate against any disabled person—
- (a) in the arrangements which he makes for the purpose of determining whom he will take as his pupil;
  - (b) in respect of any terms on which he offers to take the disabled person as his pupil; or
  - (c) by refusing, or deliberately omitting, to take the disabled person as his pupil.
- (2) It is unlawful for an advocate, in relation to a disabled person who is a pupil, to discriminate against him—

- (a) in respect of any terms applicable to him as a pupil;
  - (b) in the opportunities for training, or gaining experience, which are afforded or denied to him;
  - (c) in the benefits which are afforded or denied to him;
  - (d) by terminating the relationship or by subjecting him to any pressure to leave; or
  - (e) by subjecting him to any other detriment.
- (3) It is unlawful for an advocate to subject to harassment a disabled person who is, or has applied to be, his pupil.
- (4) It is also unlawful for any person, in relation to the giving, withholding or acceptance of instructions to an advocate, to discriminate against a disabled person.
- (5) In this section and section 7D—
- “advocate” means a member of the Faculty of Advocates practising as such; and
- “pupil”, has the meaning commonly associated with its use in the context of a person training to be an advocate.
- (6) This section and section 7D extend to Scotland only.

### **7D Advocates: duty to make adjustments**

- (1) Where—
- (a) a provision, criterion or practice applied by or on behalf of an advocate, or
  - (b) any physical feature of premises occupied by an advocate,
- place the disabled person concerned at a substantial disadvantage in comparison with persons who are not disabled, it is the duty of the advocate to take such steps as it is reasonable, in all the circumstances of the case, for him to have to take in order to prevent the provision, criterion or practice, or feature, having that effect.
- (2) Subsection (1)(a) applies only in relation to a provision, criterion or practice—
- (a) for determining—
    - (i) whom an advocate will take as his pupil, or

- (ii) the terms on which an advocate offers to take any person as his pupil; or
  - (b) applying in relation to any working condition, training, opportunity for gaining experience or other benefit connected with working as the advocate's pupil.
- (3) In this section, "the disabled person concerned" means—
- (a) in the case of a provision, criterion or practice for determining whom he will take as his pupil, any disabled person who is, or has notified the advocate that he may apply to be taken as a pupil;
  - (b) in any other case, a disabled person who is—
    - (i) an applicant to be taken as the advocate's pupil;
    - (ii) a pupil; or
    - (iii) an advocate.
- (4) Nothing in this section imposes any duty on an advocate in relation to a disabled person if he does not know, and could not reasonably be expected to know—
- (a) in the case of an applicant or potential applicant, that the disabled person concerned is, or may be, applying to be taken as his pupil; or
  - (b) in any case, that that person has a disability and is likely to be affected in the way mentioned in subsection (1)."

## **Enforcement**

**8.—**(1) Move section 8 (enforcement, remedies and procedure), and the preceding cross-heading, to after section 17; and renumber the section as section 17A

(2) Amend the section as follows.

(3) In subsection (1), after "discriminated against him" (in each place where it occurs) insert "; or subjected him to harassment,".

(4) After subsection (1), insert the following subsection—

"(1A) Where, on the hearing of a complaint under subsection (1), the complainant proves facts from which the tribunal could, apart from this subsection, conclude in the absence of an adequate explanation, that the respondent has acted in a way which is unlawful under this Part, the tribunal shall uphold the complaint unless the respondent proves that he did not so act."

**Repeal of section 9**

9. Omit section 9 (validity of certain agreements) [in consequence of the new section 17D inserted by regulation 16].

**Charities etc.**

10. Move section 10 (charities and support for particular groups of persons) to after section 18B (reasonable adjustments: supplementary), as inserted by regulation 18, and renumber it as section 18C.

**Repeal of sections 11 (advertisements) and 12 (contract workers)**

11. Omit sections 11 and 12 [in consequence of the new sections 16B and 4B inserted by regulations 14 and 4 respectively] .

**Trade and professional bodies; qualifications bodies; practical work experience**

12. For sections 13 to 15, substitute the following sections—

*“Trade and professional bodies*

**13 Trade organisations: discrimination**

- (1) It is unlawful for a trade organisation to discriminate against a disabled person—
  - (a) in the terms on which it is prepared to admit him to membership of the organisation; or
  - (b) by refusing to accept, or deliberately not accepting, his application for membership.
- (2) It is unlawful for a trade organisation, in the case of a disabled person who is a member of the organisation, to discriminate against him—
  - (a) in the way it affords him access to any benefits or by refusing or deliberately omitting to afford him access to them;
  - (b) by depriving him of membership, or varying the terms on which he is a member; or
  - (c) by subjecting him to any other detriment.

- (3) It is also unlawful for a trade organisation to subject to harassment a disabled person who—
- (a) is a member of the organisation, or
  - (b) has applied for membership of the organisation.
- (4) In this section “trade organisation” means—
- (a) an organisation of workers,
  - (b) an organisation of employers, or
  - (c) any other organisation whose members carry on a particular profession or trade for the purposes of which the organisation exists.

#### **14 Trade organisations: duty to make adjustments**

- (1) Where—
- (a) a provision, criterion or practice applied by or behalf of a trade organisation, or
  - (b) any physical feature of premises occupied by the organisation,
- places the disabled person concerned at a substantial disadvantage in comparison with persons who are not disabled, it is the duty of the organisation to take such steps as it is reasonable, in all the circumstances of the case, for them to have to take in order to prevent the provision, criterion or practice, or feature, having that effect.
- (2) Subsection (1)(a) applies only in relation to a provision, criterion or practice—
- (a) for determining—
    - (i) who should become or remain a member of the organisation, or
    - (ii) the basis upon which membership of the organisation should be offered or held; or
  - (b) in relation to the enjoyment of any benefit connected with being a member of the organisation.
- (3) In this section “the disabled person concerned” means—
- (a) in the case of a provision, criterion or practice for determining to whom membership should be offered, any disabled person who is, or has notified the organisation that he may be, an applicant for membership;

- (b) in any other case, a disabled person who is—
  - (i) an applicant for membership; or
  - (ii) has a disability and is likely to be affected in the way mentioned in subsection (1).
- (4) Nothing in this section imposes any duty on an organisation in relation to a disabled person if the organisation does not know, and could not reasonably be expected to know that the disabled person concerned—
  - (a) is, or may be, an applicant for membership; or
  - (b) has a disability and is likely to be affected in the way mentioned in subsection (1).

#### **14A Qualifications bodies: discrimination**

- (1) It is unlawful for a qualifications body to discriminate against a disabled person—
  - (a) in the terms on which it is prepared to confer a professional or trade qualification on him,
  - (b) by refusing or deliberately omitting to grant any application by him for such a qualification, or
  - (c) by withdrawing such a qualification from him or varying the terms on which he holds it.
- (2) It is also unlawful for a qualifications body to subject to harassment a disabled person who—
  - (a) holds a professional or trade qualification conferred by it, or
  - (b) applies for a professional or trade qualification which it confers.
- (3) In determining for the purposes of subsection (1) whether the application of a competence standard to a disabled person constitutes discrimination within the meaning of section 3A(1)—
  - (a) the application of the standard is justified for the purposes of section 3A(1)(b) if, but only if, the qualifications body can show that—
    - (i) the standard is, or would be, applied equally to persons who do not have his particular disability, and
    - (ii) its application is a proportionate means of achieving a legitimate aim; and
  - (b) section 3A(2) and (3) do not apply.

(4) In this section and section 14B—

“qualifications body” means any authority or body which can confer a professional or trade qualification, but it does not include—

- (a) a responsible body (within the meaning of Chapter 1 or 2 of Part 4),
- (b) a local education authority in England or Wales, or
- (c) an education authority (within the meaning of section 135(1) of the Education (Scotland) Act 1980);

“confer” includes renew or extend;

“professional or trade qualification” means an authorisation, qualification, recognition, registration, enrolment, approval or certification which is needed for, or facilitates engagement in, a particular profession or trade;

“competence standard” means an academic, medical or other standard applied by or on behalf of a qualifications body for the purpose of determining whether or not a person has a particular level of competence or ability.

#### **14B Qualifications bodies: duty to make adjustments**

(1) Where—

- (a) a provision, criterion or practice, other than a competence standard, applied by or on behalf of a qualifications body; or
- (b) any physical feature of premises occupied by a qualifications body,

places the disabled person concerned at a substantial disadvantage in comparison with persons who are not disabled, it is the duty of the qualifications body to take such steps as it is reasonable, in all the circumstances of the case, for it to have to take in order to prevent the provision, criterion or practice, or feature, having that effect.

(2) Subsection (1)(a) applies only in relation to a provision, criterion or practice applied for determining—

- (a) whether a professional or trade qualification is to be conferred on, or withdrawn from, any person, or
- (b) the terms on which a professional or trade qualification is conferred, held or withdrawn.

(3) In this section “the disabled person concerned” means –

- (a) in the case of a provision, criterion or practice for determining on whom a professional or trade qualification is to be conferred, any disabled person who is, or has notified the qualifications body that he may be, an applicant for the conferment of that qualification;
  - (b) in any other case, a disabled person who—
    - (i) holds a professional or trade qualification conferred by it, or
    - (ii) applies for a professional or trade qualification which it confers.
- (4) Nothing in this section imposes a duty on a qualifications body in relation to a disabled person if the body does not know, and could not reasonably be expected to know—
- (a) in the case of an applicant or potential applicant, that the disabled person concerned is, or may be, an applicant for the conferment of a professional or trade qualification; or
  - (b) in any case, that that person has a disability and is likely to be affected in the way mentioned in subsection (1).

*Practical work experience*

**14C Practical work experience: discrimination**

- (1) It is unlawful, in the case of a disabled person seeking or undertaking a work placement, for a placement provider to discriminate against him—
  - (a) in the terms on which he affords him access to any work placement or any facilities concerned with such placement,
  - (b) by refusing or deliberately omitting to afford him such access,
  - (c) by terminating his placement, or
  - (d) by subjecting him to any other detriment during the placement.
- (2) It is also unlawful for a placement provider to subject to harassment—
  - (a) a disabled person to whom he is providing a work placement, or
  - (b) a disabled person who has applied to him for a work placement.
- (3) Subsections (1) and (2) do not apply to—
  - (a) anything made unlawful by section 4 or any provision of Part 3 or 4,
  - (b) anything which would be unlawful under that section or any such provision but for the operation of any other provision of this Act.

(4) In this section and section 14D—

“work placement” means practical work experience undertaken for a limited period for the purposes of a person’s vocational training;

“placement provider” means any person who provides a work placement to a person whom he does not employ, but it does not include—

- (a) a responsible body (within the meaning of Chapter 1 or 2 of Part 4),
- (b) a local education authority in England or Wales, or
- (c) an education authority (within the meaning of section 135(1) of the Education (Scotland) Act 1980.

**14D Practical work experience: duty to make adjustments**

(1) Where—

- (a) a provision, criterion or practice applied by or on behalf of a placement provider, or
- (b) any physical feature of premises occupied by the placement provider,

places the disabled person concerned at a substantial disadvantage in comparison with persons who are not disabled, it is the duty of the placement provider to take such steps as it is reasonable, in all the circumstances of the case, for him to have to take in order to prevent the provision, criterion or practice, or feature, having that effect.

(2) Subsection (1) applies only in relation to a provision, criterion or practice—

- (a) for determining to whom a work placement should be offered, or
- (b) applying in relation to the way in which any work placement is offered or afforded.

(3) In this section, “the disabled person concerned” means—

- (a) in the case of a provision, criterion or practice for determining to whom a work placement should be offered, any disabled person who is, or has notified the placement provider that he may be, an applicant for that work placement;
- (b) in any other case, a disabled person who is—
  - (i) an applicant for the work placement concerned, or

- (ii) undertaking a work placement with the placement provider.
- (4) Nothing in this section imposes any duty on a placement provider in relation to the disabled person concerned if he does not know, and could not reasonably be expected to know—
- (a) in the case of an applicant or potential applicant, that the disabled person concerned is, or may be, an applicant for the work placement; or
  - (b) in any case, that that person has a disability and is likely to be affected in the way mentioned in subsection (1).”.

### **Alterations to premises occupied under leases**

**13.**—(1) Amend section 16 (alterations to premises occupied under leases) and the preceding cross-heading as follows.

(2) Omit the cross-heading.

(3) Move the section to after section 18 (and the cross-heading inserted by regulation 17(2)) and renumber it as section 18A.

(4) In subsection (1)(a), for “an employer or trade organisation” substitute “a person to whom a duty to make reasonable adjustments applies”.

(5) In subsection (1)(c), for “a section 6 duty or section 15 duty” substitute “that duty”.

### **Other unlawful acts**

**14.** After section 16, insert the following sections—

#### *“ Other unlawful acts*

#### **16A Relationships which have come to an end**

(1) This section applies where—

- (a) there has been a relevant relationship between a disabled person and another person (“the relevant person”), and
- (b) the relationship has come to an end.

(2) In this section a “relevant relationship” is a relationship during the course of which, by virtue of any preceding provision of this Part, an act of discrimination or harassment would have been unlawful.

- (3) It is unlawful for the relevant person—
- (a) to discriminate against a disabled person by subjecting him to a detriment, or
  - (b) to subject a disabled person to harassment,
- where the discrimination or harassment arises out of and is closely connected to a relevant relationship between the two.
- (4) Where—
- (a) a provision, practice or criterion applied by the relevant person to the disabled person in relation to any matter arising out of the relevant relationship, or
  - (b) a physical feature of premises occupied by the relevant person,
- places the disabled person at a substantial disadvantage in comparison with persons who are not disabled, but are in the same position as the disabled person in relation to the relevant person, it is the duty of the relevant person to take such steps as it is reasonable, in all the circumstances of the case, for him to have to take in order to prevent the provision, practice or criterion, or feature, having that effect.
- (5) Nothing in subsection (4) imposes any duty on the relevant person if he does not know, and could not reasonably be expected to know, that the disabled person has a disability and is likely to be affected in the way mentioned in that subsection.

## **16B Discriminatory advertisements**

- (1) It is unlawful to publish or cause to be published an advertisement which—
- (a) invites applications for a relevant position or benefit; and
  - (b) indicates, or might reasonably be understood to indicate, that an application will or may be determined to any extent by reference to—
    - (i) the applicant's not having any disability, or any particular disability, or
    - (ii) any reluctance of the person determining the application to comply with any duty to make reasonable adjustments.
- (2) Subsection (1) does not apply where it would in fact be lawful for an application to be determined in the manner indicated (or understood to be indicated in the advertisement).

- (3) In subsection (1)(a), “relevant position or benefit” means—
- (a) any employment, promotion or transfer of employment;
  - (b) membership of, or a benefit under, an occupational pension scheme;
  - (c) insurance services provided under such arrangements as are referred to in section 4F(1);
  - (d) any partnership in a firm (within the meaning of section 6A);
  - (e) any tenancy or pupillage (within the meaning of section 7A or 7C);
  - (f) any membership of a trade organisation (within the meaning of section 13);
  - (g) any professional or trade qualification (within the meaning of section 14A);
  - (h) any work placement (within the meaning of section 14C).
- (4) A person who publishes an advertisement in contravention of subsection (1) is not subject to any liability by virtue of that subsection if he proves that—
- (a) he published the advertisement in reliance on a statement made to him by the person who caused it to be published to the effect that, by virtue of the operation of subsection (2), the publication would not be unlawful, and
  - (b) that it was reasonable for him to rely on the statement.
- (5) A person who knowingly or recklessly makes a statement such as is referred to in subsection (4) which in a material respect is false or misleading commits an offence, and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (6) In this section, “advertisement” includes every form of advertisement or notice, whether to the public or not.

### **16C Instructions and pressure to discriminate**

- (1) It is unlawful for a person—
- (a) who has authority over another person, or
  - (b) in accordance with whose wishes that other person is accustomed to act,

to instruct him to do any act which is unlawful by virtue of this Part, or procure or attempt to procure the doing by him of any such act.

- (2) It is unlawful to induce, or attempt to induce, a person to do any act which contravenes this Part by—
  - (a) providing or offering to provide him with any benefit, or
  - (b) subjecting or threatening to subject him to any detriment.
- (3) An attempted inducement is not prevented from falling within subsection (2) because it is not made directly to the person in question, if it is made in such a way that he is likely to hear of it.”.

### **Repeal of section 17**

**15.** Omit section 17 (occupational pension schemes) [in consequence of the new sections 4D and 4E inserted by regulation 4].

*[Enforcement etc.]*

### **Enforcement of sections 16B and 16C; validity of agreements etc.**

**16.—**(1) After section 17A (enforcement), the former section 8 moved, renumbered and amended by regulation 8, insert the following sections—

#### **“17B Enforcement of sections 16B and 16C**

- (1) Proceedings in respect of a contravention of section 16B (discriminatory advertisements) or 16C (instructions and pressure to discriminate) shall be brought only by the Disability Rights Commission in accordance with the following provisions of this section.
- (2) The proceedings shall be—
  - (a) an application for a decision whether the alleged contravention occurred, or
  - (b) an application under subsection (4) below,or both.
- (3) An application under subsection (2)(a) shall be made to an employment tribunal.
- (4) If it appears to the Commission—

- (a) that a person has done an act which by virtue of section 16B or 16C was unlawful, and
- (b) that unless restrained he is likely to do further acts which by virtue of that section are unlawful,

the Commission may apply to a county court for an injunction, or to a sheriff court for an order, restraining him from doing such acts; and the court, if satisfied that the application is well-founded, may grant the injunction or order in the terms applied for or more limited terms.

- (5) In proceedings under subsection (4) the Commission shall not allege that the person to whom the proceedings relate has done an act which is unlawful by virtue of this Part [and within the jurisdiction of an employment tribunal] unless a finding by an employment tribunal that he did that act has become final.

#### **17C Enforcement of sections 16B and 16C: supplementary**

- (1) With a view to making a preliminary application under section 17B(4) in relation to a person, the Disability Rights Commission may present to an employment tribunal a complaint that he has done an act within the jurisdiction of an employment tribunal.
- (2) If the tribunal considers that the complaint is well-founded it shall make a finding to that effect.
- (3) If it thinks it just and equitable to do so in the case of an act contravening any provision of this Part, the tribunal may also (as if the complaint had been presented by the person discriminated against)—
  - (a) make a declaration such as is referred to in section 17A(2)(a), or
  - (b) a recommendation such as is referred to in section 17A(2)(c),or both.
- (4) Subsection (1) is without prejudice to the jurisdiction conferred by section 17B(2).
- (5) Any finding of an employment tribunal under this Part in respect of any act shall, if it has become final, be treated as conclusive—
  - (a) by the county court on an application under section 17B(4),
  - (b) by an employment tribunal on a complaint made by the person affected by the act under section 17A.
- (6) In section 17B and this section, the acts “within the jurisdiction of an employment tribunal” are those in respect of which such jurisdiction is

conferred by sections 17A and 17B.

**17D Validity of certain agreements; rules of undertakings etc.**

Schedule 3A shall have effect.”.

(2) After Schedule 3, insert the Schedule set out in the Schedule to these Regulations.

**Omission of section 18**

**17.**—(1) Omit section 18 (insurance services) [in consequence of the new section 4F inserted by regulation 4].

(2) In Part 2, after section 18, insert the following cross-heading—

*“Supplementary and general”.*

**Supplementary and general**

**18.** In Part 2, after section 18A (the former section 16 (alterations to premises occupied under leases) moved, renumbered and amended by regulation 13) insert the following section—

**18B. Reasonable adjustments: supplementary**

(1) In determining whether it is reasonable for a person to have to take a particular step in order to comply with a duty to make reasonable adjustments, regard shall be had, in particular, to—

(a) the extent to which taking the step would prevent the effect in relation to which the duty is imposed;

(b) the extent to which it is practicable for him to take the step;

(c) the financial and other costs which would be incurred by him in taking the step and the extent to which taking it would disrupt any of his activities;

(d) the extent of his financial and other resources;

(e) the availability to him of financial or other assistance with respect to taking the step;

- (f) the nature of his activities, and the size of his undertaking;
  - (g) where the step is to be taken in relation to a private household, the extent to which taking it would—
    - (i) disrupt that household, or
    - (ii) disturb any person residing there.
- (2) The following are examples of steps which a person may need to take in relation to a disabled person in order to comply with a duty to make reasonable adjustments—
- (a) making adjustments to premises;
  - (b) allocating some of the disabled person's duties to another person;
  - (c) transferring him to fill an existing vacancy;
  - (d) altering his hours of working or training;
  - (e) assigning him to a different place of work or training;
  - (f) allowing him to be absent during working or training hours for rehabilitation, assessment or treatment;
  - (g) giving, or arranging for, training or mentoring (whether for the disabled person or any other person);
  - (h) acquiring or modifying equipment;
  - (i) modifying instructions or reference manuals;
  - (j) modifying procedures for testing or assessment;
  - (k) providing a reader or interpreter;
  - (l) providing supervision or other support.
- (3) For the purposes of any duty to make reasonable adjustments, where under any binding obligation a person is required to obtain the consent of any person to any alteration of the premises occupied by him—
- (a) it is always reasonable for him to have to take steps to obtain that consent; and
  - (b) it is never reasonable for him to have to make that alteration before that consent is obtained.
- (4) The steps referred to in subsection (3)(a) shall not be taken to include an application to a court or tribunal.

- (5) In subsection (3), “binding obligation” means a legally binding obligation (not contained in a lease (within the meaning of section 18A(3)) in relation to the premises, whether arising from an agreement or otherwise.”.

## **Interpretation of Part 2**

- 19.** In Part 2, after section 18C (charities), the former section 10 moved, renumbered and amended by regulation 10, insert the following section—

### **“18D Interpretation of Part 2**

- (1) In this Part—

“benefits” includes facilities and services;

“detriment” does not include conduct of the nature referred to in section 3B (harassment);

“discriminate”, “discrimination” and other related expressions are to be construed in accordance with section 3A;

“duty to make reasonable adjustments” means a duty imposed by or under section 4A, 4B(5), 4E, 6B, 7B, 7D, 14, 14B, 14D and 16A(4);

references to “employer”, in their application to a person seeking at any time to employ another, include a person who has no employees at that time”;

“harassment” is to be construed in accordance with section 3B;

“physical feature”, in relation to any premises, includes any of the following (whether permanent or temporary)—

- (a) any feature arising from the design or construction of a building on the premises,
- (b) any feature on the premises of any approach to, exit from or access to such a building,
- (c) any fixtures, fittings, furnishings, furniture, equipment or material in or on the premises,
- (d) any other physical element or quality of any land comprised in the premises;

“provision, criterion or practice” includes any arrangements.”.

**Amendments to Part 3**

**20.**—(1) Part 3 of the 1995 Act is amended as follows.

(2) After section 21 insert the following sections—

**“21A Employment services: modification of sections 19 to 21**

(1) In this Part, “employment services” means—

- (a) vocational guidance;
- (b) vocational training;
- (c) services to assist a person to obtain or retain employment, or to establish himself as self-employed.

(2) Subsection (1) does not apply to services provided by—

- (a) a responsible body (within the meaning of Chapter 1 or 2 of Part 4),
- (b) a local education authority in England or Wales, or
- (c) an education authority (within the meaning of section 135(1) of the Education (Scotland) Act 1980).

(3) In their application to employment services, the preceding provisions of this Part have effect as follows.

(4) Section 19(1) has effect as if—

(a) after paragraph (a), there were inserted the following paragraph—

“(aa) in failing to comply with a duty imposed on him by subsection (1) of section 21 in circumstances in which the effect of that failure is to place the disabled person at a substantial disadvantage in comparison with persons who are not disabled in relation to the provision of the service;”;

(b) in paragraph (b), for “section 21” there were substituted “subsection (2) or (4) of section 21”;

(5) Section 20 has effect as if—

(a) after subsection (1), there were inserted the following subsection—

“(1A) For the purposes of section 19, a provider of services also discriminates against a disabled person if he fails to comply with a duty imposed on him by subsection (1) of section 21 in relation to the disabled person.”;

- (b) in subsection (2)(a), for “a section 21 duty imposed” there were substituted “a duty imposed by subsection (2) or (4) of section 21”;
  - (c) after subsection (2), there were inserted the following paragraph—

“(2A) For the purposes of subsection (1), treatment is only justified if one or more of the conditions mentioned in subsection (4) are satisfied.”;
  - (d) in subsection (3), for “this section” there were substituted “subsection (2)”.
- (6) Section 21 has effect as if—
- (a) in subsection (1), for the words “makes it impossible or unreasonably difficult for disabled persons to make use of” there were substituted “places disabled persons at a substantial disadvantage in comparison with persons who are not disabled in relation to the provision of”;
  - (b) after subsection (1), there were inserted the following subsection—

“(1A) In subsection (1), “practice, policy or procedure” includes a provision or criterion.”.

### **21B Employment Services: supplementary**

- (1) It is unlawful for a person providing employment services to subject to harassment a disabled person—
  - (a) to whom he is providing such services; or
  - (b) who has requested him to provide such services;and section 3B (meaning of “harassment”) shall apply for the purposes of this subsection as it applies for the purposes of Part 2.
- (2) Section 16A (relationships which have come to an end) applies in relation to the provision of employment services as if the relationship between the person providing and the person receiving such services were a relevant relationship for the purposes of that section.
- (3) Section 16B (advertisements) applies in relation to an advertisement for employment services as it applies in relation to an advertisement for a relevant position or benefit within the meaning of that section.
- (4) Section 16C (instructions and pressure) applies to any act relating to the provision of employment services which is unlawful under this Part as it applies to any act which is unlawful under Part 2.”.

(3) In section 25 (enforcement), at the end insert—

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

- (a) has discriminated against him or subjected him to harassment in relation to the provision of employment services in a way which is unlawful under this Part; or
- (b) is by virtue of section 57 or 58 to be treated as having discriminated against him or subjected him to harassment in such a way.

(8) Any claim of the kind referred to in subsection (7) may be presented to an employment tribunal, and sections 17A(1A) to (8) and Part 1 of Schedule 3 apply to it accordingly.”.

### **Codes of Practice**

**21.**—(1) In Part 7, amend section 53A(k) (codes of practice) as follows—

(2) In subsection (9), for the definition of “discrimination”, substitute—

“ “discrimination” means—

- (a) anything which is unlawful discrimination for the purposes of any provision of Part 2, 3 or 4;
- (b) an act which is contrary to section 16B or 16C; or
- (c) the subjection of a person to harassment contrary to a provision of Part 2 of that Act; and”.

### **Amendments to section 55 (victimisation)**

**22.** (1) Amend section 55 as follows.

(2) At the end insert the following subsections—

“(5) In the case of an act which constitutes discrimination by virtue of this section, sections 4, 4B, 4D, 6A, 7A, 7C, 13, 14A, 14C and 16A also apply to discrimination against a person who is not disabled.”;

(6) For the purposes of Part 2, subsection (2)(a)(iii) shall have effect as if there were inserted after “under” the words “or by reference to”.

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(k) Section 53A was inserted by section 9 of the 1999 Act, and amended by section 36 of the 2001 Act.

### **Help for persons suffering discrimination**

**23.**—(1) Amend section 56 (help for persons suffering discrimination) as follows.

(2) In subsection (1)(a), after “discriminated against” insert “or subjected to harassment”.

(3) In subsection (3)(b)(i), for “a reasonable period” substitute “the period of eight weeks beginning with the day on which the question was served on him”.

### **Application to the Crown etc.**

**24.**—(1) In Part 8, amend section 64 as follows.

(2) Omit subsections (5) and (6).

(3) In subsection (8), omit the definitions of “British Transport Police”, “fire brigade”, “Ministry of Defence Police”, “prison officer”, “Royal Parks Constabulary” and “United Kingdom Atomic Energy Authority Constabulary” (and the preceding “and”).

### **Interpretation**

**25.**—(1) Amend section 68 as follows.

(2) In subsection (1), omit the definitions of “benefits”, “section 6 duty”, “section 15 duty” and “trade organisation”.

### **Amendments to Schedules 2, 3 and 4**

**26.**—(1) Amend Schedule 2 (past disabilities), Schedule 3 (enforcement and procedure) and Schedule 4 (premises occupied under leases) as follows.

(2) In Schedule 2—

(a) [*Amendments are still to be drafted.*];

(3) In Schedule 3—

(a) in the side note, for “8(8)” substitute “17A(8)”;

(b) for “section 8” (in each place it occurs) substitute “section 17A”;

(c) in paragraph 3(3)(a), after “discrimination” insert “or harassment”.

(4) In Schedule 4—

- (a) in the side note, for “16(5)” substitute “18A(5)”;
- (b) in the heading, for “EMPLOYER OR TRADE ORGANISATION” substitute “EMPLOYER etc.”
- (c) in paragraph 1, for “the section 6 or section 15 duty” substitute “a duty to make reasonable adjustments”;
- (d) in the cross-heading preceding paragraph 2 and in paragraph 2(1), for “section 8” (in each place) substitute “section 17A”;
- (e) for “section 16” (in each place it occurs) substitute “section 18A”;
- (f) in paragraph 2(8) and (9), for “section 8(2)” in each place substitute “section 17A(2)”.

PART 2  
THE 1999 ACT

**General functions of the Commission**

27.—(1) Amend section 2 of the 1999 Act (general functions) as follows.

(2) For the definition of “discrimination” in subsection (5), substitute—

“discrimination” means—

- (a) anything which is discrimination for the purposes of any provision of Part 2, Part 3 or Chapter 1 or 2 of Part 4 of the 1995 Act,
- (b) the subjection of a person to harassment contrary to a provision of Part 2 of that Act;”.

**Non-discrimination notices**

28.—(1) Amend section 4 of the 1999 Act (non-discrimination notices) as follows.

(2) In subsection (5), after “the 1995 Act” insert “, an act which is contrary to section 16B or 16C of that Act,”.

(3) After subsection (5), insert the following subsection—

“(5A) In this section “unlawful act” also means the subjection of a person to harassment contrary to a provision of Part 2 of the 1995 Act.”.

### **Agreements in lieu of enforcement action**

**29.**—(1) Amend section 5 of the 1999 Act (agreements in lieu of enforcement action) as follows.

(2) In subsection (11), after “the 1995 Act” insert “, an act which is contrary to section 16B or 16C of that Act,”.

(3) After subsection (11), insert the following subsection—

“(11A) In this section “unlawful act” also means the subjection of a person to harassment contrary to a provision of Part 2 of the 1995 Act.”.

### **Persistent discrimination**

**30.**—(1) Amend section 6 of the 1999 Act (persistent discrimination) as follows.

(2) After subsection (4), insert the following subsection—

“(4A) In this section “unlawful act” also means the subjection of a person to harassment contrary to a provision of Part 2 of the 1995 Act.”.

(3) In subsection (5), after “this section” insert “and section 17C(5) of the 1995 Act”.

### **Formal investigations and non-discrimination notices**

**31.**—(1) Amend paragraph 3 of Schedule 3 to the 1999 Act (investigations of unlawful acts etc.) as follows.

(2) In sub-paragraph (10), after “the 1995 Act” insert “, an act which is contrary to sections 16B or 16C of that Act,”.

(3) After subparagraph (10), add the following subparagraph—

“(11) In this subparagraph “unlawful act” also means the subjection of a person to harassment contrary to a provision of Part 2 of the 1995 Act.”.

**32. {To be completed. Consequential amendments will be needed to:**

- (a) section 7(2) of the Local Government and Housing Act 1989;*
- (b) s.18(1)(c) of the Employment Tribunals Act 1996;*
- (c) Schedules 3, 4 and 5 of the Employment Act 2002;*
- (d) S.I. 1996/1836, reg. 2;*
- (e) S.I. 1996/2803, reg. 1(2)(b)*
- (f) other legislation, whether primary or secondary.}*

... 2003

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

SCHEDULE

Regulation 16(2)

VALIDITY OF CERTAIN AGREEMENTS; RULES OF UNDERTAKINGS.

The following is the new Schedule inserted in the 1995 Act after Schedule 3.

“SCHEDULE 3A

Section 17D

VALIDITY OF CERTAIN AGREEMENTS AND RULES OF UNDERTAKINGS

Part 1

VALIDITY OF CERTAIN AGREEMENTS

1. Any term in a contract of employment or other agreement 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 Part of this Act (“Part 2”);
  - (b) exclude or limit the operation of any provision of Part 2; or

- (c) prevent any person from presenting a complaint to an employment tribunal under Part 2.
2. Subparagraphs (b) and (c) of paragraph 1 do not apply to an agreement not to institute proceedings under section 17A(1), or to an agreement not to continue such proceedings, if—
- (a) a conciliation officer has acted under section 18 of the Employment Tribunals Act 1996 in relation to the matter; or
  - (b) the conditions set out in paragraph 3 are satisfied.
3. The conditions are that—
- (a) the complainant must have received advice from a relevant independent adviser as to the terms and effect of the proposed agreement (and in particular its effect on his ability to pursue his complaint before an employment tribunal);
  - (b) when the adviser gave the advice there must have been in force a contract of insurance, or an indemnity provided for members of a professional body, covering the risk of a claim by the complainant in respect of loss arising in consequence of the advice; and
  - (c) the agreement must be in writing, relate to the particular complaint, identify the adviser and state that the conditions are satisfied.
4. A person is a relevant independent adviser for the purposes of paragraph 3(a)—
- (a) if he is a qualified lawyer,
  - (b) if he is an officer, official, employee or member of an independent trade union who has been certified in writing by the trade union as competent to give advice and as authorised to do so on behalf of the trade union, or
  - (c) if he works at an advice centre (whether as an employee or a volunteer) and has been certified in writing by the centre as competent to give advice and as authorised to do so on behalf of the centre.
5. But a person is not a relevant independent adviser for the purposes of paragraph 3(a) in relation to the complainant—
- (a) if he is employed by, or is acting in the matter for, the other party or a person who is connected with the other party,
  - (b) in the case of a person within paragraph 4(b) or (c), if the trade union or advice centre is the other party or a person who is connected with the other party, or
  - (c) in the case of a person within paragraph 4(c), if the complainant makes a payment for the advice received from him.

6. In paragraph (4)(a) “qualified lawyer” means—
  - (a) as respects England and Wales, a barrister (whether in practice as such or employed to give legal advice), a solicitor who holds a practising certificate, or a person other than a barrister or solicitor who is an authorised advocate or authorised litigator (within the meaning of the Courts and Legal Services Act 1990), and
  - (b) as respects Scotland, an advocate (whether in practice as such or employed to give legal advice), or a solicitor who holds a practising certificate.
7. In paragraph 4(b), “independent trade union” has the same meaning as in the Trade Union and Labour Relations (Consolidation) Act 1992.
8. For the purposes of paragraph 5 any two persons are to be treated as connected—
  - (a) if one is a company of which the other (directly or indirectly) has control, or
  - (b) if both are companies of which a third person (directly or indirectly) has control.
9. An agreement under which the parties agree to submit a dispute to arbitration—
  - (a) shall be regarded for the purposes of paragraph 2 as being an agreement not to institute, or an agreement not to continue, proceedings if—
    - (i) the dispute is covered by a scheme having effect by virtue of an order under section 212A of the Trade Union and Labour Relations (Consolidation) Act 1992, and
    - (ii) the agreement is to submit it to arbitration in accordance with the scheme, but
  - (b) shall be regarded as neither being nor including such an agreement in any other case.
10. On the application of a disabled person interested in a contract of employment or other agreement to which paragraph 1 applies, an employment tribunal may make such order as it thinks just for modifying the agreement to take account of the effect of paragraph 1.
11. No such order shall be made unless all persons affected have been given notice of the application (except where under tribunal procedure rules notice may be dispensed with) and have been afforded an opportunity to make representations to the tribunal.
12. An order under paragraph 10 may include provision as respects any period before the making of the order.

Part 2

COLLECTIVE AGREEMENTS AND RULES OF UNDERTAKINGS

13. Without prejudice to the generality of Part 1 of this Schedule, that Part shall apply, as it applies in relation to the term of a contract of employment or other agreement, to the following, namely—

- (a) any term of a collective agreement, including an agreement which was not intended, or is presumed not to have been intended, to be a legally enforceable contract;
- (b) any rule made by an employer for application to all or any of the persons who are employed by him or who apply to be, or are, considered by him for employment;
- (c) any rule made by a trade organisation (within the meaning of section [13]) or a qualifications body (within the meaning of section [15]) for application to all or any of its members or prospective members or to all or any of the persons on whom it has conferred authorisations or qualifications or who are seeking the authorisations or qualifications which it has power to confer;

and Part 1 of this Schedule shall so apply whether the agreement was entered into, or the rule made, before or after the coming into force of this Schedule.

14. A disabled person to whom this paragraph applies may present a complaint to an employment tribunal that a term or rule is void by virtue of paragraph 1 if he has reason to believe that the term or rule may at some future time have effect in relation to him.

15. In the case of a complaint about—

- (a) a term of a collective agreement made by or on behalf of—
  - (i) an employer,
  - (ii) an organisation of employers of which an employer is a member, or
  - (iii) an association of such organisations of one of which an employer is a member, or
- (b) a rule made by an employer,

paragraph 14 applies to any disabled person who is, or is genuinely and actively seeking to become, one of his employees.

16. In the case of a complaint about a rule made by an organisation or body mentioned in paragraph 13(c), paragraph 14 applies to any disabled person—
  - (a) who is, or is genuinely and actively seeking to become, a member of the organisation, authority or body,
  - (b) on whom the organisation, authority or body has conferred an authorisation or qualification, or
  - (c) who is genuinely and actively seeking an authorisation or qualification which the organisation, authority or body has power to confer.
17. When an employment tribunal finds that a complaint presented to it under paragraph 14 above is well-founded the tribunal shall make an order declaring that the term or rule is void.
18. The avoidance by virtue of paragraph 1 of any term or rule which provides for a disabled person to be discriminated against shall be without prejudice to the following rights except in so far as they enable any person to require a disabled person to be treated less favourably than himself, namely—
  - (a) such of the rights of the disabled person to be discriminated against; and
  - (b) such of the rights of any person who will be treated more favourably in direct or indirect consequence of the discrimination,as are conferred by or in respect of a contract made or modified wholly or partly in pursuance of, or by reference to, that term or rule.
19. In this Schedule, “collective agreement” means any agreement relating to one or more of the matters mentioned in section 178(2) of the Trade Union and Labour Relations (Consolidation) Act 1992 (meaning of trade dispute), being an agreement made by or on behalf of one or more employers or one or more organisations of employers or associations of such organisations with one or more organisations of workers or associations of such organisations.”.