

# **Disability Discrimination Act 1995**

## **1995 CHAPTER 50**

### ***Part II*** ***The Employment Field***

#### ***Discrimination by employers***

##### ***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 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(1),***

***(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(2) (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(3), means the chief constable of the relevant police force,***

***(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”—***

---

***(1)*** 1996 c.16.

***(b)*** 1997 c.50.

***(f)*** 1967 c.77.

***(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(4), the City of London Police Act 1839(5) 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***

***(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***

---

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

***(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.***

***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***

### ***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(6).***
- (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(7).***
- (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***
  - (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.***

### ***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).***

### ***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).***

### ***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.***

### ***Enforcement etc***

### ***17A Enforcement, remedies and procedure***

***(1) A complaint by any person that another person—***

***(a) has discriminated against him or ***subjected him to******

***harassment*** 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 in such a way,

may be presented to an employment tribunal.

***(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.***

(2) Where an employment tribunal finds that a complaint presented to it under this section is well-founded, it shall take such of the following steps as it considers just and equitable—

- (a) making a declaration as to the rights of the complainant and the respondent in relation to the matters to which the complaint relates;
- (b) ordering the respondent to pay compensation to the complainant;
- (c) recommending that the respondent take, within a specified period, action appearing to the tribunal to be reasonable, in all the circumstances of the case, for the purpose of obviating or

reducing the adverse effect on the complainant of any matter  
to which the complaint relates.

- (3) Where a tribunal orders compensation under subsection (2)(b), the amount of the compensation shall be calculated by applying the principles applicable to the calculation of damages in claims in tort or (in Scotland) in reparation for breach of statutory duty.
- (4) For the avoidance of doubt it is hereby declared that compensation in respect of discrimination in a way which is unlawful under this Part may include compensation for injury to feelings whether or not it includes compensation under any other head.
- (5) If the respondent to a complaint fails, without reasonable justification, to comply with a recommendation made by an employment tribunal under subsection (2)(c) the tribunal may, if it thinks it just and equitable to do so—
- (a) increase the amount of compensation required to be paid to the complainant in respect of the complaint, where an order was made under subsection (2)(b); or
  - (b) make an order under subsection (2)(b).
- (6) Regulations may make provision—
- (a) for enabling a tribunal, where an amount of compensation falls to be awarded under subsection (2)(b), to include in the award interest on that amount; and
  - (b) specifying, for cases where a tribunal decides that an award

is to include an amount in respect of interest, the manner in which and the periods and rate by reference to which the interest is to be determined.

(7) Regulations may modify the operation of any order made under section 14 of the Employment Tribunals Act 1996 (power to make provision as to interest on sums payable in pursuance of employment tribunal decisions) to the extent that it relates to an award of compensation under subsection (2)(b).

(8) Part I of Schedule 3 makes further provision about the enforcement of this Part and about procedure.

#### ***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.***

***18A Alterations to premises occupied under leases***

(1) This section applies where—

- (a) ***a person to whom a duty to make reasonable adjustments*** applies (“the occupier”) occupies premises under a lease;
- (b) but for this section, the occupier would not be entitled to make a particular alteration to the premises; and
- (c) the alteration is one which the occupier proposes to make in order to comply with ***that duty***.

(2) Except to the extent to which it expressly so provides, the lease shall have effect by virtue of this subsection as if it provided—

- (a) for the occupier to be entitled to make the alteration with the written consent of the lessor;
- (b) for the occupier to have to make a written application to the lessor for consent if he wishes to make the alteration;

- (c) if such an application is made, for the lessor not to withhold his consent unreasonably; and
  
- (d) for the lessor to be entitled to make his consent subject to reasonable conditions.

(3) In this section—

“lease” includes a tenancy, sub-lease or sub-tenancy and an agreement for a lease, tenancy, sub-lease or sub-tenancy; and

“sub-lease” and “sub-tenancy” have such meaning as may be prescribed.

(4) If the terms and conditions of a lease—

- (a) impose conditions which are to apply if the occupier alters the premises, or
  
- (b) entitle the lessor to impose conditions when consenting to the occupier’s altering the premises,

the occupier is to be treated for the purposes of subsection (1) as not being entitled to make the alteration.

(5) Part I of Schedule 4 supplements the provisions of this section.

### ***Supplementary and general***

#### ***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.***

### **18C Charities and support for particular groups of persons**

***(1) Nothing in this Part—***

- (a) affects any charitable instrument which provides for conferring benefits on one or more categories of person determined by reference to any physical or mental capacity;***  
***or***

Amended to show proposed changes (in ***bold italics***) in the draft regulations published on 22 October 2002

- (b) *makes unlawful any act done by a charity or recognised body in pursuance of any of its charitable purposes, so far as those purposes are connected with persons so determined.*

(2) *Nothing in this Part prevents—*

- (a) *a person who provides supported employment from treating members of a particular group of disabled persons more favourably than other persons in providing such employment; or*
  
- (b) *the Secretary of State from agreeing to arrangements for the provision of supported employment which will, or may, have that effect.*

(3) *In this section—*

*“charitable instrument” means an enactment or other instrument (whenever taking effect) so far as it relates to charitable purposes;*

*“charity” has the same meaning as in the Charities Act 1993;*

*“recognised body” means a body which is a recognised body for the purposes of Part I of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990; and*

*“supported employment” means facilities provided, or in respect of*

*which payments are made, under section 15 of the Disabled Persons (Employment) Act 1944.*

*(4) In the application of this section to England and Wales, “charitable purposes” means purposes which are exclusively charitable according to the law of England and Wales.*

*(5) In the application of this section to Scotland, “charitable purposes” shall be construed in the same way as if it were contained in the Income Tax Acts.*

### **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.***

***Part III***  
***Discrimination in Other Areas***

***Goods, facilities and services***

**19 Discrimination in relation to goods, facilities and services**

(1) It is unlawful for a provider of services to discriminate against a disabled person—

- (a) in refusing to provide, or deliberately not providing, to the disabled person any service which he provides, or is prepared to provide, to members of the public;
- (b) in failing to comply with any duty imposed on him by section 21 in circumstances in which the effect of that failure is to make it impossible or unreasonably difficult for the disabled person to make use of any such service;
- (c) in the standard of service which he provides to the disabled person or the manner in which he provides it to him; or
- (d) in the terms on which he provides a service to the disabled person.

(2) For the purposes of this section and sections 20 and 21—

- (a) the provision of services includes the provision of any goods or facilities;

- (b) a person is “a provider of services” if he is concerned with the provision, in the United Kingdom, of services to the public or to a section of the public; and
- (c) it is irrelevant whether a service is provided on payment or without payment.

(3) The following are examples of services to which this section and sections 20 and 21 apply—

- (a) access to and use of any place which members of the public are permitted to enter;
- (b) access to and use of means of communication;
- (c) access to and use of information services;
- (d) accommodation in a hotel, boarding house or other similar establishment;
- (e) facilities by way of banking or insurance or for grants, loans, credit or finance;

- (f) facilities for entertainment, recreation or refreshment;
- (g) facilities provided by employment agencies or under section 2 of the Employment and Training Act 1973;
- (h) the services of any profession or trade, or any local or other public authority.

(4) 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.

(5) Except in such circumstances as may be prescribed, this section and sections 20 and 21 do not apply to—

- (a) *education which is funded, or secured, by a relevant body or provided at—*

- (i) *an establishment which is funded by such a body or by a Minister of the Crown; or*

- (ii) *any other establishment which is a school as defined in section 4(1) and (2) of the Education Act 1996 or section 135(1) of the Education (Scotland) Act 1980;*

- (aa) *education which is provided by an institution within the further education sector (within the meaning given by section*

Amended to show proposed changes (in ***bold italics***) in the draft regulations published on 22 October 2002

*91(3) of the Further and Higher Education Act 1992);*

- (ab) *education which is provided by such establishments as may be specified by the Secretary of State by order;*
  
- (b) any service so far as it consists of the use of any means of transport; or
  
- (c) such other services as may be prescribed.

(5A) Nothing in this Part applies to the provision of a service in relation to which discrimination is made unlawful by section 28A, 28F or 28R.

(6) *In subsection (5) “relevant body” means—*

- (a) *a local education authority in England and Wales;*
  
- (b) *an education authority in Scotland;*
  
- (c) ...
  
- (d) ...

(e) ...

(f) ...

(ff) *the Scottish Further Education Funding Council established  
by an order under section 7(1) of the Further and Higher  
Education (Scotland) Act 1992;*

(g) *the Higher Education Funding Council for England;*

(h) *the Scottish Higher Education Funding Council;*

(i) *the Higher Education Funding Council for Wales;*

(j) *the Teacher Training Agency;*

(k) *a voluntary organisation; or*

(l) *a body of a prescribed kind.*

## **20 Meaning of “discrimination”**

(1) For the purposes of section 19, a provider of services 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) For the purposes of section 19, a providers of services also discriminates against a disabled person if—

- (a) he fails to comply with a section 21 duty imposed on him in relation to the disabled person; and
- (b) he cannot show that his failure to comply with that duty is justified.

(3) For the purposes of this section, treatment is justified only if—

- (a) in the opinion of the provider of services, one or more of the conditions mentioned in subsection (4) are satisfied; and
- (b) it is reasonable, in all the circumstances of the case, for him to hold that opinion.

(4) The conditions are that—

- (a) in any case, the treatment is necessary in order not to endanger the health or safety of any person (which may include that of the disabled person);
  
- (b) in any case, the disabled person is incapable of entering into an enforceable agreement, or of giving an informed consent, and for that reason the treatment is reasonable in that case;
  
- (c) in a case falling within section 19(1)(a), the treatment is necessary because the provider of services would otherwise be unable to provide the service to members of the public;
  
- (d) in a case falling within section 19(1)(c) or (d), the treatment is necessary in order for the provider of services to be able to provide the service to the disabled person or to other members of the public;
  
- (e) in a case falling within section 19(1)(d), the difference in the terms on which the service is provided to the disabled person and those on which it is provided to other members of the public reflects the greater cost to the provider of services in providing the service to the disabled person.

(5) Any increase in the cost of providing a service to a disabled person which results from compliance by a provider of services with a section 21 duty shall be disregarded for the purposes of subsection (4)(e).

(6) Regulations may make provision, for purposes of this section, as to circumstances in which—

(a) it is reasonable for a provider of services to hold the opinion mentioned in subsection (3)(a);

(b) it is not reasonable for a provider of services to hold that opinion.

(7) Regulations may make provision for subsection (4)(b) not to apply in prescribed circumstances where—

(a) a person is acting for a disabled person under a power of attorney;

(b) functions conferred by or under Part VII of the Mental Health Act 1983 are exercisable in relation to a disabled person's property or affairs; or

(c) powers are exercisable in Scotland in relation to a disabled person's property or affairs in consequence of the appointment of a curator bonis, tutor or judicial factor.

(8) Regulations may make provision, for purposes of this section, as to circumstances (other than those mentioned in subsection (4)) in which treatment is to be taken to be justified.

- (9) In subsections (3), (4) and (8) “treatment” includes failure to comply with a section 21 duty.

## **21 Duty of providers of services to make adjustments**

(1) Where a provider of services has a practice, policy or procedure which makes it impossible or unreasonably difficult for disabled persons to make use of a service which he provides, or is prepared to provide, to other members of the public, it is his duty to take such steps as it is reasonable, in all the circumstances of the case, for him to have to take in order to change that practice, policy or procedure so that it no longer has that effect.

(2) Where a physical feature (for example, one arising from the design or construction of a building or the approach or access to premises) makes it impossible or unreasonably difficult for disabled persons to make use of such a service, it is the duty of the provider of that service to take such steps as it is reasonable, in all the circumstances of the case, for him to have to take in order to—

- (a) remove the feature;
- (b) alter it so that it no longer has that effect;
- (c) provide a reasonable means of avoiding the feature; or
- (d) provide a reasonable alternative method of making the service in question available to disabled persons.

(3) Regulations may prescribe—

- (a) matters which are to be taken into account in determining

whether any provision of a kind mentioned in subsection (2)(c) or (d) is reasonable; and

- (b) categories of providers of services to whom subsection (2) does not apply.

(4) Where an auxiliary aid or service (for example, the provision of information on audio tape or of a sign language interpreter) would—

- (a) enable disabled persons to make use of a service which a provider of services provides, or is prepared to provide, to members of the public, or
- (b) facilitate the use by disabled persons of such a service,

it is the duty of the provider of that service to take such steps as it is reasonable, in all the circumstances of the case, for him to have to take in order to provide that auxiliary aid or service.

(5) Regulations may make provision, for the purposes of this section—

- (a) as to circumstances in which it is reasonable for a provider of services to have to take steps of a prescribed description;
- (b) as to circumstances in which it is not reasonable for a provider of services to have to take steps of a prescribed description;

- (c) as to what is to be included within the meaning of “practice, policy or procedure”;
- (d) as to what is not to be included within the meaning of that expression;
- (e) as to things which are to be treated as physical features;
- (f) as to things which are not to be treated as such features;
- (g) as to things which are to be treated as auxiliary aids or services;
- (h) as to things which are not to be treated as auxiliary aids or services.

(6) Nothing in this section requires a provider of services to take any steps which would fundamentally alter the nature of the service in question or the nature of his trade, profession or business.

(7) Nothing in this section requires a provider of services to take any steps which would cause him to incur expenditure exceeding the prescribed maximum.

(8) Regulations under subsection (7) may provide for the prescribed maximum to be calculated by reference to—

- (a) aggregate amounts of expenditure incurred in relation to different cases;
- (b) prescribed periods;
- (c) services of a prescribed description;
- (d) premises of a prescribed description; or
- (e) such other criteria as may be prescribed.

(9) Regulations may provide, for the purposes of subsection (7), for expenditure incurred by one provider of services to be treated as incurred by another.

(10) This section imposes duties only for the purpose of determining whether a provider of services has discriminated against a disabled person; and accordingly a breach of any such duty is not actionable as such. *Premises*

**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.***

### ***22 Discrimination in relation to premises***

***(1) It is unlawful for a person with power to dispose of any premises to discriminate against a disabled person—***

***(a) in the terms on which he offers to dispose of those premises to the disabled person;***

- (b) by refusing to dispose of those premises to the disabled person; or
- (c) in his treatment of the disabled person in relation to any list of persons in need of premises of that description.

(2) Subsection (1) does not apply to a person who owns an estate or interest in the premises and wholly occupies them unless, for the purpose of disposing of the premises, he—

- (a) uses the services of an estate agent, or
- (b) publishes an advertisement or causes an advertisement to be published.

(3) It is unlawful for a person managing any premises to discriminate against a disabled person occupying those premises—

- (a) in the way he permits the disabled person to make use of any benefits or facilities;
- (b) by refusing or deliberately omitting to permit the disabled person to make use of any benefits or facilities; or

Amended to show proposed changes (in ***bold italics***) in the draft regulations published on 22 October 2002

- (c) by evicting the disabled person, or subjecting him to any other detriment.

(4) It is unlawful for any person whose licence or consent is required for the disposal of any premises comprised in, or (in Scotland) the subject of, a tenancy to discriminate against a disabled person by withholding his licence or consent for the disposal of the premises to the disabled person.

(5) Subsection (4) applies to tenancies created before as well as after the passing of this Act.

(6) In this section—

“advertisement” includes every form of advertisement or notice, whether to the public or not;

“dispose”, in relation to premises, includes granting a right to occupy the premises, and, in relation to premises comprised in, or (in Scotland) the subject of, a tenancy, includes—

- (a) assigning the tenancy, and

- (b) sub-letting or parting with possession of the premises or any part of the premises;

and “disposal” shall be construed accordingly;

“estate agent” means a person who, by way of profession or trade, provides services for the purpose of finding premises for persons seeking to acquire them or assisting in the disposal of premises;

and

“tenancy” means a tenancy created—

- (a) by a lease or sub-lease,
- (b) by an agreement for a lease or sub-lease,
- (c) by a tenancy agreement, or
- (d) in pursuance of any enactment.

(7) 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.

(8) This section applies only in relation to premises in the United Kingdom.

### **23 Exemption for small dwellings**

(1) Where the conditions mentioned in subsection (2) are satisfied, subsection (1), (3) or (as the case may be) (4) of section 22 does not apply.

(2) The conditions are that—

- (a) the relevant occupier resides, and intends to continue to reside, on the premises;

- (b) the relevant occupier shares accommodation on the premises with persons who reside on the premises and are not members of his household;
- (c) the shared accommodation is not storage accommodation or a means of access; and
- (d) the premises are small premises.

(3) For the purposes of this section, premises are “small premises” if they fall within subsection (4) or (5).

(4) Premises fall within this subsection if—

- (a) only the relevant occupier and members of his household reside in the accommodation occupied by him;
- (b) the premises comprise, in addition to the accommodation occupied by the relevant occupier, residential accommodation for at least one other household;
- (c) the residential accommodation for each other household is let, or available for letting, on a separate tenancy or similar agreement; and
- (d) there are not normally more than two such other

households.

(5) Premises fall within this subsection if there is not normally residential accommodation on the premises for more than six persons in addition to the relevant occupier and any members of his household.

(6) For the purposes of this section “the relevant occupier” means—

(a) in a case falling within section 22(1), the person with power to dispose of the premises, or a near relative of his;

(b) in a case falling within section 22(4), the person whose licence or consent is required for the disposal of the premises, or a near relative of his.

(7) For the purposes of this section—

“near relative” means a person’s spouse, partner, parent, child, grandparent, grandchild, or brother or sister (whether of full or half blood or by affinity); and

“partner” means the other member of a couple consisting of a man and a woman who are not married to each other but are living together as husband and wife.

## **24 Meaning of “discrimination”**

(1) For the purposes of section 22, a person (“A”) 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) For the purposes of this section, treatment is justified only if—

(a) in A's opinion, one or more of the conditions mentioned in subsection (3) are satisfied; and

(b) it is reasonable, in all the circumstances of the case, for him to hold that opinion.

(3) The conditions are that—

(a) in any case, the treatment is necessary in order not to endanger the health or safety of any person (which may include that of the disabled person);

(b) in any case, the disabled person is incapable of entering into an enforceable agreement, or of giving an informed consent, and for that reason the treatment is reasonable in that case;

(c) in a case falling within section 22(3)(a), the treatment is necessary in order for the disabled person or the occupiers of other premises forming part of the building to make use of the benefit or facility;

- (d) in a case falling within section 22(3)(b), the treatment is necessary in order for the occupiers of other premises forming part of the building to make use of the benefit or facility.

(4) Regulations may make provision, for purposes of this section, as to circumstances in which—

- (a) it is reasonable for a person to hold the opinion mentioned in subsection 2(a);
- (b) it is not reasonable for a person to hold that opinion.

(5) Regulations may make provision, for purposes of this section, as to circumstances (other than those mentioned in subsection (3)) in which treatment is to be taken to be justified.

*Enforcement, etc*

**25 Enforcement, remedies and procedure**

(1) A claim by any person that another person—

- (a) has discriminated against him 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 in such a way,

may be made the subject of civil proceedings in the same way as any other claim in tort or (in Scotland) in reparation for breach of statutory duty.

- (2) For the avoidance of doubt it is hereby declared that damages in respect of discrimination in a way which is unlawful under this Part may include compensation for injury to feelings whether or not they include compensation under any other head.
- (3) Proceedings in England and Wales shall be brought only in a county court.
- (4) Proceedings in Scotland shall be brought only in a sheriff court.
- (5) The remedies available in such proceedings are those which are available in the High Court or (as the case may be) the Court of Session.
- (6) Part II of Schedule 3 makes further provision about the enforcement of this Part and about procedure.
- (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.***

## **26 Validity and revision of certain agreements**

- (1) Any term in a contract for the provision of goods, facilities or services or in any 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,

(b) exclude or limit the operation of any provision of this Part, or

(c) prevent any person from making a claim under this Part.

(2) Paragraphs (b) and (c) of subsection (1) do not apply to an agreement settling a claim to which section 25 applies.

(3) On the application of any person interested in an agreement to which subsection (1) applies, a county court or a sheriff court may make such order as it thinks just for modifying the agreement to take account of the effect of subsection (1).

(4) No such order shall be made unless all persons affected have been—

(a) given notice of the application; and

(b) afforded an opportunity to make representations to the court.

(5) Subsection (4) applies subject to any rules of court providing for that notice to be dispensed with.

(6) An order under subsection (3) may include provision as respects any period before the making of the order.

### **53A Codes of practice**

(1) The Disability Rights Commission may prepare and issue codes of practice giving practical guidance on how to avoid discrimination, or on any other matter relating to the operation of any provision of Part 2, 3 or 4, to—

- (a) employers;
- (b) service providers;
- (c) bodies which are responsible bodies for the purposes of Chapter 1 or 2 of Part 4; or
- (d) other persons to whom the provisions of Parts 2 or 3 or Chapter 2 of Part 4 apply.

(1A) The Commission may also prepare and issue codes of practice giving practical guidance to any persons on any other matter with a view to—

- (a) promoting the equalisation of opportunities for disabled persons and persons who have had a disability; or
- (b) encouraging good practice in the way such persons are treated,

in any field of activity regulated by any provision of Part 2, 3 or 4.

(1B) Neither subsection (1) nor (1A) applies in relation to any duty imposed by or under sections 28D or 28E.

(2) The Commission shall, when requested to do so by the Secretary of State, prepare a code of practice dealing with the matters specified in the request.

(3) In preparing a code of practice the Commission shall carry out such consultations as it considers appropriate (which shall include the publication for public consultation of proposals relating to the code).

(4) The Commission may not issue a code of practice unless—

(a) a draft of it has been submitted to and approved by the Secretary of State and laid by him before both Houses of Parliament; and

(b) the 40 day period has elapsed without either House resolving not to approve the draft.

(5) If the Secretary of State does not approve a draft code of practice submitted to him he shall give the Commission a written statement of his reasons.

(6) A code of practice issued by the Commission—

(a) shall come into effect on such day as the Secretary of State may by order appoint;

(b) may be revised in whole or part, and re-issued, by the Commission; and

- (c) may be revoked by an order made by the Secretary of State at the request of the Commission.

(7) Where the Commission proposes to revise a code of practice—

- (a) it shall comply with subsection (3) in relation to the revisions; and
- (b) the other provisions of this section apply to the revised code of practice as they apply to a new code of practice.

(8) Failure to observe any provision of a code of practice does not of itself make a person liable to any proceedings. . . .

(8A) But if a provision of a code of practice appears to a court, tribunal or other body hearing any proceedings under Part 2, 3 or 4 to be relevant, it must take that provision into account.

(9) In this section—

“code of practice” means a code of practice under this section;

***“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***

“40 day period” has the same meaning in relation to a draft code of practice as it has in section 3 in relation to draft guidance.

## **55 Victimisation**

(1) For the purposes of Part II, Part 3 or Part 4, a person (“A”) discriminates against another person (“B”) if—

- (a) he treats B less favourably than he treats or would treat other persons whose circumstances are the same as B’s; and
- (b) he does so for a reason mentioned in subsection (2).

(2) The reasons are that—

- (a) B has—
  - (i) brought proceedings against A or any other person under this Act; or
  - (ii) given evidence or information in connection with such proceedings brought by any person; or

(iii) otherwise done anything under this Act in relation to A or any other person; or

(iv) alleged that A or any other person has (whether or not the allegation so states) contravened this Act; or

(b) A believes or suspects that B has done or intends to do any of those things.

(3) Where B is a disabled person, or a person who has had a disability, the disability in question shall be disregarded in comparing his circumstances with those of any other person for the purposes of subsection (1)(a).

(3A) For the purposes of Chapter 1 of Part 4—

(a) references in subsection (2) to B include references to—

(i) a person who is, for the purposes of that Chapter, B's parent; and

(ii) a sibling of B; and

(b) references in that subsection to this Act are, as respects a person mentioned in sub-paragraph (i) or (ii) of paragraph (a), restricted to that Chapter.

(4) Subsection (1) does not apply to treatment of a person because of an allegation made by him if the allegation was false and not made in good faith.

***(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”.***

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

(1) For the purposes of this section—

- (a) a person who considers that he may have been discriminated against ***or subjected to harassment***, in contravention of any provision of Part II, is referred to as “the complainant”; and
- (b) a person against whom the complainant may decide to make, or has made, a complaint under Part II is referred to as “the respondent”.

(2) The Secretary of State shall, with a view to helping the complainant to decide whether to make a complaint against the respondent and, if he does so, to formulate and present his case in the most effective manner, by order prescribe—

- (a) forms by which the complainant may question the respondent on his reasons for doing any relevant act, or on any other matter which is or may be relevant; and
- (b) forms by which the respondent may if he so wishes reply to any questions.

(3) Where the complainant questions the respondent in accordance with forms prescribed by an order under subsection (2)—

(a) the question, and any reply by the respondent (whether in accordance with such an order or not), shall be admissible as evidence in any proceedings under Part II;

(b) if it appears to the tribunal in any such proceedings—

(i) that the respondent deliberately, and without reasonable excuse, omitted to reply within ***the period of eight weeks beginning with the day on which the question was served on him***, or

(ii) that the respondent's reply is evasive or equivocal,

it may draw any inference which it considers it just and equitable to draw, including an inference that the respondent has contravened a provision of Part II.

(4) The Secretary of State may by order prescribe—

(a) the period within which questions must be duly served in order to be admissible under subsection (3)(a); and

(b) the manner in which a question, and any reply by the

respondent, may be duly served.

- (5) This section is without prejudice to any other enactment or rule of law regulating interlocutory and preliminary matters in proceedings before an employment tribunal, and has effect subject to any enactment or rule of law regulating the admissibility of evidence in such proceedings.

## **59 Statutory authority and national security etc**

(1) Nothing in this Act makes unlawful any act done—

- (a) in pursuance of any enactment; or
- (b) in pursuance of any instrument made by a Minister of the Crown under any enactment; or
- (c) to comply with any condition or requirement imposed by a Minister of the Crown (whether before or after the passing of this Act) by virtue of any enactment.

(2) In subsection (1) “enactment” includes one passed or made after the date on which this Act is passed and “instrument” includes one made after that date.

(3) Nothing in this Act makes unlawful any act done for the purpose of safeguarding national security.

## **64 Application to Crown etc**

(1) This Act applies—

- (a) to an act done by or for purposes of a Minister of the Crown or government department, or
- (b) to an act done on behalf of the Crown by a statutory body, or a person holding a statutory office,

as it applies to an act done by a private person.

(2) Subject to subsection (5), Part II applies to service—

- (a) for purposes of a Minister of the Crown or government department, other than service of a person holding a statutory office, or
- (b) on behalf of the Crown for purposes of a person holding a statutory office or purposes of a statutory body,

as it applies to employment by a private person.

(3) The provisions of Parts II to IV of the 1947 Act apply to proceedings against the Crown under this Act as they apply to Crown proceedings in England and Wales; but section 20 of that Act (removal of proceedings from county court to High Court) does not apply.

(4) The provisions of Part V of the 1947 Act apply to proceedings against the Crown under this Act as they apply to proceedings in Scotland which by virtue of that Part are treated as civil proceedings by or against the Crown; but the

proviso to section 44 of that Act (removal of proceedings from the sheriff court to the Court of Session) does not apply.

(7) It is hereby declared (for the avoidance of doubt) that Part II does not apply to service in any of the naval, military or air forces of the Crown.

(8) In this section—

“the 1947 Act” means the Crown Proceedings Act 1947;

“Crown proceedings” means proceedings which, by virtue of section 23 of the 1947 Act, are treated for the purposes of Part II of that Act as civil proceedings by or against the Crown;

“service for purposes of a Minister of the Crown or government department” does not include service in any office for the time being mentioned in Schedule 2 (Ministerial offices) to the House of Commons Disqualification Act 1975;

“statutory body” means a body set up by or under an enactment;

“statutory office” means an office so set up.

## **68 Interpretation**

(1) In this Act—

“accessibility certificate” means a certificate issued under section 41(1)(a);

“act” includes a deliberate omission;

“approval certificate” means a certificate issued under section 42(4);

“conciliation officer” means a person designated under section 211 of the Trade Union and Labour Relations (Consolidation) Act 1992;

“employment” means, subject to any prescribed provision,

Amended to show proposed changes (in ***bold italics***) in the draft regulations published on 22 October 2002

employment under a contract of service or of apprenticeship or a contract personally to do any work, and related expressions are to be construed accordingly;

“employment at an establishment in Great Britain” is to be construed in accordance with subsections (2) to (5);

“enactment” includes subordinate legislation and any Order in Council, and (except in section 56(5)) includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament;

“licensing authority” means—

(a) in relation to the area to which the Metropolitan Public Carriage Act 1869 applies, the Secretary of State or the holder of any office for the time being designated by the Secretary of State; or

(b) in relation to any other area in England and Wales, the authority responsible for licensing taxis in that area;

“mental impairment” does not have the same meaning as in the Mental Health Act 1983 or the Mental Health (Scotland) Act 1984 but the fact that an impairment would be a mental impairment for the purposes of either of those Acts does not prevent it from being a mental impairment for the purposes of this Act;

“Minister of the Crown” includes the Treasury;

“occupational pension scheme” has the same meaning as in the Pension Schemes Act 1993;

“premises” includes land of any description;

“prescribed” means prescribed by regulations;

“profession” includes any vocation or occupation;

“provider of services” has the meaning given in section 19(2)(b);

“public service vehicle” and “regulated public service vehicle” have the meaning given in section 40;

“PSV accessibility regulations” means regulations made under section 40(1);

“rail vehicle” and “regulated rail vehicle” have the meaning given in section 46;

“rail vehicle accessibility regulations” means regulations made under section 46(1);

“regulations” means regulations made by the Secretary of State;

“section 21 duty” means any duty imposed by or under section 21;

“subordinate legislation” has the same meaning as in section 21 of the Interpretation Act 1978;

“taxi” and “regulated taxi” have the meaning given in section 32;

“taxi accessibility regulations” means regulations made under section 32(1);

“trade” includes any business;

“vehicle examiner” means an examiner appointed under section 66A of the Road Traffic Act 1988.

(2) Where an employee does his work wholly outside Great Britain, his employment is not to be treated as being work at an establishment in Great Britain.

(3) Except in prescribed cases, employment on board a ship, aircraft or hovercraft is to be regarded as not being employment at an establishment in Great Britain.

(4) Employment of a prescribed kind, or in prescribed circumstances, is to be regarded as not being employment at an establishment in Great Britain.

(5) Where work is not done at an establishment it shall be treated as done—

- (a) at the establishment from which it is done; or
  
- (b) where it is not done from any establishment, at the establishment with which it has the closest connection.

**SCHEDULE 3**  
**ENFORCEMENT AND PROCEDURE**

Sections **17A**(8), 25(6)

Part I  
Employment

*Conciliation*

**1**

...

*Restriction on proceedings for breach of Part II*

**2**

(1) Except as provided by section **17A**, no civil or criminal proceedings may be brought against any person in respect of an act merely because the act is unlawful under Part II.

(2) Sub-paragraph (1) does not prevent the making of an application for judicial review.

*Period within which proceedings must be brought*

**3**

(1) An employment tribunal shall not consider a complaint under section **17A**

unless it is presented before the end of the period of three months beginning when the act complained of was done.

(2) A tribunal may consider any such complaint which is out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so.

(3) For the purposes of sub-paragraph (1)—

- (a) where an unlawful act of discrimination ***or harassment*** is attributable to a term in a contract, that act is to be treated as extending throughout the duration of the contract;
- (b) any act extending over a period shall be treated as done at the end of that period; and
- (c) a deliberate omission shall be treated as done when the person in question decided upon it.

(4) In the absence of evidence establishing the contrary, a person shall be taken for the purposes of this paragraph to decide upon an omission—

- (a) when he does an act inconsistent with doing the omitted act;  
or
- (b) if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the omitted act if it was to be done.

*Evidence*

**4**

(1) In any proceedings under section **17A**, a certificate signed by or on behalf of a Minister of the Crown and certifying—

(a) that any conditions or requirements specified in the certificate were imposed by a Minister of the Crown and were in operation at a time or throughout a time so specified, . . .

(b) . . .

shall be conclusive evidence of the matters certified.

(2) A document purporting to be such a certificate shall be received in evidence and, unless the contrary is proved, be deemed to be such a certificate.

## **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.***

**SCHEDULE 4**  
**PREMISES OCCUPIED UNDER LEASES**

Sections **18A(5)**, 27(5)

Part I  
Occupation by ***Employer etc***

*Failure to obtain consent to alteration*

**1**

If any question arises as to whether the occupier has failed to comply with a ***duty to make reasonable adjustments***, by failing to make a particular alteration to the premises, any constraint attributable to the fact that he occupies the premises under a lease is to be ignored unless he has applied to the lessor in writing for consent to the making of the alteration.

*Joining lessors in proceedings under section 17A*

**2**

(1) In any proceedings under section **17A**, in a case to which section **18A** 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.

(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.

### *Regulations*

#### **3**

Regulations may make provision as to circumstances in which—

- (a) a lessor is to be taken, for the purposes of section **18A** and this Part of this Schedule to have—
  - (i) withheld his consent;
  - (ii) withheld his consent unreasonably;
  - (iii) acted reasonably in withholding his consent;
- (b) a condition subject to which a lessor has given his consent is to be taken to be reasonable;
- (c) a condition subject to which a lessor has given his consent is to be taken to be unreasonable.

### *Sub-leases etc*

#### **4**

The Secretary of State may by regulations make provision supplementing, or modifying, the provision made by section **18A** or any provision made by or under this Part of this Schedule in relation to

Amended to show proposed changes (in ***bold italics***) in the draft regulations  
published on 22 October 2002

cases where the occupier occupies premises under a sub-lease or sub-  
tenancy.

# Disability Rights Commission Act 1999

## 1999 CHAPTER 17

*An Act to establish a Disability Rights Commission and make provision as to its functions; and for connected purposes.*

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### **1 The Disability Rights Commission**

- (1) There shall be a body known as the Disability Rights Commission (referred to in this Act as "the Commission").
- (2) The Secretary of State shall pay to the Commission such sums as he thinks fit to enable it to meet its expenses.
- (3) Schedule 1 (the Commission's constitution and related matters) has effect.
- (4) The National Disability Council (which is superseded by the Commission) is abolished.

### **2 General functions**

- (1) The Commission shall have the following duties—
  - (a) to work towards the elimination of discrimination against disabled persons;
  - (b) to promote the equalisation of opportunities for disabled

persons;

- (c) to take such steps as it considers appropriate with a view to encouraging good practice in the treatment of disabled persons; and
- (d) to keep under review the working of the Disability Discrimination Act 1995 (referred to in this Act as “the 1995 Act”) and this Act.

(2) The Commission may, for any purpose connected with the performance of its functions—

- (a) make proposals or give other advice to any Minister of the Crown as to any aspect of the law or a proposed change to the law;
- (b) make proposals or give other advice to any Government agency or other public authority as to the practical application of any law;
- (c) undertake, or arrange for or support (whether financially or otherwise), the carrying out of research or the provision of advice or information.

Nothing in this subsection is to be regarded as limiting the Commission’s powers.

Amended to show proposed changes (in ***bold italics***) in the draft regulations published on 22 October 2002

(3) The Commission shall make proposals or give other advice under subsection (2)(a) on any matter specified in a request from a Minister of the Crown.

(4) The Commission may make charges for facilities or services made available by it for any purpose.

(5) In this section—

“disabled persons” includes persons who have had a disability;

***“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;***

“the law” includes Community law and the international obligations of the United Kingdom.

### **3 Formal investigations**

(1) The Commission may decide to conduct a formal investigation for any purpose connected with the performance of its duties under section 2(1).

(2) The Commission shall conduct a formal investigation if directed to do so by the Secretary of State for any such purpose.

(3) The Commission may at any time decide to stop or to suspend the conduct of a formal investigation; but any such decision requires the approval of the Secretary of State if the investigation is being conducted in pursuance of a direction under subsection (2).

(4) The Commission may, as respects any formal investigation which it has decided or been directed to conduct—

(a) nominate one or more commissioners, with or without one or more additional commissioners appointed for the purposes of the investigation, to conduct the investigation on its behalf; and

(b) authorise those persons to exercise such of its functions in relation to the investigation (which may include drawing up or revising terms of reference) as it may determine.

(5) Schedule 2 (appointment and tenure of office of additional commissioners) and Schedule 3 (so far as relating to the conduct of formal investigations) have effect.

#### **4 Non-discrimination notices**

(1) If in the course of a formal investigation the Commission is satisfied that a person has committed or is committing an unlawful act, it may serve on him a notice (referred to in this Act as a non-discrimination notice) which—

(a) gives details of the unlawful act which the Commission has found that he has committed or is committing; and

(b) requires him not to commit any further unlawful acts of the same kind (and, if the finding is that he is committing an unlawful act, to cease doing so).

(2) The notice may include recommendations to the person concerned as to action which the Commission considers he could reasonably be expected to take with a view to complying with the requirement mentioned in subsection (1)(b).

(3) The notice may require the person concerned—

(a) to propose an adequate action plan (subject to and in accordance with Part III of Schedule 3) with a view to securing compliance with the requirement mentioned in subsection (1)(b); and

(b) once an action plan proposed by him has become final, to take any action which—

(i) is specified in the plan; and

(ii) he has not already taken,

at the time or times specified in the plan.

(4) For the purposes of subsection (3)—

(a) an action plan is a document drawn up by the person concerned specifying action (including action he has already taken) intended to change anything in his practices, policies, procedures or other arrangements which—

- (i) caused or contributed to the commission of the unlawful act concerned; or
  
  - (ii) is liable to cause or contribute to a failure to comply with the requirement mentioned in subsection (1)(b); and
- (b) an action plan is adequate if the action specified in it would be sufficient to ensure, within a reasonable time, that he is not prevented from complying with that requirement by anything in his practices, policies, procedures or other arrangements;

and the action specified in an action plan may include ceasing an activity or taking continuing action over a period.

(5) In this section “unlawful act” means an act which is unlawful discrimination for the purposes of any provision of Part II, Part 3 or Chapter 1 or 2 of Part 4 of the 1995 Act, ***an act which is contrary to section 16B or 16C of that Act***, or any other unlawful act of a description prescribed for the purposes of this section.

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

(6) Schedule 3 (so far as relating to non-discrimination notices and action plans) has effect.

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

(1) If the Commission has reason to believe that a person has committed or is committing an unlawful act, it may (subject to section 3(3)) enter into an agreement in writing under this section with that person on the assumption that that belief is well founded (whether or not that person admits that he committed or is committing the act in question).

(2) An agreement under this section is one by which—

(a) the Commission undertakes not to take any relevant enforcement action in relation to the unlawful act in question; and

(b) the person concerned undertakes—

(i) not to commit any further unlawful acts of the same kind (and, where appropriate, to cease committing the unlawful act in question); and

(ii) to take such action (which may include ceasing an activity or taking continuing action over any period) as may be specified in the agreement.

(3) Those undertakings are binding on the parties to the agreement; but undertakings under subsection (2)(b) are enforceable by the Commission only as provided by subsection (8).

(4) For the purposes of subsection (2)(a), “relevant enforcement action” means—

(a) beginning a formal investigation into the commission by the person concerned of the unlawful act in question;

(b) if such an investigation has begun (whether or not the investigation is confined to that matter), taking any further steps in the investigation of that matter; and

- (c) taking any steps, or further steps, with a view to the issue of a non-discrimination notice based on the commission of the unlawful act in question.

(5) The action specified in an undertaking under subsection (2)(b)(ii) must be action intended to change anything in the practices, policies, procedures or other arrangements of the person concerned which—

- (a) caused or contributed to the commission of the unlawful act in question; or
- (b) is liable to cause or contribute to a failure to comply with his undertaking under subsection (2)(b)(i).

(6) An agreement under this section—

- (a) may include terms providing for incidental or supplementary matters (including the termination of the agreement, or the right of either party to terminate it, in certain circumstances); and
- (b) may be varied or revoked by agreement of the parties.

(7) An agreement under this section may not include any provisions other than terms mentioned in subsections (2) and (6)(a) unless their inclusion is authorised by regulations made by the Secretary of State for the purposes of this section; but any provisions so authorised are not enforceable by the Commission under subsection (8).

(8) The Commission may apply to a county court or by summary application to the sheriff for an order under this subsection if—

- (a) the other party to an agreement under this section has failed to comply with any undertaking under subsection (2)(b); or
- (b) the Commission has reasonable cause to believe that he intends not to comply with any such undertaking.

(9) An order under subsection (8) is an order requiring the other party to comply with the undertaking or with such directions for the same purpose as are contained in the order.

(10) Nothing in this section affects the Commission's powers to settle or compromise legal proceedings of any description.

(11) In this section "unlawful act" means an act which is unlawful discrimination for the purposes of any provision of Part II, Part 3 or Chapter 1 or 2 of Part 4 of the 1995 Act, ***an act which is contrary to section 16B or 16C of that Act***, or any other unlawful act of a description prescribed for the purposes of this section.

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

(12) Schedule 3 (so far as relating to agreements under this section) has effect.

## **6 Persistent discrimination**

(1) This section applies during the period of five years beginning on the date on which—

- (a) a non-discrimination notice served on a person,

- (b) a finding in proceedings under section 8, 25, 28I, 28K, 28L, 28N or 28V of the 1995 Act that a person has committed an act which is unlawful discrimination for the purposes of any provision of Part 2, Part 3 or Chapter 1 or 2 of Part 4 of the Act, or
  
- (c) a finding by a court or tribunal in any other proceedings that a person has committed an unlawful act of a description prescribed under subsection (4),

has become final.

(2) If during that period it appears to the Commission that unless restrained the person concerned is likely to do one or more unlawful acts, the Commission may apply to a county court for an injunction, or to the sheriff for interdict, restraining him from doing so.

(3) The court, if satisfied that the application is well-founded, may grant the injunction or interdict in the terms applied for or in more limited terms.

(4) In this section “unlawful act” means an act which is unlawful discrimination for the purposes of any provision of Part II, Part 3 or Chapter 1 or 2 of Part 4 of the 1995 Act or any other unlawful act of a description prescribed for the purposes of this section.

***(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.***

(5) A finding . . . becomes final for the purposes of this section ***and section 17C(5) of the 1995 Act*** when an appeal against it is dismissed, withdrawn or abandoned or when the time for appealing expires without an appeal having been brought.

**SCHEDULE 3**  
**FORMAL INVESTIGATIONS AND NON-DISCRIMINATION NOTICES**

Sections 3(5), 4(6) and 5(12)

Part I  
Conduct of Formal Investigations

*Introductory*

**1**

(1) This Part of this Schedule applies to a formal investigation which the Commission has decided or has been directed to conduct.

(2) Any subsequent action required or authorised by this Part of this Schedule (or by Part IV of this Schedule) to be taken by the Commission in relation to the conduct of a formal investigation may be taken, so far as they are authorised to do so, by persons nominated under section 3(4) for the purposes of the investigation.

*Terms of reference and preliminary notices*

**2**

(1) The Commission shall not take any steps in the conduct of a formal investigation until—

(a) terms of reference for the investigation have been drawn up;  
and

(b) notice of the holding of the investigation and the terms of reference has been served or published as required by subparagraph (3) or (4).

(2) The terms of reference for the investigation shall be drawn up (and may be revised)—

- (a) if the investigation is held at the direction of the Secretary of State, by the Secretary of State after consulting the Commission; and
- (b) in any other case, by the Commission.

(3) Where the terms of reference confine the investigation to activities of one or more named persons, notice of the holding of the investigation and the terms of reference shall be served on each of those persons.

(4) Where the terms of reference do not confine the investigation to activities of one or more named persons, notice of the holding of the investigation and the terms of reference shall be published in such manner as appears to the Commission appropriate to bring it to the attention of persons likely to be affected by it.

(5) If the terms of reference are revised, this paragraph applies again in relation to the revised investigation and its terms of reference.

*Investigation of unlawful acts etc*

**3**

(1) This paragraph applies where the Commission proposes to investigate in the course of a formal investigation (whether or not the investigation has already begun) whether—

- (a) a person has committed or is committing any unlawful act;
- (b) any requirement imposed by a non-discrimination notice served on a person (including a requirement to take action specified in an action plan) has been or is being complied with;

- (c) any undertaking given by a person in an agreement made with the Commission under section 5 is being or has been complied with.

(2) The Commission may not investigate any such matter unless the terms of reference of the investigation confine it to the activities of one or more named persons (and the person concerned is one of those persons).

(3) The Commission may not investigate whether a person has committed or is committing any unlawful act unless—

- (a) it has reason to believe that the person concerned may have committed or may be committing the act in question, or
- (b) that matter is to be investigated in the course of a formal investigation into his compliance with any requirement or undertaking mentioned in sub-paragraph (1)(b) or (c).

(4) The Commission shall serve a notice on the person concerned offering him the opportunity to make written and oral representations about the matters being investigated.

(5) If the Commission is investigating whether the person concerned has committed or is committing any unlawful act (otherwise than in the course of a formal investigation into his compliance with any requirement or undertaking mentioned in sub-paragraph (1)(b) or (c)) the Commission shall include in the notice required by sub-paragraph (4) a statement informing that person that the Commission has reason to believe that he may have committed or may be committing any unlawful act.

(6) The Commission shall not make any findings in relation to any matter mentioned in sub-paragraph (1) without giving the person concerned or his representative a reasonable opportunity to make written and oral representations.

(7) The Commission may refuse to receive oral representations made on behalf of the person concerned by a person (not being counsel or a solicitor) to whom the Commission reasonably objects as being unsuitable.

(8) If the Commission refuses to receive oral representations from a person under sub-paragraph (7), it shall give reasons in writing for its objection.

(9) A notice required by sub-paragraph (4) may be included in a notice required by paragraph 2(3).

(10) In this paragraph “unlawful act” means an act which is unlawful discrimination for the purposes of any provision of Part II, Part 3 or Chapter 1 or 2 of Part 4 of the 1995 Act, ***an act which is contrary to sections 16B or 16C of that Act***, or any other unlawful act of a description prescribed for the purposes of this paragraph.

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

#### *Power to obtain information*

#### **4**

(1) For the purposes of a formal investigation the Commission may serve a notice on any person requiring him—

- (a) to give such written information as may be described in the notice; or
- (b) to attend and give oral information about any matter specified in the notice, and to produce all documents in his possession or control relating to any such matter.

(2) A notice under this paragraph may only be served on the written authority of the Secretary of State unless the terms of reference confine the

investigation to the activities of one or more named persons and the person being served is one of those persons.

(3) A person may not be required by a notice under this paragraph—

- (a) to give information, or produce a document, which he could not be compelled to give in evidence, or produce, in civil proceedings before the High Court or the Court of Session; or
- (b) to attend at any place unless the necessary expenses of his journey to and from that place are paid or tendered to him.

## 5

(1) The Commission may apply to a county court or by summary application to the sheriff for an order under this paragraph if—

- (a) a person has been served with a notice under paragraph 4;  
and
- (b) he fails to comply with it or the Commission has reasonable cause to believe that he intends not to comply with it.

(2) An order under this paragraph is an order requiring the person concerned to comply with the notice or with such directions for the same purpose as may be contained in the order.

### *Recommendations*

## 6

(1) The Commission may make recommendations in the light of its findings in a formal investigation.

- (2) The recommendations may be—
- (a) recommendations to any person for changes in his policies or procedures, or as to any other matter, with a view to promoting the equalisation of opportunities for disabled persons or persons who have had a disability, or
  - (b) recommendations to the Secretary of State, for changes in the law or otherwise.
- (3) The Commission may make such recommendations before the conclusion of the investigation concerned.

### *Reports*

#### **7**

- (1) The Commission shall prepare a report of its findings in any formal investigation.
- (2) The Commission shall exclude from such a report any matter which relates to an individual's private affairs or any person's business interests if—
- (a) publication of that matter might, in the Commission's opinion, prejudicially affect that individual or person, and
  - (b) its exclusion is consistent with the Commission's duties and the object of the report.
- (3) The report of an investigation carried out at the direction of the Secretary of State shall be published by the Secretary of State or, if the Secretary of State so directs, by the Commission.

Amended to show proposed changes (in ***bold italics***) in the draft regulations published on 22 October 2002

(4) The report of any other investigation shall be published by the Commission.

(5) Nothing in this paragraph affects the Commission's power to issue a non-discrimination notice before a report is prepared or published.