

Disability Discrimination Act 1995

Chapter 50

*Note: The material reproduced or annotated below is limited to what is relevant to this volume:  
Ss. 1, 2, 4, 5(1) & (3), 7-9, 17, 67 & defn. of “occupational pension scheme” in s.68(1).*

ARRANGEMENT OF SECTIONS

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An Act to make it unlawful to discriminate against disabled persons in connection with employment, the provisions of goods, facilities and services or the disposal or management of premises; to make provision about the employment of disabled persons; and to establish a National Disability Council. [8th November 1995]

# DISABILITY DISCRIMINATION ACT 1995 (c. 50)

## S.s. 1-3A

### PART I DISABILITY

Meaning of “disability”  
and “disabled person”.

1.—(1) Subject to the provisions of Schedule 1, a person has a disability for the purposes of this Act if he has a physical or mental impairment which has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities.

(2) In this Act “disabled person” means a person who has a disability.

Past disabilities.

2.—(1) The provisions of this Part and Parts II [<sup>1</sup>to 4] [<sup>2</sup>and 5A] apply in relation to a person who has had a disability as they apply in relation to a person who has that disability.

(2) Those provisions are subject to the modifications made by Schedule 2.

(3) Any regulations or order made under this Act [<sup>3</sup>by the Secretary of State, the Scottish Ministers or the National Assembly for Wales] may include provision with respect to persons who have had a disability.

(4) In any proceedings under Part [<sup>4</sup>2, 3, 4 and 5A] of this Act, the question whether a person had a disability at a particular time (“the relevant time”) shall be determined, for the purposes of this section, as if the provisions of, or made under, this Act in force when the act complained of was done had been in force at the relevant time.

(5) The relevant time may be a time before the passing of this Act.

### PART II

[<sup>5</sup>THE EMPLOYMENT FIELD] [<sup>2</sup>AND MEMBERS OF LOCALLY-ELECTABLE AUTHORITIES]

[<sup>5</sup>Meaning of “discrimination” and “harassment”]

Meaning of  
“discrimination”.

3A.—(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) 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.

(3) 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.

(4) But treatment of a disabled person cannot be justified under subsection (3) if it amounts to direct discrimination falling within subsection (5).

<sup>1</sup> Words substituted (1.9.02) by the Special Educational Needs and Disability Act 2001 (c. 10), s. 38.

<sup>2</sup> Words inserted (5.12.05) by the Disability Discrimination Act 2005 (c. 13), Sch. 1, para. 2.

<sup>3</sup> Words inserted (30.6.05) by the Disability Discrimination Act 2005 (c. 13), Sch. 1, para. 2.

<sup>4</sup> Words substituted (4.12.06) by the Disability Discrimination Act 2005 (c. 13), Sch. 1, para. 2.

<sup>5</sup> Heading substituted and ss. 3A & 3B inserted (1.10.04) by S.I. 2003/1673, reg. 4.

(5) A person directly discriminates against a disabled person if, on the ground of the disabled person's disability, he treats the disabled person less favourably than he treats or would treat a person not having that particular disability whose relevant circumstances, including his abilities, are the same as, or not materially different from, those of the disabled person.

(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 (3) unless it would have been justified even if he had complied with that duty.

**3B.**—(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—

Meaning of  
"harassment".

- (a) violating the disabled person's dignity, or
- (b) creating an intimidating, hostile, degrading, humiliating or offensive environment for him.

(2) Conduct shall be regarded as having the effect referred to in paragraph (a) or (b) of subsection (1) 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.]

*[<sup>1</sup>Occupational pension schemes*

**4G.**—(1) Every occupational pension scheme shall be taken to include a provision ("the non-discrimination rule") containing the following requirements—

Occupational pension  
schemes: non-  
discrimination rule

- (a) a requirement that the trustees or managers of the scheme refrain from discriminating against a relevant disabled person in carrying out any of their functions in relation to the scheme (including in particular their functions relating to the admission of members of the scheme and the treatment of members of the scheme);
- (b) a requirement that the trustees or managers of the scheme do not subject a relevant disabled person to harassment in relation to the scheme.

(2) The other provisions of the scheme are to have effect subject to the non-discrimination rule.

(3) It is unlawful for the trustees or managers of an occupational pension scheme—

- (a) to discriminate against a relevant disabled person contrary to requirement (a) of the non-discrimination rule; or
- (b) to subject a relevant disabled person to harassment contrary to requirement (b) of the non-discrimination rule.

(4) The non-discrimination rule does not apply in relation to rights accrued, or benefits payable, in respect of periods of service prior to the coming into force of this section (but it does apply to communications with members of prospective members of the scheme in relation to such rights or benefits).

(5) The trustees or manager of an occupational pension scheme may, if—

- (a) they do not (apart from this subsection) have power to make such alterations to the scheme as may be required to secure conformity with the non-discrimination rule, or
- (b) they have such power but the procedure for doing so—
  - (i) is liable to be unduly complex or protracted, or
  - (ii) involves the obtaining of consents which cannot be obtained, or can only be obtained with undue delay or difficulty,

<sup>1</sup> Ss 4G-4K inserted (1.10.04) by S.I. 2003/2770, reg. 3.

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### S.s 4G-4J

by resolution make such alterations to the scheme.

(6) The alterations referred to in subsection (5) may have effect in relation to a period before the alterations are made (but may not have effect in relation to a period before the coming into force of this section).

Occupational pension schemes: duty to make adjustments

**4H.**—(1) Where—

- (a) a provision, criterion or practice (including a scheme rule) applied by or on behalf of the trustees or managers of an occupational pension scheme, or
- (b) any physical feature of premises occupied by the trustees or managers,

places a relevant disabled person at a substantial disadvantage in comparison with persons who are not disabled, it is the duty of the trustees or manager 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) The making of alterations of scheme rules is (in addition to the examples set out in section 18B(2)) an example of a step which trustees or managers may have to take in order to comply with the duty set out in subsection (1).

(3) Nothing in subsection (1) imposes any duty on trustees or managers in relation to a disabled person if they do not know, and could not reasonably be expected to know—

- (a) that the disabled person is a relevant disabled person; or
- (b) that that person has a disability and is likely to be affected in the way mentioned in subsection (1).

Occupational pension schemes: procedure

**4I.**—(1) Where under section 17A a relevant disabled person presents a complaint to an employment tribunal that the trustees or managers of an occupational pension scheme have acted in relation to him in a way which is unlawful under this Part, the employer in relation to that scheme shall, for the purposes of the rules governing procedure, be treated as a party and be entitled to appear and be heard in accordance with those rules.

(2) In this section, “employer”, in relation to an occupational pension scheme, has the meaning given by section 124(1) of the Pensions Act 1995 as at the date of coming into force of this section.

1995 c. 26

Occupational pension schemes: remedies

**4J.**—(1) This section applies where—

- (a) under section 17A a relevant disabled person presents to an employment tribunal a complaint that—
  - (i) the trustees or managers of an occupational pension scheme have acted in relation to him in a way which is unlawful under this Part; or
  - (ii) an employer has so acted in relation to him;
- (b) the complaint relates to—
  - (i) the terms on which persons become members of an occupational pension scheme, or
  - (ii) the terms on which members of the scheme are treated;
- (c) the disabled person is not a pensioner member of the scheme; and
- (d) the tribunal finds that the complaint is well-founded.

(2) The tribunal may, without prejudice to the generality of its power under section 17A(2)(a), make a declaration that the complainant has a right—

- (a) (where subsection (1)(b)(i) applies) to be admitted to the scheme in question; or
- (b) (where subsection (1)(b)(ii) applies) to membership of the scheme without discrimination.

(3) A declaration under subsection (2)–

- (a) may be made in respect of such period as the declaration may specify (but may not be made in respect of any period before the coming into force of this section);
- (b) may make such provision as the tribunal considers appropriate as to the terms upon which, or the capacity in which, the disabled person is to enjoy such admission or membership.

(4) The tribunal may not award the disabled person any compensation under section 17A(2)(b) (whether in relation to arrears of benefits or otherwise) other than–

- (a) compensation for injury to feelings;
- (b) compensation pursuant to section 17A(5).

**4K.**—(1) In their application to communications, sections 4G to 4J apply in relation to a disabled person who is–

Occupational pension schemes: supplementary

- (a) entitled to the present payment of dependants’ or survivors’ benefits under an occupational pension scheme; or
- (b) a person credit member of such a scheme,

as they apply in relation to a disabled person who is a pensioner member of the scheme.

(2) In sections 4G to 4J and in this section–

“active member”, “deferred member”, “managers”, “pension credit member”, “pensioner member” and “trustees or managers” have the meanings given by section 124(1) of the Pensions Act 1995 as at the date of coming into force of this section;

1995 c. 26.

“communications” includes–

- (i) the provision of information, and
- (ii) the operation of a dispute resolution procedure;

“member”, in relation to an occupational pension scheme, means any active, deferred or pensioner member;

“non-discrimination rule” means the rule in section 4G(1);

“relevant disabled person”, in relation to an occupational pension scheme, means a disabled person who is a member or prospective member of the scheme; and

“prospective member” means any person who, under the terms of his contract of employment or the scheme rules or both–

- (i) is able, at his own option, to become a member of the scheme,
- (ii) will become so able if he continues in the same employment for a sufficiently long period.
- (iii) will be admitted to it automatically unless he makes an election not to become a member, or
- (iv) may be admitted to it subject to the consent of his employment.]

[...<sup>1</sup>]

[<sup>2</sup>Enforcement etc.

**17A.**—(1) A complaint by any person that another person–

Enforcement, remedies and procedure.

- (a) has discriminated against him [<sup>2</sup>, 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 [<sup>2</sup> done so],

may be presented to an industrial tribunal.

<sup>1</sup> S. 17 omitted (1.10.04) by S.I. 2003/2770, reg. 4.

<sup>2</sup> S. 8 renumbered S. 17A, word inserted in sub-section (1)(a), words substituted in (1)(b) (1.10.04) by S.I. 2003/1673, reg. 9.

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### S.s. 17A

[<sup>1</sup>(1A) Subsection (1) does not apply to a complaint under section 14A(1) or (2) of an act in respect of which an appeal, or proceedings in the nature of an appeal, may be brought under any enactment

[...<sup>2</sup>]

(1C) Where, on the hearing of a complaint under subsection (1), the complainant proves facts from which the tribunal could, apart from this subsection, concluded 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 industrial 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 industrial 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 paragraph 6A of Schedule 9 to the Employment Protection (Consolidation) Act 1978 (power to make provision as to interest on sums payable in pursuance of industrial tribunal decisions) to the extent that it relates to an award of compensation under subsection (2)(b).

1978 c. 44.

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<sup>1</sup> S. 17A (1A)-(1C) inserted (1.10.04) by S.I. 2003/1673, reg. 9.

<sup>2</sup> S. 17A(1B) omitted (30.6.05) by the Disability Discrimination Act 2005 (c. 13), Sch. 1, para. 9.

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

**67.—**(1) Any power under this Act [<sup>1</sup>of the Secretary of State, the Scottish Ministers or the National Assembly for Wales] to make regulations or orders shall be exercisable by statutory instrument.

Regulations and orders.

(2) Any such power may be exercised to make different provision for different cases, including different provision for different areas or localities.

(3) Any such power includes power—

- (a) to make such incidental, supplemental, consequential or transitional provision as appears to the [<sup>1</sup>person to whom the power is exercisable] to be expedient; and
- (b) to provide for a person to exercise a discretion in dealing with any matter.

[<sup>2</sup>(3A) Where regulations under section 21D(7)(b) provide for the omission of section 21D(5), the provision that may be made by the regulations in exercise of the power conferred by subsection (3)(a) includes provision amending section 21D for the purpose of omitting references to section 21D(5).

(3B) The provision that may be made by regulations under section 21G(5)(b) in exercise of the power conferred by subsection (3)(a) includes provision amending or repealing section 21G(4).

(3C) The provision that may be made by regulations under any of subsections (1) to (4) of section 49D in exercise of the power conferred by subsection (3)(a) includes provision amending or repealing an enactment.]

[<sup>2</sup>(4) Subsection (4A) applies to—

- (a) the first regulations to be made under section 21H(1);
- (b) the first regulations to be made under each of subsections (1), (2) and (4) of section 31AE;
- (c) regulations under section 31AE(1), (2) or (4) that amend this Act;
- (d) regulations under section 31AE(1) that make provision as to remedies;
- (e) regulations under section 47J(3);
- (f) regulations under section 49D(1) or (2) that, in exercise of the power under subsection (3)(a), amend or repeal an enactment contained in an Act or in an Act of the Scottish Parliament;
- (g) regulations under section 67A(3);
- (h) regulations under paragraph 6A(2) of Schedule 1.

(4A) No regulations to which this subsection applies shall be made unless a draft of the statutory instrument containing the regulations (whether containing the regulations alone or with other provisions) has been laid before, and approved by a resolution of, each House of Parliament.

(4B) Subsection (4C) applies to regulations under section 49D(3) or (4) that, in exercise of the power under subsection (3)(a), amend or repeal any enactment contained in an Act or in an Act of the Scottish Parliament.

(4C) No regulations to which this subsection applies shall be made unless a draft of the statutory instrument containing the regulations (whether containing the regulations alone or with other provisions) had been laid before, and approved by a resolution of, the Scottish Parliament.

<sup>1</sup> Words inserted and substituted (30.6.05) by the Disability Discrimination Act 2005 (c. 13), Sch. 1, para. 33.

<sup>2</sup> Sub.para. (3A) to (3C) inserted and (4) to (5A) substituted for (4) and (5) (5.12.05) by the Disability Discrimination Act 2005 (c. 13), Sch. 1, para. 33.

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**S.s. 67-68**

(4D) A statutory instrument—

(a) that—

(i) contains regulations under section 49D(3) or (4), and

(ii) is not subject to the requirement in subsection (4C) that a draft of the instrument be laid before, and approved by, the Scottish Parliament, or

(b) that contains regulations or an order made by the Scottish Ministers under section 33,

shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.

(5) A statutory instrument—

(a) that—

(i) contains regulations made by the Secretary of State under this Act, and

(ii) is not subject to the requirement in subsection (4A) that a draft of the instrument be laid before, and approved by a resolution of, each House of Parliament, or

(b) that contains an order made by the Secretary of State under this Act that is not an order under section 3(9), 47(1), [...<sup>1</sup>] or 70(3),

shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(5A) A statutory instrument that contains an order under section 47(1), if made without a draft having been laid before, and approved by a resolution of, each House of Parliament, shall be subject to annulment in pursuance of a resolution of either House, but the exercise of the discretion conferred by this subsection is subject to section 67A.]

(6) Subsection (1) does not require an order under section 43 which applies only to a specified vehicle, or to vehicles of a specified person, to be made by statutory instrument but such an order shall be as capable of being amended or revoked as an order which is made by statutory instrument.

(7) Nothing in section 34(4), 40(6) or 46(5) affects the powers conferred by subsections (2) and (3).

Interpretation

**68.—**(1) In this Act—

...

“Occupational Pension Scheme” has the same meaning as in the Pensions Scheme Act 1993;

1993 c. 48

...

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<sup>1</sup> Words omitted in s. 67(5)(b) (1.10.07) by the Equality Act 2006 (c. 3), Sch. 3, para. 53.

[There is no Annex 1 to this Act]

Annex 2  
DISABILITY DISCRIMINATION ACT 1995  
COMMENCEMENT DATES

(a) List of Commencement Orders relevant to provisions reproduced in this volume (these Orders are not reproduced in this work):-

<i>S.I. No.</i>	<i>Title of Order</i>
1996/1336	The Disability Discrimination Act 1995 (Commencement No. 2) Order 1996
1996/1474	The Disability Discrimination Act 1995 (Commencement No. 3 and Saving and Transitional Provisions) Order 1996

(b) Dates on which provisions of the Disability Discrimination Act 1995 came into force:-

<i>Section of Act</i>	<i>Commencement date</i>	<i>Relevant Commencement Order</i>
1,2	17.5.96	S.I. 1996/1336
4	2.12.96	S.I. 1996/1474
5(1), (3)	2.12.96	S.I. 1996/1474
7	2.12.96	S.I. 1996/1474
8(1)-(5)	2.12.96	S.I. 1996/1474
8(6), (7)	6.6.96	S.I. 1996/1474
8(8)	2.12.96	S.I. 1996/1474
9	2.12.96	S.I. 1996/1474
17(1), (2)	2.12.96	S.I. 1996/1474
17(3)	6.6.96	S.I. 1996/1474
17(4)	2.12.96	S.I. 1996/1474
67	17.5.96	S.I. 1996/1336
68(1)	17.5.96	S.I. 1996/1336

