



# Disability Discrimination Act 2005

## 2005 CHAPTER 13

### *Other matters*

#### **10 Discriminatory advertisements**

(1) Section 16B of the 1995 Act (the employment field: discriminatory advertisements) shall have effect with the following amendments.

(2) For subsection (1) (advertisements published, or caused to be published, by person intending to make appointment or confer benefit) there is substituted—

“(1) It is unlawful for a person to publish or cause to be published an advertisement which—

- (a) invites applications for a relevant appointment 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 not having any disability, or any particular disability,
  - (ii) the applicant not having had any disability, or any particular disability, or
  - (iii) any reluctance of the person determining the application to comply with a duty to make reasonable adjustments or (in relation to employment services) with the duty imposed by section 21(1) as modified by section 21A(6).”

(3) After subsection (2) there is inserted—

“(2A) A person who publishes an advertisement of the kind described in subsection (1) shall not be subject to any liability under subsection (1) in respect of the publication of the advertisement if he proves—

- (a) that the advertisement was published in reliance on a statement made to him by the person who caused it to be published to the effect that, by reason 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.

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(2B) A person who knowingly or recklessly makes a statement such as is mentioned in subsection (2A)(a) 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.”

(4) In subsection (3) (definition of “relevant appointment or benefit”), for ;subsection (1)” there is substituted “ ;this section ”.

## 11 Group insurance

(1) Section 18 of the 1995 Act (provision of insurance services to employees under group insurance arrangements) ceases to have effect.

(2) In section 25 of that Act (subsection (1) of which enables a claim under Part 3 to be made the subject of civil proceedings in the same way as breach of statutory duty), after subsection (6) there is inserted—

“(6A) Subsection (1) does not apply in relation to a claim by a person that another person—

- (a) has discriminated against him in relation to the provision under a group insurance arrangement of facilities by way of insurance; or
- (b) is by virtue of section 57 or 58 to be treated as having discriminated against him in relation to the provision under such an arrangement of such facilities.”

(3) In section 68(1) of that Act (interpretation), at the appropriate place there is inserted—

““group insurance arrangement” means an arrangement between an employer and another for the provision by the other of facilities by way of insurance to the employer’s employees or to any class of those employees;”.

## 12 Private clubs etc.

In the 1995 Act, after section 21E (which is inserted by section 2 of this Act) there is inserted—

*“Private clubs etc.*

### **21F Discrimination by private clubs etc.**

(1) This section applies to any association of persons (however described, whether corporate or unincorporate, and whether or not its activities are carried on for profit) if—

- (a) it has twenty-five or more members;
- (b) admission to membership is regulated by its constitution and is so conducted that the members do not constitute a section of the public within the meaning of section 19(2); and
- (c) it is not an organisation to which section 13 applies.

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- (2) It is unlawful for an association to which this section applies, in the case of a disabled person who is not a member of the association, to discriminate against him—
  - (a) in the terms on which it is prepared to admit him to membership; or
  - (b) by refusing or deliberately omitting to accept his application for membership.
- (3) It is unlawful for an association to which this section applies, in the case of a disabled person who is a member, or associate, of the association, to discriminate against him—
  - (a) in the way it affords him access to a benefit, facility or service;
  - (b) by refusing or deliberately omitting to afford him access to a benefit, facility or service;
  - (c) in the case of a member—
    - (i) by depriving him of membership, or
    - (ii) by varying the terms on which he is a member;
  - (d) in the case of an associate—
    - (i) by depriving him of his rights as an associate, or
    - (ii) by varying those rights; or
  - (e) in either case, by subjecting him to any other detriment.
- (4) It is unlawful for an association to which this section applies to discriminate against a disabled person—
  - (a) in the way it affords him access to a benefit, facility or service,
  - (b) by refusing or deliberately omitting to afford him access to a benefit, facility or service, or
  - (c) by subjecting him to any other detriment,in his capacity as a guest of the association.
- (5) It is unlawful for an association to which this section applies to discriminate against a disabled person—
  - (a) in the terms on which it is prepared to invite him, or permit a member or associate to invite him, to be a guest of the association;
  - (b) by refusing or deliberately omitting to invite him to be a guest of the association; or
  - (c) by not permitting a member or associate to invite him to be a guest of the association.
- (6) It is unlawful for an association to which this section applies to discriminate against a disabled person in failing in prescribed circumstances to comply with a duty imposed on it under section 21H.
- (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.

### **21G Meaning of “discrimination”**

- (1) For the purposes of section 21F, an association discriminates against a disabled person if—

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- (a) for a reason which relates to the disabled person's disability, the association treats him less favourably than it treats or would treat others to whom that reason does not or would not apply; and
  - (b) it cannot show that the treatment in question is justified.
- (2) For the purposes of subsection (1), treatment is justified only if—
- (a) in the opinion of the association, one or more of the conditions mentioned in subsection (3) are satisfied; and
  - (b) it is reasonable, in all the circumstances, for it to hold that opinion.
- (3) The conditions are that—
- (a) 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) the disabled person is incapable of entering into an enforceable agreement, or giving an informed consent, and for that reason the treatment is reasonable in that case;
  - (c) in a case falling within section 21F(2)(a), (3)(a), (c)(ii), (d)(ii) or (e), (4)(a) or (c) or (5)(a), the treatment is necessary in order for the association to be able to afford members, associates or guests of the association, or the disabled person, access to a benefit, facility or service;
  - (d) in a case falling within section 21F(2)(b), (3)(b), (c)(i) or (d)(i), (4)(b) or (5)(b) or (c), the treatment is necessary because the association would otherwise be unable to afford members, associates or guests of the association access to a benefit, facility or service;
  - (e) in a case falling within section 21F(2)(a), the difference between—
    - (i) the terms on which membership is offered to the disabled person, and
    - (ii) those on which it is offered to other persons,
 reflects the greater cost to the association of affording the disabled person access to a benefit, facility or service;
  - (f) in a case falling within section 21F(3)(a), (c)(ii) or (d)(ii) or (4)(a), the difference between—
    - (i) the association's treatment of the disabled person, and
    - (ii) its treatment of other members or (as the case may be) other associates or other guests of the association,
 reflects the greater cost to the association of affording the disabled person access to a benefit, facility or service;
  - (g) in a case falling within section 21F(5)(a), the difference between—
    - (i) the terms on which the disabled person is invited, or permitted to be invited, to be a guest of the association, and
    - (ii) those on which other persons are invited, or permitted to be invited, to be guests of the association,
 reflects the greater cost to the association of affording the disabled person access to a benefit, facility or service.
- (4) Any increase in the cost of affording a disabled person access to a benefit, facility or service which results from compliance with a duty under section 21H shall be disregarded for the purposes of subsection (3)(e), (f) and (g).
- (5) Regulations may—

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- (a) make provision, for purposes of this section, as to circumstances in which it is, or as to circumstances in which it is not, reasonable for an association to hold the opinion mentioned in subsection (2)(a);
  - (b) amend or omit a condition specified in subsection (3) or make provision for it not to apply in prescribed circumstances;
  - (c) make provision as to circumstances (other than any for the time being mentioned in subsection (3)) in which treatment is to be taken to be justified for the purposes of subsection (1).
- (6) For the purposes of section 21F, an association also discriminates against a disabled person if—
- (a) it fails to comply with a duty under section 21H imposed on it in relation to the disabled person; and
  - (b) it cannot show that its failure to comply with that duty is justified.
- (7) Regulations may make provision as to circumstances in which failure to comply with a duty under section 21H is to be taken to be justified for the purposes of subsection (6).

#### **21H Duty to make adjustments**

- (1) Regulations may make provision imposing on an association to which section 21F applies—
- (a) a duty to take steps for a purpose relating to a policy, practice or procedure of the association, or a physical feature, which adversely affects disabled persons who—
    - (i) are, or might wish to become, members or associates of the association, or
    - (ii) are, or are likely to become, guests of the association;
  - (b) a duty to take steps for the purpose of making an auxiliary aid or service available to any such disabled persons.
- (2) Regulations under subsection (1) may (in particular)—
- (a) make provision as to the cases in which a duty is imposed;
  - (b) make provision as to the steps which a duty requires to be taken;
  - (c) make provision as to the purpose for which a duty requires steps to be taken.
- (3) Any duty imposed under this section is imposed only for the purpose of determining whether an association has, for the purposes of section 21F, discriminated against a disabled person; and accordingly a breach of any such duty is not actionable as such.

#### **21J “Member”, “associate” and “guest”**

- (1) For the purposes of sections 21F to 21H and this section—
- (a) a person is a member of an association to which section 21F applies if he belongs to it by virtue of his admission to any sort of membership provided for by its constitution (and is not merely a person with certain rights under its constitution by virtue of his membership of some other association), and references to membership of an association shall be construed accordingly;

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- (b) a person is an associate of an association to which section 21F applies if, not being a member of it, he has under its constitution some or all of the rights enjoyed by members (or would have apart from any provision in its constitution authorising the refusal of those rights in particular cases).
- (2) References in sections 21F to 21H to a guest of an association include a person who is a guest of the association by virtue of an invitation issued by a member or associate of the association and permitted by the association.
- (3) Regulations may make provision, for purposes of sections 21F to 21H, as to circumstances in which a person is to be treated as being, or as to circumstances in which a person is to be treated as not being, a guest of an association.”

#### Commencement Information

- II** S. 12 wholly in force at 5.12.2005; s. 12 not in force at Royal Assent see s. 20(3); s. 12 in force for certain purposes at 30.6.2005 by S.I. 2005/1676, art. 2(2)(c); s. 12 in force for certain purposes at 10.10.2005 by S.I. 2005/2774, art. 2(a); s. 12 fully in force at 5.12.2005 by S.I. 2005/2774, art. 3(g)

### 13 Discrimination in relation to letting of premises

In the 1995 Act, after section 24 there is inserted—

#### “24A Let premises: discrimination in failing to comply with duty

- (1) It is unlawful for a controller of let premises to discriminate against a disabled person—
  - (a) who is a person to whom the premises are let; or
  - (b) who, although not a person to whom the premises are let, is lawfully under the letting an occupier of the premises.
- (2) For the purposes of subsection (1), a controller of let premises discriminates against a disabled person if—
  - (a) he fails to comply with a duty under section 24C or 24D imposed on him by reference to the disabled person; and
  - (b) he cannot show that failure to comply with the duty is justified (see section 24K).
- (3) For the purposes of this section and sections 24B to 24F, a person is a controller of let premises if he is—
  - (a) a person by whom the premises are let; or
  - (b) a person who manages the premises.
- (4) For the purposes of this section and sections 24B to 24F—
  - (a) “let” includes sub-let; and
  - (b) premises shall be treated as let by a person to another where a person has granted another a contractual licence to occupy them.
- (5) This section applies only in relation to premises in the United Kingdom.

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### **24B Exceptions to section 24A(1)**

- (1) Section 24A(1) does not apply if—
  - (a) the premises are, or have at any time been, the only or principal home of an individual who is a person by whom they are let; and
  - (b) since entering into the letting—
    - (i) the individual has not, and
    - (ii) where he is not the sole person by whom the premises are let, no other person by whom they are let has,used for the purpose of managing the premises the services of a person who, by profession or trade, manages let premises.
- (2) Section 24A(1) does not apply if the premises are of a prescribed description.
- (3) Where the conditions mentioned in section 23(2) are satisfied, section 24A(1) does not apply.
- (4) For the purposes of section 23 “the relevant occupier” means, in a case falling within section 24A(1), a controller of the let premises, or a near relative of his; and “near relative” has here the same meaning as in section 23.

### **24C Duty for purposes of section 24A(2) to provide auxiliary aid or service**

- (1) Subsection (2) applies where—
  - (a) a controller of let premises receives a request made by or on behalf of a person to whom the premises are let;
  - (b) it is reasonable to regard the request as a request that the controller take steps in order to provide an auxiliary aid or service; and
  - (c) either the first condition, or the second condition, is satisfied.
- (2) It is the duty of the controller 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 the auxiliary aid or service (but see section 24E(1)).
- (3) The first condition is that—
  - (a) the auxiliary aid or service—
    - (i) would enable a relevant disabled person to enjoy, or facilitate such a person’s enjoyment of, the premises, but
    - (ii) would be of little or no practical use to the relevant disabled person concerned if he were neither a person to whom the premises are let nor an occupier of them; and
  - (b) it would, were the auxiliary aid or service not to be provided, be impossible or unreasonably difficult for the relevant disabled person concerned to enjoy the premises.
- (4) The second condition is that—
  - (a) the auxiliary aid or service—
    - (i) would enable a relevant disabled person to make use, or facilitate such a person’s making use, of any benefit, or facility, which by reason of the letting is one of which he is entitled to make use, but

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- (ii) would be of little or no practical use to the relevant disabled person concerned if he were neither a person to whom the premises are let nor an occupier of them; and
- (b) it would, were the auxiliary aid or service not to be provided, be impossible or unreasonably difficult for the relevant disabled person concerned to make use of any benefit, or facility, which by reason of the letting is one of which he is entitled to make use.

#### **24D Duty for purposes of section 24A(2) to change practices, terms etc**

- (1) Subsection (3) applies where—
  - (a) a controller of let premises has a practice, policy or procedure which has the effect of making it impossible, or unreasonably difficult, for a relevant disabled person—
    - (i) to enjoy the premises, or
    - (ii) to make use of any benefit, or facility, which by reason of the letting is one of which he is entitled to make use, or
  - (b) a term of the letting has that effect,
 and (in either case) the conditions specified in subsection (2) are satisfied.
- (2) Those conditions are—
  - (a) that the practice, policy, procedure or term would not have that effect if the relevant disabled person concerned did not have a disability;
  - (b) that the controller receives a request made by or on behalf of a person to whom the premises are let; and
  - (c) that it is reasonable to regard the request as a request that the controller take steps in order to change the practice, policy, procedure or term so as to stop it having that effect.
- (3) It is the duty of the controller 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 the practice, policy, procedure or term so as to stop it having that effect (but see section 24E(1)).

#### **24E Sections 24C and 24D: supplementary and interpretation**

- (1) For the purposes of sections 24C and 24D, it is never reasonable for a controller of let premises to have to take steps consisting of, or including, the removal or alteration of a physical feature.
- (2) Sections 24C and 24D impose duties only for the purpose of determining whether a person has, for the purposes of section 24A, discriminated against another; and accordingly a breach of any such duty is not actionable as such.
- (3) In sections 24C and 24D “relevant disabled person”, in relation to let premises, means a particular disabled person—
  - (a) who is a person to whom the premises are let; or
  - (b) who, although not a person to whom the premises are let, is lawfully under the letting an occupier of the premises.
- (4) For the purposes of sections 24C and 24D, the terms of a letting of premises include the terms of any agreement which relates to the letting of the premises.



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### **24F Let premises: victimisation of persons to whom premises are let**

- (1) Where a duty under section 24C or 24D is imposed on a controller of let premises by reference to a person who, although not a person to whom the premises are let, is lawfully under the letting an occupier of the premises, it is unlawful for a controller of the let premises to discriminate against a person to whom the premises are let.
- (2) For the purposes of subsection (1), a controller of the let premises discriminates against a person to whom the premises are let if—
  - (a) the controller treats that person (“T”) less favourably than he treats or would treat other persons whose circumstances are the same as T’s; and
  - (b) he does so because of costs incurred in connection with taking steps to avoid liability under section 24A(1) for failure to comply with the duty.
- (3) In comparing T’s circumstances with those of any other person for the purposes of subsection (2)(a), the following (as well as the costs’ having been incurred) shall be disregarded—
  - (a) the making of the request that gave rise to the imposition of the duty; and
  - (b) the disability of each person who—
    - (i) is a disabled person or a person who has had a disability, and
    - (ii) is a person to whom the premises are let or, although not a person to whom the premises are let, is lawfully under the letting an occupier of the premises.

### **24G Premises that are to let: discrimination in failing to comply with duty**

- (1) Where—
  - (a) a person has premises to let, and
  - (b) a disabled person is considering taking a letting of the premises,it is unlawful for a controller of the premises to discriminate against the disabled person.
- (2) For the purposes of subsection (1), a controller of premises that are to let discriminates against a disabled person if—
  - (a) he fails to comply with a duty under section 24J imposed on him by reference to the disabled person; and
  - (b) he cannot show that failure to comply with the duty is justified (see section 24K).
- (3) For the purposes of this section and sections 24H and 24J, a person is a controller of premises that are to let if he is—
  - (a) a person who has the premises to let; or
  - (b) a person who manages the premises.
- (4) For the purposes of this section and sections 24H and 24J—
  - (a) “let” includes sub-let;
  - (b) premises shall be treated as to let by a person to another where a person proposes to grant another a contractual licence to occupy them;

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and references to a person considering taking a letting of premises shall be construed accordingly.

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

#### **24H Exceptions to section 24G(1)**

- (1) Section 24G(1) does not apply in relation to premises that are to let if the premises are, or have at any time been, the only or principal home of an individual who is a person who has them to let and—
- (a) the individual does not use, and
  - (b) where he is not the sole person who has the premises to let, no other person who has the premises to let uses,
- the services of an estate agent (within the meaning given by section 22(6)) for the purposes of letting the premises.
- (2) Section 24G(1) does not apply if the premises are of a prescribed description.
- (3) Where the conditions mentioned in section 23(2) are satisfied, section 24G(1) does not apply.
- (4) For the purposes of section 23 “the relevant occupier” means, in a case falling within section 24G(1), a controller of the premises that are to let, or a near relative of his; and “near relative” has here the same meaning as in section 23.

#### **24J Duties for purposes of section 24G(2)**

- (1) Subsection (2) applies where—
- (a) a controller of premises that are to let receives a request made by or on behalf of a relevant disabled person;
  - (b) it is reasonable to regard the request as a request that the controller take steps in order to provide an auxiliary aid or service;
  - (c) the auxiliary aid or service—
    - (i) would enable the relevant disabled person to become, or facilitate his becoming, a person to whom the premises are let, but
    - (ii) would be of little or no practical use to him if he were not considering taking a letting of the premises; and
  - (d) it would, were the auxiliary aid or service not to be provided, be impossible or unreasonably difficult for the relevant disabled person to become a person to whom the premises are let.
- (2) It is the duty of the controller to take such steps as it is reasonable, in all the circumstances of the case, for the controller to have to take in order to provide the auxiliary aid or service (but see subsection (5)).
- (3) Subsection (4) applies where—
- (a) a controller of premises that are to let has a practice, policy or procedure which has the effect of making it impossible, or unreasonably difficult, for a relevant disabled person to become a person to whom the premises are let;

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- (b) the practice, policy or procedure would not have that effect if the relevant disabled person did not have a disability;
  - (c) the controller receives a request made by or on behalf of the relevant disabled person; and
  - (d) it is reasonable to regard the request as a request that the controller take steps in order to change the practice, policy or procedure so as to stop it having that effect.
- (4) It is the duty of the controller 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 the practice, policy or procedure so as to stop it having that effect (but see subsection (5)).
- (5) For the purposes of this section, it is never reasonable for a controller of premises that are to let to have to take steps consisting of, or including, the removal or alteration of a physical feature.
- (6) In this section “relevant disabled person”, in relation to premises that are to let, means a particular disabled person who is considering taking a letting of the premises.
- (7) This section imposes duties only for the purpose of determining whether a person has, for the purposes of section 24G, discriminated against another; and accordingly a breach of any such duty is not actionable as such.

#### **24K Let premises and premises that are to let: justification**

- (1) For the purposes of sections 24A(2) and 24G(2), a person’s failure to comply with a duty is justified only if—
- (a) in his opinion, a condition mentioned in subsection (2) is satisfied; and
  - (b) it is reasonable, in all the circumstances of the case, for him to hold that opinion.
- (2) The conditions are—
- (a) that it is necessary to refrain from complying with the duty in order not to endanger the health or safety of any person (which may include that of the disabled person concerned);
  - (b) that the disabled person concerned is incapable of entering into an enforceable agreement, or of giving informed consent, and for that reason the failure is reasonable.
- (3) Regulations may—
- (a) make provision, for purposes of this section, as to circumstances in which it is, or as to circumstances in which it is not, reasonable for a person to hold the opinion mentioned in subsection (1)(a);
  - (b) amend or omit a condition specified in subsection (2) or make provision for it not to apply in prescribed circumstances;
  - (c) make provision, for purposes of this section, as to circumstances (other than any for the time being mentioned in subsection (2)) in which a failure is to be taken to be justified.

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## **24L Sections 24 to 24K: power to make supplementary provision**

- (1) Regulations may make provision, for purposes of sections 24(3A) and (3B) and 24A to 24K—
- (a) as to circumstances in which premises are to be treated as let to a person;
  - (b) as to circumstances in which premises are to be treated as not let to a person;
  - (c) as to circumstances in which premises are to be treated as being, or as not being, to let;
  - (d) as to who is to be treated as being, or as to who is to be treated as not being, a person who, although not a person to whom let premises are let, is lawfully under the letting an occupier of the premises;
  - (e) as to who is to be treated as being, or as to who is to be treated as not being, a person by whom premises are let;
  - (f) as to who is to be treated as having, or as to who is to be treated as not having, premises to let;
  - (g) as to who is to be treated as being, or as to who is to be treated as not being, a person who manages premises;
  - (h) as to things which are, or as to things which are not, to be treated as auxiliary aids or services;
  - (i) as to what is, or as to what is not, to be included within the meaning of “practice, policy or procedure”;
  - (j) as to circumstances in which it is, or as to circumstances in which it is not, reasonable for a person to have to take steps of a prescribed description;
  - (k) as to steps which it is always, or as to steps which it is never, reasonable for a person to have to take;
  - (l) as to circumstances in which it is, or as to circumstances in which it is not, reasonable to regard a request as being of a particular kind;
  - (m) as to things which are, or as to things which are not, to be treated as physical features;
  - (n) as to things which are, or as to things which are not, to be treated as alterations of physical features.
- (2) Regulations under subsection (1)(a) may (in particular) provide for premises to be treated as let to a person where they are a commonhold unit of which he is a unit-holder; and “commonhold unit”, and “unit-holder” in relation to such a unit, have here the same meaning as in Part 1 of the Commonhold and Leasehold Reform Act 2002.
- (3) The powers under subsections (1)(j) and (k) are subject to sections 24E(1) and 24J(5).”

### **Commencement Information**

**12** S. 13 wholly in force at 4.12.2006; s. 13 not in force at Royal Assent see s. 20(3); s. 13 in force for certain purposes at 30.6.2005 by S.I. 2005/1676, art. 2(2)(d); s. 13 fully in force at 4.12.2006 by S.I. 2005/2774, art. 4(b)

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*Changes to legislation: There are currently no known outstanding effects for the Disability Discrimination Act 2005, Cross Heading: Other matters. (See end of Document for details)*

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## **14 Power to modify or end small dwellings exemptions**

- (1) The Secretary of State may by order made by statutory instrument amend, or repeal provisions of, sections 23, 24B and 24H of the 1995 Act—
  - (a) for the purpose of adding to the conditions for entitlement to the exemptions conferred by sections 23, 24B(3) and 24H(3);
  - (b) for the purpose of making any of the conditions for entitlement to those exemptions more onerous;
  - (c) for the purpose of making the conditions for entitlement to those exemptions more onerous overall;
  - (d) for the purpose of otherwise restricting the cases in which any of those exemptions is available; or
  - (e) for the purpose of removing those exemptions.
- (2) The power under subsection (1) includes power to make consequential repeals of provisions of enactments (including future enactments) that amend section 23, 24B or 24H of the 1995 Act.
- (3) No order under this section shall be made unless a draft of the statutory instrument containing the order (whether alone or with other provisions) has been laid before, and approved by a resolution of, each House of Parliament.

## **15 General qualifications bodies**

In Part 4 of the 1995 Act (education), after Chapter 2 there is inserted—

### “CHAPTER 2A

#### *General Qualifications Bodies*

### **31AA General qualifications bodies: discrimination and harassment**

- (1) It is unlawful for a general qualifications body to discriminate against a disabled person—
  - (a) in the arrangements which it makes for the purpose of determining upon whom to confer a relevant qualification;
  - (b) in the terms on which it is prepared to confer a relevant qualification on him;
  - (c) by refusing or deliberately omitting to grant any application by him for such a qualification; or
  - (d) by withdrawing such a qualification from him or varying the terms on which he holds it.
- (2) It is also unlawful for a general qualifications body, in relation to a relevant qualification conferred by it, to subject to harassment a disabled person who holds or applies for such a qualification.
- (3) 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.

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- (4) In this section and section 31AD, “relevant qualification” means an authorisation, qualification, approval or certification of a prescribed description.
- (5) But an authorisation, qualification, approval or certification may not be prescribed under subsection (4) if it is a professional or trade qualification (within the meaning given by section 14A(5)).
- (6) In this Chapter—
- (a) “general qualifications body” means any authority or body which can confer a relevant qualification, but it does not include—
    - (i) a responsible body (within the meaning of Chapter 1 or 2 of this Part),
    - (ii) a local education authority in England or Wales,
    - (iii) an education authority (within the meaning of section 135(1) of the Education (Scotland) Act 1980), or
    - (iv) an authority or body of a prescribed description or in prescribed circumstances;
  - (b) references (however expressed) to the conferment of a qualification on a person include—
    - (i) the renewal or extension of a qualification, and
    - (ii) the authentication of a qualification awarded to him by another person.

### **31AB Meaning of “discrimination”**

- (1) For the purposes of section 31AA, a body discriminates against a disabled person if—
  - (a) for a reason which relates to the disabled person’s disability, it treats him less favourably than it treats or would treat others to whom that reason does not or would not apply; and
  - (b) it cannot show that the treatment in question is justified.
- (2) For the purposes of section 31AA, a body also discriminates against a disabled person if it fails to comply with a duty imposed on it by section 31AD in relation to the disabled person.
- (3) Treatment, other than the application of a competence standard, is (subject to subsections (5) to (7)) 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) The application by a body of a competence standard to a disabled person is (subject to subsections (6) and (7)) justified for the purposes of subsection (1)(b) if, but only if, the body can show that—
  - (a) the standard is, or would be, applied equally to persons who do not have his particular disability; and
  - (b) its application is a proportionate means of achieving a legitimate aim.
- (5) If, in a case falling within subsection (1) other than a case where the treatment is the application of a competence standard, a body is under a duty under section 31AD in relation to the disabled person but fails to comply with that

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duty, its treatment of that person cannot be justified under subsection (3) unless it would have been justified even if the body had complied with that duty.

- (6) Regulations may make provision, for purposes of this section, as to circumstances in which treatment is, or as to circumstances in which treatment is not, to be taken to be justified (but see subsection (7)).
- (7) Treatment of a disabled person cannot be justified under subsection (3), (4) or (6) if it amounts to direct discrimination falling within subsection (8).
- (8) A body directly discriminates against a disabled person if, on the ground of the disabled person's disability, it treats the disabled person less favourably than it 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.
- (9) In this section, "competence standard" means an academic, medical or other standard applied by or on behalf of a general qualifications body for the purpose of determining whether or not a person has a particular level of competence or ability.

### **31AC Meaning of "harassment"**

- (1) For the purposes of section 31AA, a body subjects a disabled person to harassment where, for a reason which relates to the disabled person's disability, the body 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) 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.

### **31AD General qualifications bodies: duty to make adjustments**

- (1) Where—
  - (a) a provision, criterion or practice, other than a competence standard, is applied by or on behalf of a general qualifications body,
  - (b) it is a provision, criterion or practice for determining on whom a relevant qualification is to be conferred,
  - (c) a disabled person is, or has notified the body that he may be, an applicant for the conferment of that qualification, and
  - (d) the provision, criterion or practice places the disabled person at a substantial disadvantage in comparison with persons who are not disabled,it is the duty of the 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 having that effect.

- (2) Where—

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- (a) a provision, criterion or practice, other than a competence standard, is applied by or on behalf of a general qualifications body,
- (b) it is a provision, criterion or practice other than one for determining on whom a relevant qualification is to be conferred, and
- (c) it places a disabled person who—
  - (i) holds a relevant qualification conferred by the body, or
  - (ii) applies for a relevant qualification which the body confers,
 at a substantial disadvantage in comparison with persons who are not disabled,

it is the duty of the 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 having that effect.

- (3) Where any physical feature of premises occupied by a general qualifications body places a disabled person who—
  - (a) holds a relevant qualification conferred by the body, or
  - (b) applies for a relevant qualification which the body confers,
 at a substantial disadvantage in comparison with persons who are not disabled, it is the duty of the 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 feature having that effect.
- (4) Nothing in subsection (1), (2) or (3) imposes a duty on a general 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 for the conferment of a relevant qualification, that the disabled person concerned is, or may be, such an applicant; or
  - (b) in any case, that that person has a disability and is likely to be affected in the way mentioned in that subsection.
- (5) In this section—
  - (a) “provision, criterion or practice” includes (subject to any provision under subsection (6)(e)) any arrangements;
  - (b) “competence standard” has the meaning given by section 31AB(9).
- (6) Regulations may make provision, for purposes of this section—
  - (a) as to circumstances in which a provision, criterion or practice is to be taken to have, or as to circumstances in which a provision, criterion or practice is to be taken not to have, the effect mentioned in subsection (1) (d) or (2)(c);
  - (b) as to circumstances in which a physical feature is to be taken to have, or as to circumstances in which a physical feature is to be taken not to have, the effect mentioned in subsection (3);
  - (c) as to circumstances in which it is, or as to circumstances in which it is not, reasonable for a body to have to take steps of a prescribed description;
  - (d) as to steps which it is always, or as to steps which it is never, reasonable for a body to have to take;
  - (e) as to what is, or as to what is not, to be included within the meaning of “provision, criterion or practice”;



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(f) as to things which are, or as to things which are not, to be treated as physical features.

(7) This section imposes duties only for the purpose of determining whether a body has, for the purposes of section 31AA, discriminated against a disabled person; and accordingly a breach of any such duty is not actionable as such.

### **31AE Chapter 2A: claims, leased premises and certain agreements**

(1) Regulations may make provision for, or in connection with, the making of a claim by a person—

(a) that a general qualifications body has discriminated against him, or subjected him to harassment, in a way which is unlawful under this Chapter;

(b) that a general qualifications body is by virtue of section 57 or 58 to be treated as having done so; or

(c) that a person is by virtue of section 57 to be treated as having done so.

(2) Regulations may, in relation to a case where premises are occupied by a general qualifications body under a lease—

(a) make provision modifying the lease, or make provision for its modification, in connection with the making of alterations to the premises in pursuance of a duty imposed on the body by section 31AD;

(b) make provision in connection with the determination of questions that are about the body's compliance with any such duty and are related to the making of alterations to the premises.

(3) Any term in a contract or other agreement made by or on behalf of a general qualifications body 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 Chapter;

(b) exclude or limit the operation of any provision of, or made under, this Chapter; or

(c) prevent any person making a claim of a kind mentioned in subsection (1).

(4) Regulations may—

(a) make provision for subsection (3)(b) or (c) not to apply to an agreement settling a claim of a kind mentioned in subsection (1);

(b) make provision modifying an agreement to which subsection (3) applies, or make provision for the modification of such an agreement, in order to take account of the effect of that subsection.

(5) The provision that may be made under subsection (1), (2) or (4) includes (in particular)—

(a) provision as to the court or tribunal to which a claim, or an application in connection with a modification, may be made;

(b) provision for the determination of claims or matters otherwise than by the bringing of proceedings before a court or tribunal;

(c) provision for a person who is a lessor in relation to a lease under which a general qualifications body occupies premises to be made a party to proceedings;

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- (d) provision as to remedies;
  - (e) provision as to procedure;
  - (f) provision as to appeals;
  - (g) provision as to time limits;
  - (h) provision as to evidence;
  - (i) provision as to costs or expenses.
- (6) Provision under subsection (1), (2) or (4) may take the form of amendments of this Act.
- (7) Regulations may make provision as to the meaning of “lease” or “lessor” in this section.
- (8) Except as provided in regulations under subsection (1), no civil or criminal proceedings may be brought against any person in respect of an act merely because the act is unlawful under this Chapter.
- (9) Subsection (8) does not prevent the making of an application for judicial review.

### 31AF Chapter 2A: duty to consult before making regulations

- (1) Before making regulations under this Chapter, the Secretary of State shall consult such persons as it appears to him to be appropriate to consult, having regard to the substance and effect of the regulations in question.
- (2) Without prejudice to the generality of subsection (1), the Secretary of State shall consult the National Assembly for Wales and the Scottish Ministers before making regulations under this Chapter.”

#### Commencement Information

- I3** S. 15 wholly in force at 1.9.2007; s. 15 not in force at Royal Assent see s. 20(3); s. 15 in force for certain purposes at 11.6.2007 by S.I. 2007/1555, art. 2; s. 15 fully in force at 1.9.2007 by S.I. 2007/1555, art. 3(a)

## 16 Improvements to let dwelling houses

- (1) In the 1995 Act, after Part 5A (which is inserted by section 3 of this Act) there is inserted—

### “PART 5B

#### IMPROVEMENTS TO DWELLING HOUSES

### 49G Improvements to let dwelling houses

- (1) This section applies in relation to a lease of a dwelling house if—
- (a) the tenancy is not a protected tenancy, a statutory tenancy or a secure tenancy,
  - (b) the tenant or any other person who lawfully occupies or is intended lawfully to occupy the premises is a disabled person,

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- (c) the person mentioned in paragraph (b) occupies or is intended to occupy the premises as his only or principal home,
  - (d) the tenant is entitled under the lease to make improvements to the premises with the consent of the landlord, and
  - (e) the tenant applies to the landlord for his consent to make a relevant improvement.
- (2) If the consent of the landlord is unreasonably withheld it must be taken to have been given.
- (3) Where the tenant applies in writing for the consent—
  - (a) if the landlord refuses to give consent, he must give the tenant a written statement of the reason why the consent was withheld;
  - (b) if the landlord neither gives nor refuses to give consent within a reasonable time, consent must be taken to have been withheld.
- (4) If the landlord gives consent to the making of an improvement subject to a condition which is unreasonable, the consent must be taken to have been unreasonably withheld.
- (5) In any question as to whether—
  - (a) the consent of the landlord was unreasonably withheld, or
  - (b) a condition imposed by the landlord is unreasonable,it is for the landlord to show that it was not.
- (6) If the tenant fails to comply with a reasonable condition imposed by the landlord on the making of a relevant improvement, the failure is to be treated as a breach by the tenant of an obligation of his tenancy.
- (7) An improvement to premises is a relevant improvement if, having regard to the disability which the disabled person mentioned in subsection (1)(b) has, it is likely to facilitate his enjoyment of the premises.
- (8) Subsections (2) to (6) apply to a lease only to the extent that provision of a like nature is not made by the lease.
- (9) In this section—

“improvement” means any alteration in or addition to premises and includes—

  - (a) any addition to or alteration in landlord’s fittings and fixtures,
  - (b) any addition or alteration connected with the provision of services to the premises,
  - (c) the erection of a wireless or television aerial, and
  - (d) the carrying out of external decoration;

“lease” includes a sub-lease or other tenancy, and “landlord” and “tenant” must be construed accordingly;

“protected tenancy” has the same meaning as in section 1 of the Rent Act 1977;

“statutory tenancy” must be construed in accordance with section 2 of that Act;

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“secure tenancy” has the same meaning as in section 79 of the Housing Act 1985.

#### 49H Conciliation of disputes

- (1) The Disability Rights Commission may make arrangements with any other person for the provision of conciliation services by, or by persons appointed by, that person in relation to a dispute of any description concerning the question whether it is unreasonable for a landlord to withhold consent to the making of a relevant improvement to a dwelling house.
- (2) Subsections (2) to (8) of section 28 apply for the purposes of this section as they apply for the purposes of that section and for that purpose a reference in that section to—
  - (a) a dispute arising under Part 3 must be construed as a reference to a dispute mentioned in subsection (1) above;
  - (b) arrangements under that section must be construed as a reference to arrangements under this section.
- (3) “Relevant improvement” has the same meaning as in section 49G.”

(2) <sup>F1</sup> .....

(3) <sup>F1</sup> .....

#### Textual Amendments

**F1** S. 16(2)(3) repealed (1.10.2007) by Equality Act 2006 (c. 3), ss. 91, 93, Sch. 4 (with s. 92); S.I. 2007/2603, art. 2(c)(d) (with art. 3)

#### Commencement Information

**I4** S. 16 wholly in force at 4.12.2006; s. 16 not in force at Royal Assent see s. 20(3); s. 16(2) in force at 30.6.2005 by S.I. 2005/1676, art. 2(1)(b); s. 16 fully in force at 4.12.2006 by S.I. 2005/2774, art. 4(d)

### 17 Generalisation of section 56 of the 1995 Act in relation to Part 3 claims

For section 56 of the 1995 Act there is substituted—

#### “56 Help for aggrieved persons in obtaining information etc.

- (1) For the purposes of this section—
  - (a) a person who considers that he may have been—
    - (i) discriminated against in contravention of Part 2 or 3, or
    - (ii) subjected to harassment in contravention of Part 2 or section 21A(2),
 is referred to as “the person aggrieved”; and
  - (b) a person against whom the person aggrieved may decide to institute, or has instituted, proceedings in respect of such discrimination or harassment is referred to as “the respondent”.

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- (2) With a view to helping the person aggrieved decide whether to institute proceedings and, if he does so, to formulate and present his case in the most effective manner, the Secretary of State shall by order prescribe—
  - (a) forms by which the person aggrieved 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 person aggrieved 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 2 or 3;
  - (b) if it appears to the court or 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 committed an unlawful act.
- (4) The Secretary of State may by order—
  - (a) prescribe the period within which questions must be duly served in order to be admissible under subsection (3)(a); and
  - (b) prescribe the manner in which a question, and any reply by the respondent, may be duly served.
- (5) Rules of court may enable a court entertaining a claim under section 25 to determine, before the date fixed for the hearing of the claim, whether a question or reply is admissible under this section or not.
- (6) In proceedings in respect of a section 21B claim, subsection (3)(b) does not apply in relation to a failure to reply, or a particular reply, if the following conditions are met—
  - (a) that, at the time of doing any relevant act, the respondent was carrying out public investigator functions or was a public prosecutor; and
  - (b) that the respondent reasonably believes that a reply or (as the case may be) a different reply would be likely to prejudice any criminal investigation, any decision to institute criminal proceedings or any criminal proceedings or would reveal the reasons behind a decision not to institute, or a decision not to continue, criminal proceedings.
- (7) Regulations may provide for this section not to have effect, or to have effect with prescribed modifications, in relation to section 21B claims of a prescribed description.
- (8) This section is without prejudice to any other enactment or rule of law regulating interlocutory and preliminary matters in proceedings before a county court, the sheriff or an employment tribunal, and has effect subject to any

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enactment or rule of law regulating the admissibility of evidence in such proceedings.

(9) In this section “section 21B claim” means a claim under section 25 by virtue of section 21B.”

#### Commencement Information

**I5** S. 17 wholly in force at 4.12.2006; s. 17 not in force at Royal Assent see s. 20(3); s. 17 in force for certain purposes at 30.6.2005 by S.I. 2005/1676, art. 2(2)(e); s. 17 in force for certain purposes at 5.12.2005 by S.I. 2005/2774, art. 3(h); s. 17 fully in force at 4.12.2006 by S.I. 2005/2774, art. 4(e)

## 18 Meaning of “disability”

- (1) Schedule 1 to the 1995 Act (which supplements the definition of “disability” in section 1 of that Act) shall have effect with the following amendments.
- (2) Paragraph 1(1)(mental illness must be clinically well-recognised if it is to be basis of “mental impairment”) is omitted.
- (3) Before paragraph 7 (persons deemed to be disabled) there is inserted—

- “6A
- (1) Subject to sub-paragraph (2), a person who has cancer, HIV infection or multiple sclerosis is to be deemed to have a disability, and hence to be a disabled person.
  - (2) Regulations may provide for sub-paragraph (1) not to apply in the case of a person who has cancer if he has cancer of a prescribed description.
  - (3) A description of cancer prescribed under sub-paragraph (2) may (in particular) be framed by reference to consequences for a person of his having it.”

- (4) In paragraph 7, after sub-paragraph (5) there is inserted—

“(5A) The generality of sub-paragraph (5) shall not be taken to be prejudiced by the other provisions of this Schedule.”

- (5) At the end there is inserted—

## 9 “Interpretation

In this Schedule “HIV infection” means infection by a virus capable of causing the Acquired Immune Deficiency Syndrome.”

#### Commencement Information

**I6** S. 18 wholly in force at 5.12.2005; s. 18 not in force at Royal Assent see s. 20(3); s. 18 in force for certain purposes at 30.6.2005 by S.I. 2005/1676, art. 2(2)(f); s. 18 fully in force at 5.12.2005 by S.I. 2005/2774, art. 3(i)

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Cross Heading: Other matters.