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STATUTORY INSTRUMENTS

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**2005 No. 1117**

The Special Educational Needs and  
Disability (Northern Ireland) Order 2005

PART III

DISABILITY DISCRIMINATION IN EDUCATION

CHAPTER IV

MISCELLANEOUS

**Extension of role of Equality Commission**

**40.** Schedule 4 extends the role of the Equality Commission for Northern Ireland in relation to discrimination made unlawful by this Part.

**Codes of practice**

**41.—**(1) Section 54A of the 1995 Act (codes of practice) is amended as follows.

(2) For subsection (1) substitute—

“(1) The Commission may prepare and issue codes of practice giving practical guidance on how to avoid acts which are unlawful under Part II or III of this Act or Part III of the 2005 Order, or on any other matter relating to the operation of any provision of Part II or III of this Act or Part III of the 2005 Order, to—

- (a) employers;
- (b) service providers;
- (c) bodies which are responsible bodies for the purposes of Chapter I or II of Part III of the 2005 Order; or
- (d) other persons to whom the provisions of Part II or III of this Act or Part III of the 2005 Order 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 II or III of this Act or Part III of the 2005 Order.

(1B) Neither subsection (1) nor (1A) applies in relation to any duty imposed by or under Article 17 or 18 of the 2005 Order.”

(3) In subsection (8) after “Part III” insert “or Part III of the 2005 Order”.

(4) At the end add—

“(10) Subject to subsection (12), in relation to a code of practice giving practical guidance wholly or mainly as to—

- (a) any matter relating to the operation of any provision of Chapter I or III of Part III of the 2005 Order; or
- (b) any field of activity regulated by any such provision,

any reference in this section to the Office shall be read as a reference to the Department of Education.

(11) Subject to subsection (12), in relation to a code of practice giving practical guidance wholly or mainly as to—

- (a) any matter relating to the operation of any provision of Chapter II of Part III of the 2005 Order; or
- (b) any field of activity regulated by any such provision,

any reference in this section to the Office shall be read as a reference to the Department for Employment and Learning.

(12) Practical guidance which but for this subsection would fall to be contained in separate codes of practice by virtue of subsections (10) and (11) may be contained in a single code of practice; and in relation to any such code of practice any reference in this section to the Office shall be read as a reference to the Department of Education and the Department for Employment and Learning, acting jointly.”.

### **Conciliation for disputes under this Part**

**42.**—(1) The Equality Commission for Northern Ireland may make arrangements with any other person for the provision of conciliation services by, or by persons appointed by, that person in connection with disputes.

(2) In deciding what arrangements (if any) to make, the Commission shall have regard to the desirability of securing, so far as reasonably practicable, that conciliation services are available for all disputes which the parties may wish to refer to conciliation.

(3) No member or employee of the Commission may provide conciliation services in connection with disputes.

(4) The Commission shall ensure that arrangements under this Article include appropriate safeguards to prevent the disclosure to members or employees of the Commission of information obtained by any person in connection with the provision of conciliation services in accordance with the arrangements.

(5) Paragraph (4) does not apply to information which is disclosed with the consent of the parties to the dispute to which it relates.

(6) Paragraph (4) does not apply to information which—

- (a) does not identify a particular dispute or a particular person; and
- (b) is reasonably required by the Commission for the purpose of monitoring the operation of the arrangements concerned.

(7) Anything communicated to a person providing conciliation services in accordance with arrangements under this Article is not admissible in evidence in any proceedings except with the consent of the person who communicated it.

(8) In this Article—

“conciliation services” means advice and assistance provided to the parties to a dispute, by a conciliator, with a view to promoting its settlement otherwise than through a court, tribunal or other body;

“dispute” means a dispute arising under an earlier Chapter of this Part concerning an allegation of discrimination or harassment and here—

- (a) “discrimination” means anything which is made unlawful discrimination by a provision of the Chapter concerned; and
- (b) “harassment” means anything which is made unlawful harassment by a provision of the Chapter concerned.

### **Victimisation**

**43.**—(1) For the purposes of this Part, 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 paragraph (2).

(2) The reasons are that—

- (a) B has—
  - (i) brought proceedings against A or any other person under this Part or the 1995 Act; or
  - (ii) given evidence or information in connection with such proceedings brought by any person; or
  - (iii) otherwise done anything under or by reference to this Part or the 1995 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 Part or the 1995 Act; or
- (b) A believes or suspects that B has done or intends to do any of those things.

(3) For the purposes of Chapter I—

- (a) references in paragraph (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 paragraph to this Part or the 1995 Act are, as respects a person mentioned in head (i) or (ii) of sub-paragraph (a), to be read as references to that Chapter.

(4) 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 paragraph (1)(a).

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

### **Aiding unlawful acts**

**44.**—(1) A person who knowingly aids another person to do an act made unlawful by any provision of this Part other than Chapter I is to be treated for the purposes of this Part as himself doing the same kind of unlawful act.

(2) For the purposes of paragraph (1), an employee or agent for whose act the employer or principal is liable under Article 45 (or would be so liable but for Article 45(5)) shall be taken to have aided the employer or principal to do the act.

(3) For the purposes of this Article, a person does not knowingly aid another to do an unlawful act if—

- (a) he acts in reliance on a statement made to him by that other person that, because of any provision of this Part, the act would not be unlawful; and
- (b) it is reasonable for him to rely on the statement.

(4) A person who knowingly or recklessly makes such a statement which is false or misleading in a material respect is guilty of an offence.

(5) Any person guilty of an offence under paragraph (4) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

### **Liability of employers and principals**

**45.**—(1) Anything done by a person in the course of his employment shall be treated for the purposes of this Part as also done by his employer, whether or not it was done with the employer's knowledge or approval.

(2) Anything done by a person as agent for another person with the authority of that other person shall be treated for the purposes of this Part as also done by that other person.

(3) Paragraph (2) applies whether the authority was—

- (a) express or implied; or
- (b) given before or after the act in question was done.

(4) Paragraphs (1) and (2) do not apply in relation to an offence under Article 44(4).

(5) In proceedings under this Part against any person in respect of an act alleged to have been done by an employee of his, it shall be a defence for that person to prove that he took such steps as were reasonably practicable to prevent the employee from—

- (a) doing that act; or
- (b) doing, in the course of his employment, acts of that description.

### **Statutory authority and national security**

**46.**—(1) Nothing in this Part makes unlawful any act done—

- (a) in pursuance of any statutory provision; or
- (b) in pursuance of any instrument made by a Minister of the Crown or Northern Ireland department under any statutory provision; or
- (c) to comply with any condition or requirement imposed by a Minister of the Crown or Northern Ireland department (whether before or after the making of this Order) by virtue of any statutory provision.

(2) In paragraph (1) “statutory provision” includes one passed or made after the date on which this Order is made and “instrument” includes one made after that date.

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

### **Application to Crown, etc.**

**47.**—(1) This Part 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) The provisions of Parts II to IV of the Crown Proceedings Act 1947 (c. 44) apply to proceedings against the Crown under this Part as they apply to Crown proceedings in Northern Ireland; but section 20 of that Act (removal of proceedings from county court to High Court) does not apply.

(3) In this Article—

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

“government department” means a Northern Ireland department or a department of the Government of the United Kingdom;

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

“statutory office” means an office so set up.

#### **Relationship of this Part with the 1995 Act**

**48.**—(1) The 1995 Act is amended as follows.

(2) In section 1 (meaning of “disability”) after “this Act” (twice) insert “and Part III of the 2005 Order”.

(3) In section 2 (past disabilities)—

(a) in subsection (1), after “and III” insert “and Part III of the 2005 Order”;

(b) in subsection (3) after “this Act” insert “or Part III of the 2005 Order”; and

(c) in subsection (4) after “this Act”(twice) insert “or Part III of the 2005 Order”;

(d) in subsection (5) at the end add “or (as the case may be) the making of the 2005 Order”.

(4) In subsection (3) of section 3 (courts, etc. to have regard to guidance), after “this Act” insert “or Part III of the 2005 Order”.

(5) In section 14C (practical work experience) in subsection (3)(a) after “Part III” insert “or of Part III of the 2005 Order”.

(6) In section 19 (discrimination in relation to goods, facilities and services) for subsections (5) and (6) substitute—

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

(a) any service so far as it consists of the use of any means of transport; or

(b) such other services as may be prescribed.

(6) Nothing in this Part applies to the provision of a service in relation to which discrimination is made unlawful by Part III of the 2005 Order.”.

(7) In section 55 (victimisation), in subsection (2) after “this Act” (in each place) insert “or Part III of the 2005 Order”.

(8) After subsection (3) of that section insert—

“(3A) For the purposes of Chapter I of Part III of the 2005 Order—

(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 or Part III of the 2005 Order are, as respects a person mentioned in sub-paragraph (i) or (ii) of paragraph (a), to be read as references to that Chapter.”
- (9) In paragraph 2 of Schedule 2 (past disabilities) after “and III” insert “and Part III of the 2005 Order”.
- (10) After paragraph 5 insert—
- “6. References in Chapter I of Part III of the 2005 Order to a disabled pupil are to be read as references to a pupil who has had a disability.
  - 7. References in Chapter II of Part III of the 2005 Order to a disabled student are to be read as references to a student who has had a disability.
  - 8. In Article 15(3)(a) and (4) of the 2005 Order, after “disabled” insert “or that he had had a disability”.
  - 9. In Article 16(1) of the 2005 Order, in sub-paragraphs (a) and (b), after “not disabled” insert “and who have not had a disability”.
  - 10. In Article 29(3)(a) and (4) of the 2005 Order, after “disabled” insert “or that he had had a disability”.
  - 11. In Articles 30(1)(a) and (b) and 37(1)(d), (2)(c) and (3) of the 2005 Order, after “not disabled” insert “and who have not had a disability”.
  - 12. In Article 35(8) of the 2005 Order after “not having that particular disability” insert “and who has not had that particular disability”.
  - 13. In Article 37(4)(b) of the 2005 Order for “has” substitute “has had”.”
- (11) In section 68(1) at the appropriate place in alphabetical order insert—
- ““the 2005 Order” means the Special Educational Needs and Disability (Northern Ireland) Order 2005;”.