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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 N.I.**

**DISABILITY DISCRIMINATION IN EDUCATION**

**CHAPTER II N.I.**

**FURTHER AND HIGHER EDUCATION**

*Duties of responsible bodies*

**Discrimination against disabled students and prospective students N.I.**

**28.**—(1) It is unlawful for the body responsible for an educational institution to discriminate against a disabled person—

- (a) in the arrangements it makes for determining admissions to the institution;
- (b) in the terms on which it offers to admit him to the institution; or
- (c) by refusing or deliberately omitting to accept an application for his admission to the institution.

(2) It is unlawful for the body responsible for an educational institution to discriminate against a disabled student in the student services it provides, or offers to provide.

(3) It is unlawful for the body responsible for an educational institution to discriminate against a disabled student by suspending or expelling him from the institution.

[<sup>F1</sup>(3A) It is unlawful for the body responsible for an educational institution to discriminate against a disabled person—

- (a) in the arrangements which it makes for the purpose of determining upon whom to confer a qualification;
- (b) in the terms on which it is prepared to confer a qualification on him;
- (c) by refusing or deliberately omitting to grant any application by him for a qualification; or
- (d) by withdrawing a qualification from him or varying the terms on which he holds it.

(3B) It is unlawful for the body responsible for an educational institution to subject to harassment a disabled person who—

- (a) holds or applies for a qualification conferred by the institution;
- (b) is a student at the institution; or
- (c) seeks admission as a student to the institution.]

(4) In the case of an act which constitutes discrimination by virtue of Article 43, this Article also applies to discrimination against a person who is not disabled.

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**F1** [Art. 28\(3A\)\(3B\)](#) inserted (10.8.2006 for certain purposes and 1.9.2006 otherwise) by [Special Educational Needs and Disability \(Northern Ireland\) Order 2005 \(Amendment\) \(Further and Higher Education\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/332\)](#), regs. 1, 5

**Meaning of “discrimination”** **N.I.**

**29.**—(1) For the purposes of [<sup>F2</sup>this Chapter], a responsible body discriminates against a disabled person if—

- (a) for a reason which relates to his 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.

[<sup>F3</sup>(2) For the purposes of this Chapter, a responsible body also discriminates against a disabled person if it fails to comply with a duty imposed on it by Article 30 or 30A(5) in relation to the disabled person.]

(3) In relation to a failure to take a particular step, a responsible body does not discriminate against a person if it shows—

- (a) that, at the time in question, it did not know and could not reasonably have been expected to know, that he was disabled; and
- (b) that its failure to take the step was attributable to that lack of knowledge.

(4) <sup>F4</sup> .....

[<sup>F5</sup>(5) Treatment, other than the application of a competence standard, is (subject to paragraphs (7) to (9)), justified for the purposes of paragraph (1)(b) if, but only if, the reason for it is both material to the circumstances of the particular case and substantial.

(6) The application by a responsible body of a competence standard to a disabled person is (subject to paragraphs (8) and (9)) justified for the purposes of paragraph (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.

(7) If in a case falling within paragraph (1), other than a case where the treatment is the application of a competence standard, a responsible body is under a duty under Article 30 or 30A(5) in relation to the disabled person, but fails to comply with that duty, its treatment of that person cannot be justified under paragraph (5) unless that treatment would have been justified even if it had complied with that duty.

(8) Subject to paragraph (9), regulations may make provision, for the purposes of this Article, as to circumstances in which treatment is, or as to circumstances in which treatment is not, to be taken to be justified.

(9) Treatment of a disabled person by a responsible body cannot be justified under paragraph (5), (6) or (8) if it amounts to direct discrimination falling within paragraph (10).

(10) A responsible 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.

(11) In this Article and Article 30, “competence standard” means an academic, medical or other standard applied by or on behalf of a responsible body for the purpose of determining whether or not a person has a particular level of competence or ability.]

- F2** Words in [art. 29\(1\)](#) substituted (10.8.2006 for certain purposes and 1.9.2006 otherwise) by [Special Educational Needs and Disability \(Northern Ireland\) Order 2005 \(Amendment\) \(Further and Higher Education\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/332\)](#), regs. 1, [6\(2\)](#)
- F3** [Art. 29\(2\)](#) substituted (10.8.2006 for certain purposes and 1.9.2006 otherwise) by [Special Educational Needs and Disability \(Northern Ireland\) Order 2005 \(Amendment\) \(Further and Higher Education\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/332\)](#), regs. 1, [6\(3\)](#)
- F4** [Art. 29\(4\)](#) omitted (10.8.2006 for certain purposes and 1.9.2006 otherwise) by virtue of [Special Educational Needs and Disability \(Northern Ireland\) Order 2005 \(Amendment\) \(Further and Higher Education\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/332\)](#), regs. 1, [6\(4\)](#)
- F5** [Art. 29\(5\)-\(11\)](#) substituted (1.9.2006) for [art. 29\(5\)-\(9\)](#) by [Special Educational Needs and Disability \(Northern Ireland\) Order 2005 \(Amendment\) \(Further and Higher Education\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/332\)](#), regs. 1, [6\(5\)](#)

**[<sup>F6</sup>Meaning of “harassment” N.I.]**

**29A.**—(1) For the purposes of this Chapter, a responsible body subjects a disabled person to harassment where, for a reason which relates to the disabled person's disability, that 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 (1)(a) or (b) 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.]

- F6** [Art. 29A](#) inserted (10.8.2006 for certain purposes and 1.9.2006 otherwise) by [Special Educational Needs and Disability \(Northern Ireland\) Order 2005 \(Amendment\) \(Further and Higher Education\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/332\)](#), regs. 1, [7](#)

**[<sup>F7</sup>Responsible bodies' duties to make adjustments] N.I.]**

**30.**—[<sup>F8</sup>(1) Where—

- (a) a provision, criterion or practice, other than a competence standard, is applied by or on behalf of a responsible body,
- (b) it is a provision, criterion or practice relating to—
  - (i) the arrangements it makes for determining admissions to the institution, or
  - (ii) student services provided for, or offered to, students by the responsible body, and
- (c) that provision, criterion or practice places disabled persons at a substantial disadvantage in comparison with persons who are not disabled,

it is the duty of the responsible body to take such steps as are reasonable, in all the circumstances of the case, to prevent the provision, criterion or practice having that effect.

(1A) Where—

- (a) a provision, criterion or practice, other than a competence standard, is applied by or on behalf of a responsible body,
- (b) it is a provision, criterion or practice for determining on whom a qualification is to be conferred,

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- (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 responsible body to take such steps as are reasonable, in all the circumstances of the case, to prevent the provision, criterion or practice having that effect.

(1B) Where—

- (a) a provision, criterion or practice, other than a competence standard, is applied by or on behalf of a responsible body,
- (b) it is a provision, criterion or practice other than one mentioned in paragraph (1)(b) or (1A)(b), and
- (c) it places a disabled person who—
  - (i) holds a qualification conferred by the responsible body, or
  - (ii) applies for a qualification which the responsible body confers, at a substantial disadvantage in comparison with persons who are not disabled,

it is the duty of the responsible body to take such steps as are reasonable, in all the circumstances of the case, to prevent the provision, criterion or practice having that effect.

(1C) Where any physical feature of premises occupied by a responsible body places disabled persons at a substantial disadvantage in comparison with persons who are not disabled in relation to—

- (a) the arrangements which that body makes for determining admissions to the institution, or
- (b) student services provided for, or offered to, students by that body,

it is the duty of the body to take such steps as are reasonable, in all the circumstances of the case, to prevent the feature having that effect.

(1D) Where any physical feature of premises occupied by a responsible body places a disabled person who—

- (a) applies for a qualification which that body confers, or
- (b) holds a qualification which was conferred by that body,

at a substantial disadvantage in comparison with persons who are not disabled, it is the duty of the body to take such steps as are reasonable, in all the circumstances of the case, to prevent the feature having that effect.]

(2) In considering whether it is reasonable for it to have to take a particular step in order to comply with its duty under [F<sup>9</sup>any of paragraphs (1) to (1D)] , a responsible body shall have regard to any relevant provisions of a code of practice issued under section 54A of the 1995 Act.

(3) Paragraph (4) applies if a person has made a confidentiality request of which a responsible body is aware.

(4) In determining whether it is reasonable for the responsible body to have to take a particular step in relation to that person in order to comply with its duty under [F<sup>10</sup>any of paragraphs (1) to (1D)] , regard shall be had to the extent to which taking the step in question is consistent with compliance with that request.

(5) “Confidentiality request” means a request made by a disabled person, which asks for the nature, or asks for the existence, of his disability to be treated as confidential.

(6) This Article imposes duties only for the purpose of determining whether a responsible body has discriminated against a disabled person; and accordingly a breach of any such duty is not actionable as such.

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- F7** Art. 30 heading substituted (10.8.2006 for certain purposes and 1.9.2006 otherwise) by [Special Educational Needs and Disability \(Northern Ireland\) Order 2005 \(Amendment\) \(Further and Higher Education\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/332\), regs. 1\(3\), 8](#)
- F8** Art. 30(1)-(1D) substituted (10.8.2006 for certain purposes and 1.9.2006 otherwise) for art. 30(1) by [Special Educational Needs and Disability \(Northern Ireland\) Order 2005 \(Amendment\) \(Further and Higher Education\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/332\), regs. 1\(3\), 8](#)
- F9** Words in art. 30(2) substituted (10.8.2006 for certain purposes and 1.9.2006 otherwise) by [Special Educational Needs and Disability \(Northern Ireland\) Order 2005 \(Amendment\) \(Further and Higher Education\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/332\), regs. 1\(3\), 9](#)
- F10** Words in art. 30(4) substituted (10.8.2006 for certain purposes and 1.9.2006 otherwise) by [Special Educational Needs and Disability \(Northern Ireland\) Order 2005 \(Amendment\) \(Further and Higher Education\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/332\), regs. 1\(3\), 9](#)

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Order associated Parts and Chapters:**

Whole provisions yet to be inserted into this Order (including any effects on those provisions):

- art. 22(1)(i)-(ii) substituted for words by [2016 c. 8 \(N.I.\) s. 12\(1\)](#)