



# Disability Discrimination Act 1995

## 1995 CHAPTER 50

VALID FROM 30/06/2005

### [<sup>F1</sup>PART 5A

#### PUBLIC AUTHORITIES

##### Textual Amendments

- F1** Pt. 5A (ss. 49A-49F) inserted (E.W.S) (30.6.2005 for s. 49D for certain purposes, 5.12.2005 for s. 49A(1) for certain purposes, and 49B-49F so far as not already in force, and otherwise 4.12.2006) by [Disability Discrimination Act 2005 \(c. 13\)](#), ss. 3, 20(3)-(6); [S.I. 2005/1676](#), [art. 2\(2\)\(b\)](#); [S.I. 2005/2774](#), [arts. 3\(b\), 4\(a\)](#)

VALID FROM 05/12/2005

#### **49A** General duty

- (1) Every public authority shall in carrying out its functions have due regard to—
- (a) the need to eliminate discrimination that is unlawful under this Act;
  - (b) the need to eliminate harassment of disabled persons that is related to their disabilities;
  - (c) the need to promote equality of opportunity between disabled persons and other persons;
  - (d) the need to take steps to take account of disabled persons' disabilities, even where that involves treating disabled persons more favourably than other persons;
  - (e) the need to promote positive attitudes towards disabled persons; and
  - (f) the need to encourage participation by disabled persons in public life.

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- (2) Subsection (1) is without prejudice to any obligation of a public authority to comply with any other provision of this Act.

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#### **49B Meaning of “public authority” in Part 5A**

- (1) In this Part “public authority”—
- (a) includes any person certain of whose functions are functions of a public nature; but
  - (b) does not include—
    - (i) any person mentioned in section 21B(3);
    - (ii) the Scottish Parliament; or
    - (iii) a person, other than the Scottish Parliamentary Corporate Body, exercising functions in connection with proceedings in the Scottish Parliament.
- (2) In relation to a particular act, a person is not a public authority by virtue only of subsection (1)(a) if the nature of the act is private.
- (3) Regulations may provide for a person of a prescribed description to be treated as not being a public authority for the purposes of this Part.

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#### **49C Exceptions from section 49A(1)**

- (1) Section 49A(1) does not apply to—
- (a) a judicial act (whether done by a court, tribunal or other person); or
  - (b) an act done on the instructions, or on behalf, of a person acting in a judicial capacity.
- (2) Section 49A(1) does not apply to any act of, or relating to, making or approving an Act of Parliament, an Act of the Scottish Parliament or an Order in Council.
- (3) Section 49A(1)(c) and (d) do not apply to—
- (a) an act done in connection with recruitment to any of the naval, military or air forces of the Crown; or
  - (b) an act done in relation to a person in connection with service by him as a member of any of those forces.
- (4) Regulations may provide for section 49A(1)(a), (b), (c) or (d) not to apply to an act of a prescribed description.

#### **49D Power to impose specific duties**

- (1) The Secretary of State may by regulations impose on a public authority, other than a relevant Scottish authority or a cross-border authority, such duties as the Secretary

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- of State considers appropriate for the purpose of ensuring the better performance by that authority of its duty under section 49A(1).
- (2) The Secretary of State may by regulations impose on a cross-border authority such duties as the Secretary of State considers appropriate for the purpose of ensuring the better performance by that authority of its duty under section 49A(1) so far as relating to such of its functions as are not Scottish functions.
  - (3) The Scottish Ministers may by regulations impose on a relevant Scottish authority such duties as the Scottish Ministers consider appropriate for the purpose of ensuring the better performance by that authority of its duty under section 49A(1).
  - (4) The Scottish Ministers may by regulations impose on a cross-border authority such duties as the Scottish Ministers consider appropriate for the purpose of ensuring the better performance by that authority of its duty under section 49A(1) so far as relating to its Scottish functions.
  - (5) Before making regulations under any of subsections (1) to (4), the person making the regulations shall consult the Disability Rights Commission.
  - (6) Before making regulations under subsection (1) or (2) in relation to functions exercisable in relation to Wales by a public authority that is not a relevant Welsh authority, the Secretary of State shall consult the National Assembly for Wales.
  - (7) The Secretary of State shall not make regulations under subsection (1) or (2) in relation to a relevant Welsh authority except with the consent of the National Assembly for Wales.
  - (8) Before making regulations under subsection (2), the Secretary of State shall consult the Scottish Ministers.
  - (9) Before making regulations under subsection (4), the Scottish Ministers shall consult the Secretary of State.
  - (10) In this section—
    - “relevant Scottish authority” means—
      - (a) a member of the Scottish executive or a junior Scottish Minister;
      - (b) the Registrar General of Births, Deaths and Marriages for Scotland, the Keeper of the Registers of Scotland or the Keeper of the Records of Scotland;
      - (c) any office of a description specified in an Order in Council under section 126(8)(b) of the Scotland Act 1998 (other non-ministerial office in the Scottish Administration); or
      - (d) a public body, public office or holder of a public office—
        - (i) which (or who) is not a cross-border authority or the Scottish Parliamentary Corporate Body;
        - (ii) whose functions are exercisable only in or as regards Scotland; and
        - (iii) some at least of whose functions do not (within the meaning of the Scotland Act 1998) relate to reserved matters;
    - “cross-border authority” means a cross-border public authority within the meaning given by section 88(5) of the Scotland Act 1998;

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“Scottish functions” means functions which are exercisable in or as regards Scotland and which do not (within the meaning of the Scotland Act 1998) relate to reserved matters;

“relevant Welsh authority” means—

- (a) the National Assembly for Wales; or
- (b) a public authority whose functions are exercisable only in relation to Wales.

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#### **49E Duties under section 49D: compliance notices**

- (1) Where the Disability Rights Commission is satisfied that a public authority has failed to comply with, or is failing to comply with, a duty imposed on it by regulations under section 49D, the Commission may serve a notice on it.
- (2) The following provisions of this section apply to a notice served on an authority under subsection (1).
- (3) The notice shall require the authority—
  - (a) to comply with the duty concerned; and
  - (b) to furnish the Commission, by the end of the period of 28 days beginning with the day on which the notice is served, with details of the steps that it has taken, or is taking, to comply with the duty.
- (4) The notice may also require the authority to furnish the Commission with other information specified in the notice if the Commission reasonably requires the information in order to verify that the duty has been complied with.
- (5) The notice shall specify the time by which the authority is to furnish information which it is required to furnish under subsection (4).
- (6) A time specified under subsection (5) shall not be later than the end of the three months beginning with the day on which the notice is served.
- (7) The notice may specify the manner and form in which the authority is to furnish information which the notice requires it to furnish to the Commission.
- (8) The notice shall not require the authority—
  - (a) to furnish information which it could not be compelled to furnish in evidence in civil proceedings before the High Court; or
  - (b) to furnish information which it could not be compelled to furnish in evidence in civil proceedings before the Court of Session.

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#### **49F Enforcement of compliance notices**

- (1) If—

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- (a) a public authority on which a notice has been served under section 49E fails to furnish the Disability Rights Commission, in accordance with the notice, with any information required by the notice, or
  - (b) the Commission has reasonable cause to believe that a public authority on which a notice has been served under section 49E does not intend to furnish the information required by the notice,

the Commission may apply to a county court or, in Scotland, the sheriff for an order requiring the authority to furnish any information required by the notice.
- (2) If on an application under subsection (1) the court is satisfied that either of the conditions specified in paragraphs (a) and (b) of that subsection is met, the court may grant the order in the terms applied for or in more limited terms.
- (3) If—
  - (a) the period of three months beginning with the day on which a notice is served on a public authority under section 49E has ended,
  - (b) the notice required the authority to comply with a duty imposed on it by regulations under section 49D, and
  - (c) the Commission considers that the authority has not complied with the duty,

the Commission may apply to a county court or, in Scotland, the sheriff for an order requiring the authority to comply with the duty.
- (4) If on an application under subsection (3) the court is satisfied—
  - (a) that the conditions specified in paragraphs (a) and (b) of that subsection are met, and
  - (b) that the authority has not complied with the duty,

the court may grant the order in the terms applied for or in more limited terms.
- (5) The sanctions in section 49E and this section shall be the only sanctions for breach of any duty imposed by regulations under section 49D, but without prejudice to the enforcement of any other provision of this Act (where the breach is also a contravention of that provision).]

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