



# Disability Discrimination Act 1995

## 1995 CHAPTER 50

### PART II

#### EMPLOYMENT

*<sup>F1</sup> Enforcement etc.*

#### Textual Amendments

- F1** Cross-heading "Enforcement etc." preceding s. 8 moved (to follow s. 17) (E.W.S.) (3.7.2003 for certain purposes and otherwise 1.10.2004) by [The Disability Discrimination Act 1995 \(Amendment\) Regulations 2003 \(S.I. 2003/1673\)](#), regs. 1(2)(3), 9 and said cross-heading moved (N.I.) (21.2.2004 for certain purposes and 1.10.2004 otherwise) by [The Disability Discrimination Act \(Amendment\) Regulations \(Northern Ireland\) \(S.R. 2004/55\)](#), regs. 1(2)(3), {9}

#### **<sup>F2</sup>8 Enforcement, remedies and procedure. E+W+S**

- (1) A complaint by any person that another person—
- (a) has discriminated against him in a way which is unlawful under this Part, or
  - (b) is, by virtue of section 57 or 58, to be treated as having discriminated against him in such a way,
- may be presented to an [<sup>F3</sup>employment tribunal].
- (2) Where an [<sup>F3</sup>employment tribunal] finds that a complaint presented to it under this section is well-founded, it shall take such of the following steps as it considers just and equitable—
- (a) making a declaration as to the rights of the complainant and the respondent in relation to the matters to which the complaint relates;
  - (b) ordering the respondent to pay compensation to the complainant;
  - (c) recommending that the respondent take, within a specified period, action appearing to the tribunal to be reasonable, in all the circumstances of the case,

*Status: Point in time view as at 01/08/1998.*

*Changes to legislation: There are currently no known outstanding effects for the Disability Discrimination Act 1995, Cross Heading: Enforcement etc.. (See end of Document for details)*

for the purpose of obviating or reducing the adverse effect on the complainant of any matter to which the complaint relates.

- (3) Where a tribunal orders compensation under subsection (2)(b), the amount of the compensation shall be calculated by applying the principles applicable to the calculation of damages in claims in tort or (in Scotland) in reparation for breach of statutory duty.
- (4) For the avoidance of doubt it is hereby declared that compensation in respect of discrimination in a way which is unlawful under this Part may include compensation for injury to feelings whether or not it includes compensation under any other head.
- (5) If the respondent to a complaint fails, without reasonable justification, to comply with a recommendation made by an [<sup>F3</sup>employment tribunal] under subsection (2)(c) the tribunal may, if it thinks it just and equitable to do so—
  - (a) increase the amount of compensation required to be paid to the complainant in respect of the complaint, where an order was made under subsection (2)(b); or
  - (b) make an order under subsection (2)(b).
- (6) Regulations may make provision—
  - (a) for enabling a tribunal, where an amount of compensation falls to be awarded under subsection (2)(b), to include in the award interest on that amount; and
  - (b) specifying, for cases where a tribunal decides that an award is to include an amount in respect of interest, the manner in which and the periods and rate by reference to which the interest is to be determined.
- (7) Regulations may modify the operation of any order made under [<sup>F4</sup>section 14 of [<sup>F5</sup>the Employment Tribunals Act 1996]] (power to make provision as to interest on sums payable in pursuance of [<sup>F3</sup>employment tribunal] decisions) to the extent that it relates to an award of compensation under subsection (2)(b).
- (8) Part I of Schedule 3 makes further provision about the enforcement of this Part and about procedure.

#### Extent Information

- E1** This version of this provision extends to England and Wales and Scotland only; a separate version has been created for Northern Ireland only

#### Textual Amendments

- F2** S. 8 moved and renumbered (as s. 17A) (E.W.S.) (3.7.2003 for certain purposes and 1.10.2004 otherwise) by [The Disability Discrimination Act 1995 \(Amendment\) Regulations 2003 \(S.I. 2003/1673\)](#), regs. 1(2)(3), **9(1)** and s. 8 moved and renumbered (as s. 17A) (N.I.) (21.2.2004 for certain purposes and 1.10.2004 otherwise) by [S.R. 2004/55](#), regs. 1(2)(3), **9(1)**
- F3** Words in s. 8(1)(b)(2)(5)(7) substituted (E.W.S.) (1.8.1998) by 1998 c. 8, s. **1(2)(a)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**
- F4** Words in s. 8(7) substituted (E.W.S.) (28.8.1996) by 1996 c. 17, ss. 43, 46, **Sch. 1 para. 12(1)(2)** (with s. 38)
- F5** Words in s. 8(7) substituted (E.W.S.) (1.8.1998) by 1998 c. 8, s. **1(2)(c)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

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#### Commencement Information

- II** S. 8 wholly in force at 2.12.1996; s. 8 not in force at Royal Assent see s. 70(3); s. 8(6)(7) in force at 6.6.1996 by S.I. 1996/1474, art. 2(1), **Sch. Pt. I**; s. 8(1)-(5)(8) in force at 2.12.1996 by S.I. 1996/1474, art. 2(1), **Sch. Pt. III**

#### <sup>F12</sup>8 **Enforcement, remedies and procedure.** **N.I.**

- (1) A complaint by any person that another person—
  - (a) has discriminated against him in a way which is unlawful under this Part, or
  - (b) is, by virtue of section 57 or 58, to be treated as having discriminated against him in such a way,may be presented to an industrial tribunal.
- (2) Where an industrial tribunal finds that a complaint presented to it under this section is well-founded, it shall take such of the following steps as it considers just and equitable—
  - (a) making a declaration as to the rights of the complainant and the respondent in relation to the matters to which the complaint relates;
  - (b) ordering the respondent to pay compensation to the complainant;
  - (c) recommending that the respondent take, within a specified period, action appearing to the tribunal to be reasonable, in all the circumstances of the case, for the purpose of obviating or reducing the adverse effect on the complainant of any matter to which the complaint relates.
- (3) Where a tribunal orders compensation under subsection (2)(b), the amount of the compensation shall be calculated by applying the principles applicable to the calculation of damages in claims in tort or (in Scotland) in reparation for breach of statutory duty.
- (4) For the avoidance of doubt it is hereby declared that compensation in respect of discrimination in a way which is unlawful under this Part may include compensation for injury to feelings whether or not it includes compensation under any other head.
- (5) If the respondent to a complaint fails, without reasonable justification, to comply with a recommendation made by an industrial tribunal under subsection (2)(c) the tribunal may, if it thinks it just and equitable to do so—
  - (a) increase the amount of compensation required to be paid to the complainant in respect of the complaint, where an order was made under subsection (2)(b); or
  - (b) make an order under subsection (2)(b).
- (6) Regulations may make provision—
  - (a) for enabling a tribunal, where an amount of compensation falls to be awarded under subsection (2)(b), to include in the award interest on that amount; and
  - (b) specifying, for cases where a tribunal decides that an award is to include an amount in respect of interest, the manner in which and the periods and rate by reference to which the interest is to be determined.
- (7) Regulations may modify the operation of any order made under paragraph 6A of Schedule 9 to the Employment Protection (consolidation) Act 1978 (power to make provision as to interest on sums payable in pursuance of industrial tribunal decisions) to the extent that it relates to an award of compensation under subsection (2)(b).

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

#### Extent Information

- E4** This version of this provision extends to Northern Ireland only; in its application to Northern Ireland, this section has effect subject to the modifications set out in Sch. 8; see s. 70(6).

#### Textual Amendments

- F12** S. 8 moved and renumbered (as s. 17A) (E.W.S.) (3.7.2003 for certain purposes and 1.10.2004 otherwise) by [The Disability Discrimination Act 1995 \(Amendment\) Regulations 2003 \(S.I. 2003/1673\)](#), regs. 1(2)(3), **9(1)** and s. 8 moved and renumbered (as s. 17A) (N.I.) (21.2.2004 for certain purposes and 1.10.2004 otherwise) by [S.R. 2004/55](#), regs. 1(2)(3), **9(1)**

#### Modifications etc. (not altering text)

- C2** S. 8: transfer of certain functions (N.I.) (1.12.1999) by [S.R. 1999/481](#), art. 4(b), **Sch. 2 Pt. II**

#### Commencement Information

- I2** S. 8 wholly in force at 2.12.1996; s. 8 not in force at Royal Assent see s. 70(3); s. 8(6)(7) in force at 11.7.1996 by [S.R. 1996/280](#), art. 2(1), **Sch. Pt. I**; s. 8(1)-(5)(8) in force at 2.12.1996 by [S.R. 1996/280](#), art. 2(2), **Sch. Pt. II**

## 9 Validity of certain agreements. **E+W+S**

- (1) Any term in a contract of employment or other agreement is void so far as it purports to—
- require a person to do anything which would contravene any provision of, or made under, this Part;
  - exclude or limit the operation of any provision of this Part; or
  - prevent any person from presenting a complaint to an industrial tribunal under this Part.
- (2) Paragraphs (b) and (c) of subsection (1) do not apply to an agreement not to institute proceedings under section 8(1), or to an agreement not to continue such proceedings, if—
- a conciliation officer has acted under <sup>[F6]</sup>section 18 of <sup>[F7]</sup>the Employment Tribunals Act 1996 in relation to the matter; or
  - the conditions set out in subsection (3) are satisfied.
- (3) The conditions are that—
- the complainant must have received <sup>[F8]</sup>advice from a relevant independent adviser]as to the terms and effect of the proposed agreement (and in particular its effect on his ability to pursue his complaint before an industrial tribunal);
  - when the adviser gave the advice there must have been in force a <sup>[F9]</sup>contract of insurance, or an indemnity provided for members of a profession or professional body, covering the risk of a claim by the complainant in respect of loss arising in consequence of the advice; and
  - the agreement must be in writing, relate to the particular complaint, identify the adviser and state that the conditions are satisfied.

<sup>[F10]</sup>(4) A person is a relevant independent adviser for the purposes of subsection (3)(a)—

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- (a) if he is a qualified lawyer,
- (b) if he is an officer, official, employee or member of an independent trade union who has been certified in writing by the trade union as competent to give advice and as authorised to do so on behalf of the trade union,
- (c) if he works at an advice centre (whether as an employee or a volunteer) and has been certified in writing by the centre as competent to give advice and as authorised to do so on behalf of the centre, or
- (d) if he is a person of a description specified in an order made by the Secretary of State.

<sup>F10</sup>(4A) But a person is not a relevant independent adviser for the purposes of subsection (3) (a) in relation to the complainant—

- (a) if he is, is employed by or is acting in the matter for the other party or a person who is connected with the other party,
- (b) in the case of a person within subsection (4)(b) or (c), if the trade union or advice centre is the other party or a person who is connected with the other party,
- (c) in the case of a person within subsection (4)(c), if the complainant makes a payment for the advice received from him, or
- (d) in the case of a person of a description specified in an order under subsection (4)(d), if any condition specified in the order in relation to the giving of advice by persons of that description is not satisfied.

<sup>F10</sup>(4B) In subsection (4)(a) “qualified lawyer” means—

- (a) as respects England and Wales, a barrister (whether in practice as such or employed to give legal advice), a solicitor who holds a practising certificate, or a person other than a barrister or solicitor who is an authorised advocate or authorised litigator (within the meaning of the <sup>M1</sup>Courts and Legal Services Act 1990), and
- (b) as respects Scotland, an advocate (whether in practice as such or employed to give legal advice), or a solicitor who holds a practising certificate.

<sup>F10</sup>(4C) In subsection (4)(b) “independent trade union” has the same meaning as in the <sup>M2</sup>Trade Union and Labour Relations (Consolidation) Act 1992.

<sup>F10</sup>(5) For the purposes of subsection (4A) any two persons are to be treated as connected—

- (a) if one is a company of which the other (directly or indirectly) has control, or
- (b) if both are companies of which a third person (directly or indirectly) has control.]

[<sup>F11</sup>(6) An agreement under which the parties agree to submit a dispute to arbitration—

- (a) shall be regarded for the purposes of subsection (2) as being an agreement not to institute, or an agreement not to continue, proceedings if—
  - (i) the dispute is covered by a scheme having effect by virtue of an order under section 212A of the <sup>M3</sup>Trade Union and Labour Relations (Consolidation) Act 1992, and
  - (ii) the agreement is to submit it to arbitration in accordance with the scheme, but
- (b) shall be regarded as neither being nor including such an agreement in any other case.]

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### Extent Information

- E2** This version of this provision extends to England and Wales and Scotland only; a separate version has been created for Northern Ireland only

### Textual Amendments

- F6** Words in s. 9(2)(a) substituted (E.W.S.) (28.8.1996) by 1996 c. 17, ss. 43, 46, **Sch. 1 para. 12(1)(3)** (with s. 38)
- F7** Words in s. 9(2)(a) substituted (E.W.S.) (1.8.1998) by 1998 c. 8, s. 1(2)(c) (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**
- F8** Words in s. 9(3)(a) substituted (E.W.S.) (1.8.1998) by 1998 c. 8, s. 9(1)(2)(d); S.I. 1998/1658, art. 2(1), **Sch. 1**
- F9** Words in s. 9(3)(b) substituted (E.W.S.) (1.8.1998) by 1998 c. 8, s. 10(1)(2)(d); S.I. 1998/1658, art. 2(1), **Sch. 1**
- F10** S. 9(4)(4A)(4B)(4C)(5) substituted for s. 9(4)(5) (E.W.S.) (1.8.1998) by 1998 c. 8, s. 15, **Sch. 1 para. 11**; S.I. 1998/1658, art. 2(1), **Sch. 1**
- F11** S. 9(6) added (E.W.S.) (1.8.1998) by 1998 c. 8, s. 8(4); S.I. 1998/1658, art. 2(1), **Sch. 1**

### Marginal Citations

- M1** 1990 c. 41.
- M2** 1992 c. 52.
- M3** 1992 c. 52.

## 9 Validity of certain agreements. **N.I.**

- (1) Any term in a contract of employment or other agreement 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 Part;
  - (b) exclude or limit the operation of any provision of this Part; or
  - (c) prevent any person from presenting a complaint to an industrial tribunal under this Part.
- (2) Paragraphs (b) and (c) of subsection (1) do not apply to an agreement not to institute proceedings under section 8(1), or to an agreement not to continue such proceedings, if—
- (a) a conciliation officer has acted under paragraph 1 of Schedule 3 in relation to the matter; or
  - (b) the conditions set out in subsection (3) are satisfied.
- (3) The conditions are that—
- (a) the complainant must have received independent legal advice from a qualified lawyer as to the terms and effect of the proposed agreement (and in particular its effect on his ability to pursue his complaint before an industrial tribunal);
  - (b) when the adviser gave the advice there must have been in force a policy of insurance covering the risk of a claim by the complainant in respect of loss arising in consequence of the advice; and
  - (c) the agreement must be in writing, relate to the particular complaint, identify the adviser and state that the conditions are satisfied.
- (4) In this section—

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“independent”, in relation to legal advice to the complainant, means that it is given by a lawyer who is not acting for the other party or for a person who is connected with that other party; and

“qualified lawyer” means—

- (a) as respects proceedings in England and Wales, a barrister (whether in practice as such or employed to give legal advice) or a solicitor of the Supreme Court who holds a practising certificate; and
- (b) as respects proceedings in Scotland, an advocate (whether in practice as such or employed to give legal advice) or a solicitor who holds a practising certificate.

(5) For the purposes of subsection (4), any two persons are to be treated as connected if—

- (a) one is a company of which the other (directly or indirectly) has control, or
- (b) both are companies of which a third person (directly or indirectly) has control.

#### **Extent Information**

**E5** This version of this provision extends to Northern Ireland only; in its application to Northern Ireland, this section also has effect subject to the modifications set out in Sch. 8; see [s. 70\(6\)](#). A separate version has been created for England and Wales and Scotland only

## **10 Charities and support for particular groups of persons.**

(1) Nothing in this Part—

- (a) affects any charitable instrument which provides for conferring benefits on one or more categories of person determined by reference to any physical or mental capacity; or
- (b) makes unlawful any act done by a charity or recognised body in pursuance of any of its charitable purposes, so far as those purposes are connected with persons so determined.

(2) Nothing in this Part prevents—

- (a) a person who provides supported employment from treating members of a particular group of disabled persons more favourably than other persons in providing such employment; or
- (b) the Secretary of State from agreeing to arrangements for the provision of supported employment which will, or may, have that effect.

(3) In this section—

“charitable instrument” means an enactment or other instrument (whenever taking effect) so far as it relates to charitable purposes;

“charity” has the same meaning as in the <sup>M4</sup>Charities Act 1993;

“recognised body” means a body which is a recognised body for the purposes of Part I of the <sup>M5</sup>Law Reform (Miscellaneous Provisions) (Scotland) Act 1990; and

“supported employment” means facilities provided, or in respect of which payments are made, under section 15 of the <sup>M6</sup>Disabled Persons (Employment) Act 1944.

(4) In the application of this section to England and Wales, “charitable purposes” means purposes which are exclusively charitable according to the law of England and Wales.

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*Changes to legislation: There are currently no known outstanding effects for the Disability Discrimination Act 1995, Cross Heading: Enforcement etc.. (See end of Document for details)*

- (5) In the application of this section to Scotland, “charitable purposes” shall be construed in the same way as if it were contained in the Income Tax Acts.

#### Extent Information

**E3** In its application to Northern Ireland, this section has effect subject to the modifications set out in Sch. 8; see s. 70(6)

#### Marginal Citations

**M4** 1993 c. 10.  
**M5** 1990 c. 40.  
**M6** 1944 c. 10.

### <sup>X1</sup>11 Advertisements suggesting that employers will discriminate against disabled persons.

- (1) This section applies where—
- (a) a disabled person has applied for employment with an employer;
  - (b) the employer has refused to offer, or has deliberately not offered, him the employment;
  - (c) the disabled person has presented a complaint under section 8 against the employer;
  - (d) the employer has advertised the employment (whether before or after the disabled person applied for it); and
  - (e) the advertisement indicated, or might reasonably be understood to have indicated, that any application for the advertised employment would, or might, be determined to any extent by reference to—
    - (i) the successful applicant not having any disability or any category of disability which includes the disabled person’s disability; or
    - (ii) the employer’s reluctance to take any action of a kind mentioned in section 6.
- (2) The tribunal hearing the complaint shall assume, unless the contrary is shown, that the employer’s reason for refusing to offer, or deliberately not offering, the employment to the complainant was related to the complainant’s disability.
- (3) In this section “advertisement” includes every form of advertisement or notice, whether to the public or not.

#### Editorial Information

**X1** The moving of the cross-heading preceding s. 8 to follow s. 17 on 3.7.2003 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of s. 11 which is brought under a different existing cross-heading.

#### Modifications etc. (not altering text)

**C1** S. 11 modified (E.W.) (2.3.1998) by S.I. 1998/218, art. 3, **Sch.** (with art. 1(2))  
 S. 11 modified (1.9.1999) by S.I. 1999/2256, art. 3, **Sch.**  
 S. 11 modified (E.) (1.9.2003) by [The Education \(Modification of Enactments Relating to Employment\) \(England\) Order 2003 \(S.I. 2003/1964\)](#), art. 3, **Sch.**



**Status:**

Point in time view as at 01/08/1998.

**Changes to legislation:**

There are currently no known outstanding effects for the Disability Discrimination Act 1995,  
Cross Heading: Enforcement etc..