



# Disability Discrimination Act 1995

## 1995 CHAPTER 50

### PART II

#### [<sup>F1</sup>THE EMPLOYMENT FIELD]

#### [<sup>F1</sup>Occupational pension schemes]

#### Textual Amendments

- F1** Ss. 4G-4K and cross-heading inserted (E.W.S.) (1.12.2003 for certain purposes, otherwise 1.10.2004) by *The Disability Discrimination Act 1995 (Pensions) Regulations 2003 (S.I. 2003/2770)*, **regs. 1(2)(3)**{3}

#### **4G Occupational pension schemes: non-discrimination rule**

- (1) Every occupational pension scheme shall be taken to include a provision (“the non-discrimination rule”) containing the following requirements—
  - (a) a requirement that the trustees or managers of the scheme refrain from discriminating against a relevant disabled person in carrying out any of their functions in relation to the scheme (including in particular their functions relating to the admission of members to the scheme and the treatment of members of the scheme);
  - (b) a requirement that the trustees or managers of the scheme do not subject a relevant disabled person to harassment in relation to the scheme.
- (2) The other provisions of the scheme are to have effect subject to the non-discrimination rule.
- (3) It is unlawful for the trustees or managers of an occupational pension scheme—
  - (a) to discriminate against a relevant disabled person contrary to requirement (a) of the non-discrimination rule; or

*Status: Point in time view as at 01/12/2003.*

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

- (b) to subject a relevant disabled person to harassment contrary to requirement (b) of the non-discrimination rule.
- (4) The non-discrimination rule does not apply in relation to rights accrued, or benefits payable, in respect of periods of service prior to the coming into force of this section (but it does apply to communications with members or prospective members of the scheme in relation to such rights or benefits).
- (5) The trustees or managers of an occupational pension scheme may, if—
  - (a) they do not (apart from this subsection) have power to make such alterations to the scheme as may be required to secure conformity with the non-discrimination rule, or
  - (b) they have such power but the procedure for doing so—
    - (i) is liable to be unduly complex or protracted, or
    - (ii) involves the obtaining of consents which cannot be obtained, or can only be obtained with undue delay or difficulty,
 by resolution make such alterations to the scheme.
- (6) The alterations referred to in subsection (5) may have effect in relation to a period before the alterations are made (but may not have effect in relation to a period before the coming into force of this section).

#### Extent Information

**E1** This section extends to England and Wales and Scotland only; a separate s. 4G exists for Northern Ireland only.

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

**C1** Ss. 4-6 modified (E.) (1.9.2003) by [The Education \(Modification of Enactments Relating to Employment\) \(England\) Order 2003 \(S.I. 2003/1964\)](#), **art. 3**. {Sch.}

## 4H Occupational pension schemes: duty to make adjustments

- (1) Where—
  - (a) a provision, criterion or practice (including a scheme rule) applied by or on behalf of the trustees or managers of an occupational pension scheme, or
  - (b) any physical feature of premises occupied by the trustees or managers,
 places a relevant disabled person at a substantial disadvantage in comparison with persons who are not disabled, it is the duty of the trustees or managers to take such steps as it is reasonable, in all the circumstances of the case, for them to have to take in order to prevent the provision, criterion or practice, or feature, having that effect.
- (2) The making of alterations to scheme rules is (in addition to the examples set out in section 18B(2)) an example of a step which trustees or managers may have to take in order to comply with the duty set out in subsection (1).
- (3) Nothing in subsection (1) imposes any duty on trustees or managers in relation to a disabled person if they do not know, and could not reasonably be expected to know—
  - (a) that the disabled person is a relevant disabled person; or

*Status: Point in time view as at 01/12/2003.*

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

- (b) that that person has a disability and is likely to be affected in the way mentioned in subsection (1).

#### Extent Information

- E2** This section extends to England and Wales and Scotland only; a separate s. 4H exists for Northern Ireland only.

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

- C2** Ss. 4-6 modified (E.) (1.9.2003) by [The Education \(Modification of Enactments Relating to Employment\) \(England\) Order 2003 \(S.I. 2003/1964\)](#), **art. 3**. {Sch.}

### 4I Occupational pension schemes: procedure

- (1) Where under section 17A <sup>F2</sup> a relevant disabled person presents a complaint to an employment tribunal that the trustees or managers of an occupational pension scheme have acted in relation to him in a way which is unlawful under this Part, the employer in relation to that scheme shall, for the purposes of the rules governing procedure, be treated as a party and be entitled to appear and be heard in accordance with those rules.
- (2) In this section, “employer”, in relation to an occupational pension scheme, has the meaning given by section 124(1) of the Pensions Act 1995 <sup>F3</sup> as at the date of coming into force of this section.

#### Extent Information

- E3** This section extended to England, Wales and Scotland only; a separate s. 4I exists for Northern Ireland only.

#### Textual Amendments

- F2** The former section 8 of the 1995 Act, moved, renumbered and amended by regulation 9 of the Amendment Regulations.
- F3** [1995 c. 26](#).

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

- C3** Ss. 4-6 modified (E.) (1.9.2003) by [The Education \(Modification of Enactments Relating to Employment\) \(England\) Order 2003 \(S.I. 2003/1964\)](#), **art. 3**. {Sch.}

### 4J Occupational pension schemes: remedies

- (1) This section applies where—
- (a) under section 17A a relevant disabled person presents to an employment tribunal a complaint that—
- (i) the trustees or managers of an occupational pension scheme have acted in relation to him in a way which is unlawful under this Part; or
- (ii) an employer has so acted in relation to him;
- (b) the complaint relates to—

*Status: Point in time view as at 01/12/2003.*

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

- (i) the terms on which persons become members of an occupational pension scheme, or
  - (ii) the terms on which members of the scheme are treated;
  - (c) the disabled person is not a pensioner member of the scheme; and
  - (d) the tribunal finds that the complaint is well-founded.
- (2) The tribunal may, without prejudice to the generality of its power under section 17A(2)
- (a) make a declaration that the complainant has a right—
    - (a) (where subsection (1)(b)(i) applies) to be admitted to the scheme in question; or
    - (b) (where subsection (1)(b)(ii) applies) to membership of the scheme without discrimination.
  - (3) A declaration under subsection (2)—
    - (a) may be made in respect of such period as the declaration may specify (but may not be made in respect of any period before the coming into force of this section);
    - (b) may make such provision as the tribunal considers appropriate as to the terms upon which, or the capacity in which, the disabled person is to enjoy such admission or membership.
  - (4) The tribunal may not award the disabled person any compensation under section 17A(2)(b) (whether in relation to arrears of benefits or otherwise) other than—
    - (a) compensation for injury to feelings;
    - (b) compensation pursuant to section 17A(5).

#### Extent Information

**E4** This version of this provision extended to England, Wales and Scotland only; a separate version exists for Northern Ireland only .

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

**C4** Ss. 4-6 modified (E.) (1.9.2003) by [The Education \(Modification of Enactments Relating to Employment\) \(England\) Order 2003 \(S.I. 2003/1964\)](#), **art. 3**. {Sch.}

## 4K Occupational pension schemes: supplementary

- (1) In their application to communications, sections 4G to 4J apply in relation to a disabled person who is—
- (a) entitled to the present payment of dependants' or survivors' benefits under an occupational pension scheme; or
  - (b) a pension credit member of such a scheme,
- as they apply in relation to a disabled person who is a pensioner member of the scheme.
- (2) In sections 4G to 4J and in this section—
- “active member”, “deferred member”, “managers”, “pension credit member”, “pensioner member” and “trustees or managers” have the meanings given by section 124(1) of the Pensions Act 1995 <sup>F4</sup> as at the date of coming into force of this section;

*Status: Point in time view as at 01/12/2003.*

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

“communications” includes—

- (i) the provision of information, and
- (ii) the operation of a dispute resolution procedure;

“member”, in relation to an occupational pension scheme, means any active, deferred or pensioner member;

“non-discrimination rule” means the rule in section 4G(1);

“relevant disabled person”, in relation to an occupational pension scheme, means a disabled person who is a member or prospective member of the scheme; and

“prospective member” means any person who, under the terms of his contract of employment or the scheme rules or both—

- (i) is able, at his own option, to become a member of the scheme,
- (ii) will become so able if he continues in the same employment for a sufficiently long period,
- (iii) will be admitted to it automatically unless he makes an election not to become a member, or
- (iv) may be admitted to it subject to the consent of his employer.

#### **Extent Information**

- E5** This section extends to England and Wales and Scotland only; a separate s. 4K exists for Northern Ireland only from 21.2.2004.

#### **Textual Amendments**

- F4** 1995 c. 26.

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

- C5** Ss. 4-6 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 01/12/2003.

**Changes to legislation:**

There are currently no known outstanding effects for the Disability Discrimination Act 1995,  
Cross Heading: Occupational pension schemes.