STATUTORY RULES OF NORTHERN IRELAND

2006 No. 332

DISABLED PERSONS

The Special Educational Needs and Disability (Northern Ireland) Order 2005 (Amendment) (Further and Higher Education) Regulations (Northern Ireland) 2006

Made - - - - 9th August 2006
Coming into operation in accordance with regulation 1(2) and (3)

The Department for Employment and Learning(**1**), being a Department designated(**2**) for the purposes of section 2(2) of the European Communities Act 1972(**3**) in relation to discrimination, makes the following Regulations in exercise of the powers conferred by section 2(2):

Citation and commencement

1.—(1) These Regulations may be cited as the Special Educational Needs and Disability (Northern Ireland) Order 2005 (Amendment) (Further and Higher Education) Regulations (Northern Ireland) 2006.

(2) These Regulations shall come into operation on the day after that on which they are made so far as enabling anything to be done for the purposes of preparing and bringing into operation on or after 1st September 2006 a code of practice under section 54A of the Disability Discrimination Act 1995(**4**) concerning any provision of the 2005 Order as it will have effect on or after that date by virtue of these Regulations.

(3) Except as provided for by paragraph (2), these Regulations shall come into operation on 1st September 2006.

Interpretation

2.—(1) In these Regulations—

(**1**) Formerly the Department of Higher and Further Education, Training and Employment; *see*2001 c. 15 (N.I.)
(**2**) The European Communities (Designation) (No. 3) Order 2002 (S.I.2002/1819)
(**3**) 1972 c.68
(**4**) 1995 c.50; section 54A was inserted by Article 11 of the Equality (Disability, etc.) (Northern Ireland) Order 2000 (S.I. 2000/1110 (N.I. 2)) and amended by regulation 20 of the Disability Discrimination Act 1995 (Amendment) Regulations (Northern Ireland) 2004 (S.R. 2004 No.55) and Article 41 of the Special Educational Needs and Disability (Northern Ireland) Order 2005 (S.I. 2005/1117 (N.I. 6))

"the 2005 Order" means the Special Educational Needs and Disability (Northern Ireland) Order 2005(**5**).

(2) The Interpretation Act (Northern Ireland) 1954(**6**) shall apply to these Regulations as it applies to an Act of the Assembly.

Transitional provisions

3. Paragraph (1A) of Article 31 of the 2005 Order (inserted by regulation 11) applies in relation to a claim presented to a county court before the commencement date as well as one presented on or after that date; but it does not affect any claim which was determined by a county court before 1st September 2006.

Amendments to the 2005 Order

4. The 2005 Order is amended as follows.

Discrimination against disabled students and prospective students, and harassment

5. In Article 28 (discrimination against disabled students and prospective students), after paragraph (3) insert—

"(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.".

Meaning of "discrimination" and "harassment"

6.—(1) Article 29 (meaning of "discrimination") is amended as follows.

(2) In paragraph (1) for "Article 28" substitute "this Chapter".

(3) For paragraph (2) substitute—

"(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.".

(4) Omit paragraph (4).

(5) For paragraphs (5) to (9) substitute—

(**5**) S.I. 2005/1117 (N.I. 6)
(**6**) 1954 c. 33 (N.I.)

"(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.".

7. After Article 29 insert—

"**Meaning of "harassment"**

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.".

Duty to make reasonable adjustments

8. The following heading is substituted for that of Article 30 and the following paragraphs are substituted for paragraph (1) of that Article—

"**Responsible bodies' duties to make adjustments**

30.—(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,

(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.".

9. In Article 30(2) and (4), for "paragraph (1)" substitute "any of paragraphs (1) to (1D)".

Other unlawful acts

10. After Article 30 insert—

"Other unlawful acts

Relationships which have come to an end

30A.—(1) This Article applies where—

(a) there has been a relevant relationship between a disabled person and a responsible body, and

(b) that relationship has come to an end.

(2) In this Article a "relevant relationship" is a relationship during the course of which an act of discrimination against, or harassment of, one party to the relationship by the other party to it is unlawful under any preceding provision of this Chapter.

(3) It is unlawful for the responsible body—

(a) to discriminate against the disabled person by subjecting him to a detriment, or

(b) to subject the disabled person to harassment,

where the discrimination or harassment arises out of and is closely connected to the relevant relationship.

(4) This paragraph applies where—

(a) a provision, criterion or practice applied by the responsible body to the disabled person in relation to any matter arising out of the relevant relationship, or

(b) a physical feature of premises which are occupied by the responsible body,

places the disabled person at a substantial disadvantage in comparison with persons who are not disabled but are in the same position as the disabled person in relation to the responsible body.

(5) Where paragraph (4) applies, 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, or feature, having that effect.

(6) Paragraph (5) 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.

(7) Nothing in paragraph (5) imposes any duty on the responsible body if it does not know, and could not reasonably be expected to know, that the person has a disability and is likely to be affected in the way mentioned in that paragraph.

(8) In paragraph (2), reference to an act of discrimination or harassment which is unlawful includes, in the case of a relationship which has come to an end before the commencement of this Article, reference to such an act which would, after the commencement of this Article, be unlawful.