STATUTORY RULES OF NORTHERN IRELAND

2004 No. 55

DISABLED PERSONS

The Disability Discrimination Act 1995 (Amendment) Regulations (Northern Ireland) 2004

Made - - - -	*20th February 2004*
Coming into operation	*1st October 2004*

The Office of the First Minister and deputy First Minister, being a department designated for the purposes of section 2(2) of the European Communities Act 1972(**1**) in relation to discrimination(**2**), in exercise of the powers conferred on it by that section and of all other powers enabling it in that behalf, hereby makes the following Regulations:

PART I

INTRODUCTORY

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Disability Discrimination Act 1995 (Amendment) Regulations (Northern Ireland) 2004.

(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 October 2004 a code of practice under section 54A(**3**) of the Act concerning any provision of the Act as it will have effect on or after that date by virtue of these Regulations.

(3) Except as provided by paragraph (2), these Regulations shall come into operation on 1st October 2004.

(4) In these Regulations –

"the Act" means the Disability Discrimination Act 1995(**4**); and

(**1**) 1972 c. 68
(**2**) *See* the European Communities (Designation) (No. 3) Order 2002 (S.I. 2002/1819)
(**3**) Section 54A was inserted by Article 11 of the Equality (Disability, etc.) (Northern Ireland) Order 2000 (S.I. 2000/1110 (N.I. 2)). It is further amended by regulation 20 of these regulations
(**4**) 1995 c. 50 as it applies in Northern Ireland by virtue of section 70(6) and Schedule 8 thereof. *See also*S.R. 1999 No. 481, Article 8(a) and Schedule 6, Part I for transfer of functions.

"the Order" means the Equality (Disability, etc.) (Northern Ireland) Order 2000(**5**).

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

Transitional provisions

2.—(1) Subsection (1B) of section 17A(**7**) of the Act (as inserted by regulation 9(2)(c)) applies in relation to a complaint presented to an industrial tribunal before the commencement date, as well as one presented on or after that date; but it does not affect any case in which a complaint was determined by an industrial tribunal before the commencement date.

(2) The amendment made to section 56(3) of the Act by regulation 22(c) shall not apply in the case of a question served on a respondent before the commencement date.

(3) In paragraph (2), "question" and "respondent" shall be construed in accordance with section 56 of the Act.

(4) In this regulation, "the commencement date" means 1st October 2004.

Amendment of the Act and other legislation

3.—(1) The amendments to the Act set out in Part II shall have effect.

(2) The amendments set out in Part III (in relation to the Order and other legislation) shall have effect.

PART II

AMENDMENTS TO THE ACT

Meaning of "discrimination" and "harassment"

4.—(1) In the heading to Part II of the Act, for "EMPLOYMENT" substitute "THE EMPLOYMENT FIELD".

(2) After that heading, and before section 4, insert the following sections –

"Meaning of "discrimination" and "harassment"

Meaning of "discrimination"

3A.—(1) For the purposes of this Part, a person discriminates against a disabled person if –

(a) for a reason which relates to the disabled person's disability, he treats him less favourably than he treats or would treat others to whom that reason does not or would not apply, and

(b) he cannot show that the treatment in question is justified.

(2) For the purposes of this Part, a person also discriminates against a disabled person if he fails to comply with a duty to make reasonable adjustments imposed on him in relation to the disabled person.

(**5**) S.I. 2000/1110 (N.I. 2)
(**6**) 1954 c. 33 (N.I.)
(**7**) Regulation 9(1) renumbers section 8 of the Act as section 17A

(3) Treatment is justified for the purposes of subsection (1)(b) if, but only if, the reason for it is both material to the circumstances of the particular case and substantial.

(4) But treatment of a disabled person cannot be justified under subsection (3) if it amounts to direct discrimination falling within subsection (5).

(5) A person directly discriminates against a disabled person if, on the ground of the disabled person's disability, he treats the disabled person less favourably than he 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.

(6) If, in a case falling within subsection (1), a person is under a duty to make reasonable adjustments in relation to a disabled person but fails to comply with that duty, his treatment of that person cannot be justified under subsection (3) unless it would have been justified even if he had complied with that duty.

Meaning of "harassment"

3B.—(1) For the purposes of this Part, a person subjects a disabled person to harassment where, for a reason which relates to the disabled person's disability, he 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 (a) or (b) of subsection (1) 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.".

Employment, contract workers, office-holders, occupational pension schemes and repeal of sections 5, 6 and 17

5.—(1) For section 4 (and the preceding cross-heading), substitute the following sections –

"Employment

Employers: discrimination and harassment

4.—(1) It is unlawful for an employer to discriminate against a disabled person –

(a) in the arrangements which he makes for the purpose of determining to whom he should offer employment;

(b) in the terms on which he offers that person employment; or

(c) by refusing to offer, or deliberately not offering, him employment.

(2) It is unlawful for an employer to discriminate against a disabled person whom he employs –

(a) in the terms of employment which he affords him;

(b) in the opportunities which he affords him for promotion, a transfer, training or receiving any other benefit;

(c) by refusing to afford him, or deliberately not affording him, any such opportunity; or

(d) by dismissing him, or subjecting him to any other detriment.

(3) It is also unlawful for an employer, in relation to employment by him, to subject to harassment –

(a) a disabled person whom he employs; or

(b) a disabled person who has applied to him for employment.

(4) Subsection (2) does not apply to benefits of any description if the employer is concerned with the provision (whether or not for payment) of benefits of that description to the public, or to a section of the public which includes the employee in question, unless –

(a) that provision differs in a material respect from the provision of the benefits by the employer to his employees;

(b) the provision of the benefits to the employee in question is regulated by his contract of employment; or

(c) the benefits relate to training.

(5) The reference in subsection (2)(d) to the dismissal of a person includes a reference –

(a) to the termination of that person's employment by the expiration of any period (including a period expiring by reference to an event or circumstance), not being a termination immediately after which the employment is renewed on the same terms; and

(b) to the termination of that person's employment by any act of his (including the giving of notice) in circumstances such that he is entitled to terminate it without notice by reason of the conduct of the employer.

(6) This section applies only in relation to employment at an establishment in Northern Ireland.

Employers: duty to make adjustments

4A.—(1) Where –

(a) a provision, criterion or practice applied by or on behalf of an employer, or

(b) any physical feature of premises occupied by the employer,

places the disabled person concerned at a substantial disadvantage in comparison with persons who are not disabled, it is the duty of the employer to take such steps as it is reasonable, in all the circumstances of the case, for him to have to take in order to prevent the provision, criterion or practice, or feature, having that effect.

(2) In subsection (1), "the disabled person concerned" means –

(a) in the case of a provision, criterion or practice for determining to whom employment should be offered, any disabled person who is, or has notified the employer that he may be, an applicant for that employment;

(b) in any other case, a disabled person who is –

(i) an applicant for the employment concerned, or

(ii) an employee of the employer concerned.

(3) Nothing in this section imposes any duty on an employer in relation to a disabled person if the employer does not know, and could not reasonably be expected to know –

(a) in the case of an applicant or potential applicant, that the disabled person concerned is, or may be, an applicant for the employment; or

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

Contract workers

Contract workers

4B.—(1) It is unlawful for a principal, in relation to contract work, to discriminate against a disabled person who is a contract worker (a "disabled contract worker") –

(a) in the terms on which he allows him to do that work;

(b) by not allowing him to do it or continue to do it;

(c) in the way he affords him access to any benefits or by refusing or deliberately omitting to afford him access to them; or

(d) by subjecting him to any other detriment.

(2) It is also unlawful for a principal, in relation to contract work, to subject a disabled contract worker to harassment.

(3) Subsection (1) does not apply to benefits of any description if the principal is concerned with the provision (whether or not for payment) of benefits of that description to the public, or to a section of the public which includes the contract worker in question, unless that provision differs in a material respect from the provision of the benefits by the principal to contract workers.

(4) This subsection applies to a disabled contract worker where, by virtue of –

(a) a provision, criterion or practice applied by or on behalf of all or most of the principals to whom he is or might be supplied, or

(b) a physical feature of premises occupied by such persons,

he is likely, on each occasion when he is supplied to a principal to do contract work, to be placed at a substantial disadvantage in comparison with persons who are not disabled which is the same or similar in each case.

(5) Where subsection (4) applies to a disabled contract worker, his employer must take such steps as he would have to take under section 4A if the provision, criterion or practice were applied by him or on his behalf or (as the case may be) if the premises were occupied by him.

(6) Section 4A applies to any principal, in relation to contract work, as if he were, or would be, the employer of the disabled contract worker and as if any contract worker supplied to do work for him were an employee of his.

(7) However, for the purposes of section 4A as applied by subsection (6), a principal is not required to take a step in relation to a disabled contract worker if under that section the disabled contract worker's employer is required to take the step in relation to him.

(8) This section applies only in relation to contract work done at an establishment in Northern Ireland (the provisions of section 68 about the meaning of "employment at an establishment in Northern Ireland" applying for the purposes of this subsection with the appropriate modifications).

(9) In this section –

"principal" means a person ("A") who makes work available for doing by individuals who are employed by another person who supplies them under a contract made with A;

"contract work" means work so made available; and

"contract worker" means any individual who is supplied to the principal under such a contract.