



Special Educational Needs and Disability Act 2001

2001 CHAPTER 10

PART 2

DISABILITY DISCRIMINATION IN EDUCATION

CHAPTER 1

SCHOOLS

Duties of responsible bodies

11 Discrimination against disabled pupils and prospective pupils

- (1) In Part 4 of the Disability Discrimination Act 1995 (“the 1995 Act”), before section 29, insert the following section—

“CHAPTER 1

SCHOOLS

Duties of responsible bodies

28A Discrimination against disabled pupils and prospective pupils

- (1) It is unlawful for the body responsible for a school to discriminate against a disabled person—
- (a) in the arrangements it makes for determining admission to the school as a pupil;

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- (b) in the terms on which it offers to admit him to the school as a pupil; or
 - (c) by refusing or deliberately omitting to accept an application for his admission to the school as a pupil.
- (2) It is unlawful for the body responsible for a school to discriminate against a disabled pupil in the education or associated services provided for, or offered to, pupils at the school by that body.
- (3) The Secretary of State may by regulations prescribe services which are, or services which are not, to be regarded for the purposes of subsection (2) as being—
- (a) education; or
 - (b) an associated service.
- (4) It is unlawful for the body responsible for a school to discriminate against a disabled pupil by excluding him from the school, whether permanently or temporarily.
- (5) The body responsible for a school is to be determined in accordance with Schedule 4A, and in the remaining provisions of this Chapter is referred to as the “responsible body”.
- (6) In the case of an act which constitutes discrimination by virtue of section 55, this section also applies to discrimination against a person who is not disabled.”
- (2) In the 1995 Act, insert the Schedule set out in Schedule 2.

12 Meaning of “discrimination”

In the 1995 Act, insert the following section—

“28B Meaning of “discrimination”

- (1) For the purposes of section 28A, a responsible body discriminates against a disabled person if—
- (a) for a reason which relates to his disability, it treats him less favourably than it treats or would treat others to whom that reason does not or would not apply; and
 - (b) it cannot show that the treatment in question is justified.
- (2) For the purposes of section 28A, a responsible body also discriminates against a disabled person if—
- (a) it fails, to his detriment, to comply with section 28C; and
 - (b) it cannot show that its failure to comply is justified.
- (3) In relation to a failure to take a particular step, a responsible body does not discriminate against a person if it shows—
- (a) that, at the time in question, it did not know and could not reasonably have been expected to know, that he was disabled; and
 - (b) that its failure to take the step was attributable to that lack of knowledge.

- (4) The taking of a particular step by a responsible body in relation to a person does not amount to less favourable treatment if it shows that at the time in question it did not know, and could not reasonably have been expected to know, that he was disabled.
- (5) Subsections (6) to (8) apply in determining whether, for the purposes of this section—
- (a) less favourable treatment of a person, or
 - (b) failure to comply with section 28C,
- is justified.
- (6) Less favourable treatment of a person is justified if it is the result of a permitted form of selection.
- (7) Otherwise, less favourable treatment, or a failure to comply with section 28C, is justified only if the reason for it is both material to the circumstances of the particular case and substantial.
- (8) If, in a case falling within subsection (1)—
- (a) the responsible body is under a duty imposed by section 28C in relation to the disabled person, but
 - (b) it fails without justification to comply with that duty,
- its treatment of that person cannot be justified under subsection (7) unless that treatment would have been justified even if it had complied with that duty.”

13 Disabled pupils not to be substantially disadvantaged

In the 1995 Act, insert the following section—

“28C Disabled pupils not to be substantially disadvantaged

- (1) The responsible body for a school must take such steps as it is reasonable for it to have to take to ensure that—
- (a) in relation to the arrangements it makes for determining the admission of pupils to the school, disabled persons are not placed at a substantial disadvantage in comparison with persons who are not disabled; and
 - (b) in relation to education and associated services provided for, or offered to, pupils at the school by it, disabled pupils are not placed at a substantial disadvantage in comparison with pupils who are not disabled.
- (2) That does not require the responsible body to—
- (a) remove or alter a physical feature (for example, one arising from the design or construction of the school premises or the location of resources); or
 - (b) provide auxiliary aids or services.
- (3) Regulations may make provision, for the purposes of this section—
- (a) as to circumstances in which it is reasonable for a responsible body to have to take steps of a prescribed description;
 - (b) as to steps which it is always reasonable for a responsible body to have to take;

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- (c) as to circumstances in which it is not reasonable for a responsible body to have to take steps of a prescribed description;
 - (d) as to steps which it is never reasonable for a responsible body to have to take.
- (4) In considering whether it is reasonable for it to have to take a particular step in order to comply with its duty under subsection (1), a responsible body must have regard to any relevant provisions of a code of practice issued under section 53A.
- (5) Subsection (6) applies if, in relation to a person, a confidentiality request has been made of which a responsible body is aware.
- (6) In determining whether it is reasonable for the responsible body to have to take a particular step in relation to that person in order to comply with its duty under subsection (1), regard shall be had to the extent to which taking the step in question is consistent with compliance with that request.
- (7) “Confidentiality request” means a request which asks for the nature, or asks for the existence, of a disabled person’s disability to be treated as confidential and which satisfies either of the following conditions—
- (a) it is made by that person’s parent; or
 - (b) it is made by that person himself and the responsible body reasonably believes that he has sufficient understanding of the nature of the request and of its effect.
- (8) This section 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.”

14 Accessibility strategies and plans

- (1) In the 1995 Act, insert the following section—

“28D Accessibility strategies and plans

- (1) Each local education authority must prepare, in relation to schools for which they are the responsible body—
- (a) an accessibility strategy;
 - (b) further such strategies at such times as may be prescribed.
- (2) An accessibility strategy is a strategy for, over a prescribed period—
- (a) increasing the extent to which disabled pupils can participate in the schools’ curriculums;
 - (b) improving the physical environment of the schools for the purpose of increasing the extent to which disabled pupils are able to take advantage of education and associated services provided or offered by the schools; and
 - (c) improving the delivery to disabled pupils—
 - (i) within a reasonable time, and
 - (ii) in ways which are determined after taking account of their disabilities and any preferences expressed by them or their parents,

of information which is provided in writing for pupils who are not disabled.

- (3) An accessibility strategy must be in writing.
- (4) Each local education authority must keep their accessibility strategy under review during the period to which it relates and, if necessary, revise it.
- (5) It is the duty of each local education authority to implement their accessibility strategy.
- (6) An inspection under section 38 of the Education Act 1997 (inspections of local education authorities) may extend to the performance by a local education authority of their functions in relation to the preparation, review, revision and implementation of their accessibility strategy.
- (7) Subsections (8) to (13) apply to—
 - (a) maintained schools;
 - (b) independent schools; and
 - (c) special schools which are not maintained special schools but which are approved by the Secretary of State, or by the National Assembly, under section 342 of the Education Act 1996.
- (8) The responsible body must prepare—
 - (a) an accessibility plan;
 - (b) further such plans at such times as may be prescribed.
- (9) An accessibility plan is a plan for, over a prescribed period—
 - (a) increasing the extent to which disabled pupils can participate in the school's curriculum;
 - (b) improving the physical environment of the school for the purpose of increasing the extent to which disabled pupils are able to take advantage of education and associated services provided or offered by the school; and
 - (c) improving the delivery to disabled pupils—
 - (i) within a reasonable time, and
 - (ii) in ways which are determined after taking account of their disabilities and any preferences expressed by them or their parents,

of information which is provided in writing for pupils who are not disabled.
- (10) An accessibility plan must be in writing.
- (11) During the period to which the plan relates, the responsible body must keep its accessibility plan under review and, if necessary, revise it.
- (12) It is the duty of the responsible body to implement its accessibility plan.
- (13) An inspection under the School Inspections Act 1996 may extend to the performance by the responsible body of its functions in relation to the preparation, publication, review, revision and implementation of its accessibility plan.

Status: This is the original version (as it was originally enacted).

- (14) For a maintained school, the duties imposed by subsections (8) to (12) are duties of the governing body.
- (15) Regulations may prescribe services which are, or services which are not, to be regarded for the purposes of this section as being—
- (a) education; or
 - (b) an associated service.
- (16) In this section and in section 28E, “local education authority” has the meaning given in section 12 of the Education Act 1996.
- (17) In relation to Wales—
- “prescribed” means prescribed in regulations; and
- “regulations” means regulations made by the National Assembly.
- (18) “Disabled pupil” includes a disabled person who may be admitted to the school as a pupil.
- (19) “Maintained school” and “independent school” have the meaning given in section 28Q(5).”
- (2) For subsections (6) and (7) of section 317 of the 1996 Act (governing body to include information about disabled pupils in annual report) substitute—
- “(6) Each governors' report shall also include information as to—
- (a) the arrangements for the admission of disabled persons as pupils at the school,
 - (b) the steps taken to prevent disabled pupils from being treated less favourably than other pupils,
 - (c) the facilities provided to assist access to the school by disabled pupils, and
 - (d) the plan prepared by the governing body under section 28D of the Disability Discrimination Act 1995 (“the 1995 Act”).
- (7) “Governors' report” means the report prepared under section 42(1) of the School Standards and Framework Act 1998.
- (7A) “Disabled person” means a person who is a disabled person for the purposes of the 1995 Act; and section 28Q of the 1995 Act (interpretation) applies for the purposes of subsection (6) as it applies for the purposes of Chapter 1 of Part 4 of that Act.”

15 Accessibility strategies and plans: procedure

In the 1995 Act, insert the following section—

“28E Accessibility strategies and plans: procedure

- (1) In preparing their accessibility strategy, a local education authority must have regard to—
- (a) the need to allocate adequate resources for implementing the strategy; and
 - (b) any guidance issued as to—

- (i) the content of an accessibility strategy;
 - (ii) the form in which it is to be produced; and
 - (iii) the persons to be consulted in its preparation.
- (2) A local education authority must have regard to any guidance issued as to compliance with the requirements of section 28D(4).
- (3) Guidance under subsection (1)(b) or (2) may be issued—
- (a) for England, by the Secretary of State; and
 - (b) for Wales, by the National Assembly.
- (4) In preparing an accessibility plan, the responsible body must have regard to the need to allocate adequate resources for implementing the plan.
- (5) If the Secretary of State asks for a copy of—
- (a) the accessibility strategy prepared by a local education authority in England, or
 - (b) the accessibility plan prepared by the proprietor of an independent school (other than a city academy) in England,
- the strategy or plan must be given to him.
- (6) If the National Assembly asks for a copy of—
- (a) the accessibility strategy prepared by a local education authority in Wales, or
 - (b) the accessibility plan prepared by the proprietor of an independent school in Wales,
- the strategy or plan must be given to it.
- (7) If asked to do so, a local education authority must make a copy of their accessibility strategy available for inspection at such reasonable times as they may determine.
- (8) If asked to do so, the proprietor of an independent school which is not a city academy must make a copy of his accessibility plan available for inspection at such reasonable times as he may determine.”

16 Residual duty of education authorities

In the 1995 Act, insert the following sections—

“Residual duty of education authorities

28F Duty of education authorities not to discriminate

- (1) This section applies to—
- (a) the functions of a local education authority under the Education Acts; and
 - (b) the functions of an education authority under—
 - (i) the Education (Scotland) Act 1980;
 - (ii) the Education (Scotland) Act 1996; and
 - (iii) the Standards in Scotland’s Schools etc. Act 2000.

Status: This is the original version (as it was originally enacted).

- (2) But it does not apply to any prescribed function.
- (3) In discharging a function to which this section applies, it is unlawful for the authority to discriminate against—
 - (a) a disabled pupil; or
 - (b) a disabled person who may be admitted to a school as a pupil.
- (4) But an act done in the discharge of a function to which this section applies is unlawful as a result of subsection (3) only if no other provision of this Chapter makes that act unlawful.
- (5) In the case of an act which constitutes discrimination by virtue of section 55, this section also applies to discrimination against a person who is not disabled.
- (6) In this section and section 28G, “local education authority” has the meaning given in section 12 of the Education Act 1996.
- (7) “The Education Acts” has the meaning given in section 578 of the Education Act 1996.
- (8) In this section and section 28G, “education authority” has the meaning given in section 135(1) of the Education (Scotland) Act 1980.

28G Residual duty: supplementary provisions

- (1) Section 28B applies for the purposes of section 28F as it applies for the purposes of section 28A with the following modifications—
 - (a) references to a responsible body are to be read as references to an authority; and
 - (b) references to section 28C are to be read as references to subsections (2) to (4).
- (2) Each authority must take such steps as it is reasonable for it to have to take to ensure that, in discharging any function to which section 28F applies—
 - (a) disabled persons who may be admitted to a school as pupils are not placed at a substantial disadvantage in comparison with persons who are not disabled; and
 - (b) disabled pupils are not placed at a substantial disadvantage in comparison with pupils who are not disabled.
- (3) That does not require the authority to—
 - (a) remove or alter a physical feature; or
 - (b) provide auxiliary aids or services.
- (4) This section imposes duties only for the purpose of determining whether an authority has discriminated against a disabled person; and accordingly a breach of any such duty is not actionable as such.
- (5) A reference in sections 28I, 28K(1), 28M(6) and 28P to a responsible body is to be read as including a reference to a local education authority in relation to a function to which section 28F applies.

- (6) A reference in section 28N and 28P to a responsible body is to be read as including a reference to an education authority in relation to a function to which section 28F applies.
- (7) “Authority” means—
 - (a) in relation to England and Wales, a local education authority; and
 - (b) in relation to Scotland, an education authority.”