



# Special Educational Needs and Disability Act 2001

## 2001 CHAPTER 10

### PART 2

#### DISABILITY DISCRIMINATION IN EDUCATION

#### CHAPTER 1

#### SCHOOLS

#### *Enforcement*

#### **17 Special Educational Needs and Disability Tribunal**

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

*“Enforcement: England and Wales*

#### **28H Special Educational Needs and Disability Tribunal**

- (1) The Special Educational Needs Tribunal—
  - (a) is to continue to exist; but
  - (b) after the commencement date is to be known as the Special Educational Needs and Disability Tribunal.
- (2) It is referred to in this Chapter as “the Tribunal”.
- (3) In addition to its jurisdiction under Part 4 of the Education Act 1996, the Tribunal is to exercise the jurisdiction conferred on it by this Chapter.

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*Status: This is the original version (as it was originally enacted).*

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- (4) “Commencement date” means the day on which section 17 of the Special Educational Needs and Disability Act 2001 comes into force.”
- (2) Section 10 of the Disabled Persons (Services, Consultation and Representation) Act 1986 (c. 33) (consultation on appointments) is not to apply to appointments to the lay panel.
- (3) “The lay panel” has the meaning given in section 333(2)(c) of the 1996 Act.

## **18 Jurisdiction and powers of the Tribunal**

In the 1995 Act, insert the following section—

### **“28I Jurisdiction and powers of the Tribunal**

- (1) A claim that a responsible body—
- (a) has discriminated against a person (“A”) in a way which is made unlawful under this Chapter, or
  - (b) is by virtue of section 58 to be treated as having discriminated against a person (“A”) in such a way,
- may be made to the Tribunal by A’s parent.
- (2) But this section does not apply to a claim to which section 28K or 28L applies.
- (3) If the Tribunal considers that a claim under subsection (1) is well founded—
- (a) it may declare that A has been unlawfully discriminated against; and
  - (b) if it does so, it may make such order as it considers reasonable in all the circumstances of the case.
- (4) The power conferred by subsection (3)(b)—
- (a) may, in particular, be exercised with a view to obviating or reducing the adverse effect on the person concerned of any matter to which the claim relates; but
  - (b) does not include power to order the payment of any sum by way of compensation.”

## **19 Procedure**

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

### **“28J Procedure**

- (1) Regulations may make provision about—
- (a) the proceedings of the Tribunal on a claim of unlawful discrimination under this Chapter; and
  - (b) the making of a claim.
- (2) The regulations may, in particular, include provision—
- (a) as to the manner in which a claim must be made;
  - (b) if the jurisdiction of the Tribunal is being exercised by more than one tribunal—

- (i) for determining by which tribunal any claim is to be heard, and
    - (ii) for the transfer of proceedings from one tribunal to another;
  - (c) for enabling functions which relate to matters preliminary or incidental to a claim (including, in particular, decisions under paragraph 10(3) of Schedule 3) to be performed by the President, or by the chairman;
  - (d) enabling hearings to be conducted in the absence of any member other than the chairman;
  - (e) as to the persons who may appear on behalf of the parties;
  - (f) for granting any person such disclosure or inspection of documents or right to further particulars as might be granted by a county court;
  - (g) requiring persons to attend to give evidence and produce documents;
  - (h) for authorising the administration of oaths to witnesses;
  - (i) for the determination of claims without a hearing in prescribed circumstances;
  - (j) as to the withdrawal of claims;
  - (k) for enabling the Tribunal to stay proceedings on a claim;
  - (l) for the award of costs or expenses;
  - (m) for taxing or otherwise settling costs or expenses (and, in particular, for enabling costs to be taxed in the county court);
  - (n) for the registration and proof of decisions and orders; and
  - (o) for enabling prescribed decisions to be reviewed, or prescribed orders to be varied or revoked, in such circumstances as may be determined in accordance with the regulations.
- (3) Proceedings before the Tribunal are to be held in private, except in prescribed circumstances.
- (4) Unless made with the agreement of the National Assembly, regulations made under this section do not apply to Wales.
- (5) The Secretary of State may pay such allowances for the purpose of or in connection with the attendance of persons at the Tribunal as he may, with the consent of the Treasury, determine.
- (6) In relation to Wales, the power conferred by subsection (5) may be exercised only with the agreement of the National Assembly.
- (7) Part 1 of the Arbitration Act 1996 does not apply to proceedings before the Tribunal but regulations may make provision, in relation to such proceedings, corresponding to any provision of that Part.
- (8) The regulations may make provision for a claim under this Chapter to be heard, in prescribed circumstances, with an appeal under Part 4 of the Education Act 1996.
- (9) A person who without reasonable excuse fails to comply with—
- (a) a requirement in respect of the disclosure or inspection of documents imposed by the regulations by virtue of subsection (2)(f), or
  - (b) a requirement imposed by the regulations by virtue of subsection (2)(g),

is guilty of an offence.

- (10) A person guilty of an offence under subsection (9) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (11) Part 3 of Schedule 3 makes further provision about enforcement of this Chapter and about procedure.”
- (2) In Schedule 3 to the 1995 Act (enforcement and procedure), insert the provisions set out in paragraph 1 of Schedule 3.

## 20 Admissions

In the 1995 Act, insert the following section—

### “28K Admissions

- (1) If the condition mentioned in subsection (2) is satisfied, this section applies to a claim in relation to an admissions decision that a responsible body—
- (a) has discriminated against a person (“A”) in a way which is made unlawful under this Chapter; or
  - (b) is by virtue of section 58 to be treated as having discriminated against a person (“A”) in such a way.
- (2) The condition is that arrangements (“appeal arrangements”) have been made—
- (a) under section 94 of the School Standards and Framework Act 1998, or
  - (b) under an agreement entered into between the responsible body for a city academy and the Secretary of State under section 482 of the Education Act 1996,
- enabling an appeal to be made against the decision by A’s parent.
- (3) The claim must be made under the appeal arrangements.
- (4) The body hearing the claim has the powers which it has in relation to an appeal under the appeal arrangements.
- (5) “Admissions decision” means—
- (a) a decision of a kind mentioned in section 94(1) or (2) of the School Standards and Framework Act 1998;
  - (b) a decision as to the admission of a person to a city academy taken by the responsible body or on its behalf.”

## 21 Exclusions

In the 1995 Act, insert the following section—

### “28L Exclusions

- (1) If the condition mentioned in subsection (2) is satisfied, this section applies to a claim in relation to an exclusion decision that a responsible body—
- (a) has discriminated against a person (“A”) in a way which is made unlawful under this Chapter; or

- (b) is by virtue of section 58 to be treated as having discriminated against a person (“A”) in such a way.
- (2) The condition is that arrangements (“appeal arrangements”) have been made—
  - (a) under section 67(1) of the School Standards and Framework Act 1998, or
  - (b) under an agreement entered into between the responsible body for a city academy and the Secretary of State under section 482 of the Education Act 1996,
 enabling an appeal to be made against the decision by A or by his parent.
- (3) The claim must be made under the appeal arrangements.
- (4) The body hearing the claim has the powers which it has in relation to an appeal under the appeal arrangements.
- (5) “Exclusion decision” means—
  - (a) a decision of a kind mentioned in section 67(1) of the School Standards and Framework Act 1998;
  - (b) a decision not to reinstate a pupil who has been permanently excluded from a city academy by its head teacher, taken by the responsible body or on its behalf.
- (6) “Responsible body”, in relation to a maintained school, includes the discipline committee of the governing body if that committee is required to be established as a result of regulations made under paragraph 4 of Schedule 11 to the School Standards and Framework Act 1998.
- (7) “Maintained school” has the meaning given in section 28Q(5).”

## **22 Roles of the Secretary of State and the National Assembly**

In the 1995 Act, insert the following section—

### **“28M Roles of the Secretary of State and the National Assembly**

- (1) If the appropriate authority is satisfied (whether on a complaint or otherwise) that a responsible body—
  - (a) has acted, or is proposing to act, unreasonably in the discharge of a duty imposed by or under section 28D or 28E, or
  - (b) has failed to discharge a duty imposed by or under either of those sections,
 it may give that body such directions as to the discharge of the duty as appear to it to be expedient.
- (2) Subsection (3) applies in relation to—
  - (a) 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; and
  - (b) city academies.
- (3) If the appropriate authority is satisfied (whether on a complaint or otherwise) that a responsible body—

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- (a) has acted, or is proposing to act, unreasonably in the discharge of a duty which that body has in relation to—
    - (i) the provision to the appropriate authority of copies of that body’s accessibility plan, or
    - (ii) the inspection of that plan, or
  - (b) has failed to discharge that duty,
- it may give that body such directions as to the discharge of the duty as appear to it to be expedient.
- (4) Directions may be given under subsection (1) or (3) even if the performance of the duty is contingent upon the opinion of the responsible body.
- (5) Subsection (6) applies if the Tribunal has made an order under section 28I(3).
- (6) If the Secretary of State is satisfied (whether on a complaint or otherwise) that the responsible body concerned—
- (a) has acted, or is proposing to act, unreasonably in complying with the order, or
  - (b) has failed to comply with the order,
- he may give that body such directions as to compliance with the order as appear to him to be expedient.
- (7) Directions given under subsection (1), (3) or (6)—
- (a) may be varied or revoked by the directing authority; and
  - (b) may be enforced, on the application of the directing authority, by a mandatory order obtained in accordance with section 31 of the Supreme Court Act 1981.
- (8) “Appropriate authority” means—
- (a) in relation to England, the Secretary of State; and
  - (b) in relation to Wales, the National Assembly.
- (9) “Directing authority” means—
- (a) the Secretary of State in relation to a direction given by him; and
  - (b) the National Assembly in relation to a direction given by it.”

## **23 Enforcement procedure: Scotland**

In the 1995 Act, insert the following section—

### *“Enforcement: Scotland*

#### **28N Civil proceedings**

- (1) A claim that a responsible body in Scotland—
- (a) has discriminated against a person in a way which is unlawful under this Chapter, or
  - (b) is by virtue of section 58 to be treated as having discriminated against a person in such a way,
- may be made the subject of civil proceedings in the same way as any other claim for the enforcement of a statutory duty.

- (2) Proceedings in Scotland may be brought only in a sheriff court.
- (3) The remedies available in such proceedings are those which are available in the Court of Session other than an award of damages.
- (4) Part 3 of Schedule 3 makes further provision about the enforcement of this Chapter and about procedure.
- (5) In relation to civil proceedings in Scotland, in that Part of that Schedule—
  - (a) references to sections 28I, 28K and 28L, or any of them, are to be construed as a reference to this section;
  - (b) references to the Tribunal are to be construed as references to the sheriff court.”

## 24 Validity and revision of agreements of responsible bodies

In the 1995 Act, insert the following section—

*“Agreements relating to enforcement*

### **28P Validity and revision of agreements of responsible bodies**

- (1) Any term in a contract or other agreement made by or on behalf of a responsible body 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 Chapter;
  - (b) exclude or limit the operation of any provision of, or made under, this Chapter; or
  - (c) prevent any person from making a claim under this Chapter.
- (2) Paragraphs (b) and (c) of subsection (1) do not apply to an agreement settling a claim—
  - (a) under section 28I or 28N; or
  - (b) to which section 28K or 28L applies.
- (3) On the application of any person interested in an agreement to which subsection (1) applies, a county court or a sheriff court may make such order as it thinks just for modifying the agreement to take account of the effect of subsection (1).
- (4) No such order may be made unless all persons affected have been—
  - (a) given notice of the application; and
  - (b) afforded an opportunity to make representations to the court.
- (5) Subsection (4) applies subject to any rules of court providing for notice to be dispensed with.
- (6) An order under subsection (3) may include provision as respects any period before the making of the order.”

**25 Interpretation**

In the 1995 Act, insert the following section—

*“Interpretation of Chapter 1***28Q Interpretation**

- (1) This section applies for the purpose of interpreting this Chapter.
- (2) “Disabled pupil” means a pupil who is a disabled person.
- (3) “Pupil”—
  - (a) in relation to England and Wales, has the meaning given in section 3(1) of the Education Act 1996; and
  - (b) in relation to Scotland, has the meaning given in section 135(1) of the Education (Scotland) Act 1980.
- (4) Except in relation to Scotland (when it has the meaning given in section 135(1) of the Education (Scotland) Act 1980) “school” means—
  - (a) a maintained school;
  - (b) a maintained nursery school;
  - (c) an independent school;
  - (d) a special school which is not a maintained special school but which is approved by the Secretary of State, or by the National Assembly, under section 342 of the Education Act 1996;
  - (e) a pupil referral unit.
- (5) In subsection (4)—
 

“maintained school” has the meaning given in section 20(7) of the School Standards and Framework Act 1998;

“maintained nursery school” has the meaning given in section 22(9) of the School Standards and Framework Act 1998;

“independent school” has the meaning given in section 463 of the Education Act 1996; and

“pupil referral unit” has the meaning given in section 19(2) of the Education Act 1996.
- (6) “Responsible body” has the meaning given in section 28A(5).
- (7) “Governing body”, in relation to a maintained school, means the body corporate (constituted in accordance with Schedule 9 to the School Standards and Framework Act 1998) which the school has as a result of section 36 of that Act.
- (8) “Parent”—
  - (a) in relation to England and Wales, has the meaning given in section 576 of the Education Act 1996; and
  - (b) in relation to Scotland, has the meaning given in section 135(1) of the Education (Scotland) Act 1980.
- (9) In relation to England and Wales “permitted form of selection” means—
  - (a) if the school is a maintained school which is not designated as a grammar school under section 104 of the School Standards and



- Framework Act 1998, any form of selection mentioned in section 99(2) or (4) of that Act;
- (b) if the school is a maintained school which is so designated, any of its selective admission arrangements;
  - (c) if the school is an independent school, any arrangements which make provision for any or all of its pupils to be selected by reference to general or special ability or aptitude, with a view to admitting only pupils of high ability or aptitude.
- (10) In relation to Scotland, “permitted form of selection” means—
- (a) if the school is managed by an education authority, such arrangements as have been approved by the Scottish Ministers for the selection of pupils for admission;
  - (b) if the school is an independent school or a self-governing school, any arrangements which make provision for any or all of its pupils to be selected by reference to general or special ability or aptitude, with a view to admitting only pupils of high ability or aptitude.
- (11) In subsection (10), “education authority”, “independent school” and “self-governing school” have the meaning given in section 135(1) of the Education (Scotland) Act 1980.
- (12) “City academy” means a school which is known as a city academy as a result of subsection (3) or (3A) of section 482 of the Education Act 1996.
- (13) “Accessibility strategy” and “accessibility plan” have the meaning given in section 28D.
- (14) “The National Assembly” means the National Assembly for Wales.”