
STATUTORY INSTRUMENTS

2005 No. 1117

The Special Educational Needs and Disability (Northern Ireland) Order 2005

PART III

DISABILITY DISCRIMINATION IN EDUCATION

CHAPTER II

FURTHER AND HIGHER EDUCATION

Duties of responsible bodies

Meaning of “discrimination”

29.—(1) For the purposes of [^{F1}this Chapter], 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.

[^{F2}(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.]

(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) ^{F3}

[^{F4}(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

Changes to legislation: The Special Educational Needs and Disability (Northern Ireland) Order 2005, Section 29 is up to date with all changes known to be in force on or before 30 August 2022. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

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.]

- | | |
|-----------|---|
| F1 | Words in art. 29(1) substituted (10.8.2006 for certain purposes and 1.9.2006 otherwise) by Special Educational Needs and Disability (Northern Ireland) Order 2005 (Amendment) (Further and Higher Education) Regulations (Northern Ireland) 2006 (S.R. 2006/332) , regs. 1, 6(2) |
| F2 | Art. 29(2) substituted (10.8.2006 for certain purposes and 1.9.2006 otherwise) by Special Educational Needs and Disability (Northern Ireland) Order 2005 (Amendment) (Further and Higher Education) Regulations (Northern Ireland) 2006 (S.R. 2006/332) , regs. 1, 6(3) |
| F3 | Art. 29(4) omitted (10.8.2006 for certain purposes and 1.9.2006 otherwise) by virtue of Special Educational Needs and Disability (Northern Ireland) Order 2005 (Amendment) (Further and Higher Education) Regulations (Northern Ireland) 2006 (S.R. 2006/332) , regs. 1, 6(4) |
| F4 | Art. 29(5)-(11) substituted (1.9.2006) for art. 29(5)-(9) by Special Educational Needs and Disability (Northern Ireland) Order 2005 (Amendment) (Further and Higher Education) Regulations (Northern Ireland) 2006 (S.R. 2006/332) , regs. 1, 6(5) |

Changes to legislation:

The Special Educational Needs and Disability (Northern Ireland) Order 2005, Section 29 is up to date with all changes known to be in force on or before 30 August 2022. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

[View outstanding changes](#)

Changes and effects yet to be applied to the whole Order associated Parts and Chapters:

Whole provisions yet to be inserted into this Order (including any effects on those provisions):

- art. 22(1)(i)-(ii) substituted for words by [2016 c. 8 \(N.I.\) s. 12\(1\)](#)