



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;

Status: This is the original version (as it was originally enacted).

- (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;

Status: This is the original version (as it was originally enacted).

- (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.

- (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.”

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.
- (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—

Status: This is the original version (as it was originally enacted).

- (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—
 - (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.

Status: This is the original version (as it was originally enacted).

- (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.”

CHAPTER 2

FURTHER AND HIGHER EDUCATION

Duties of responsible bodies

26 Discrimination against disabled students and prospective students

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

“CHAPTER 2

FURTHER AND HIGHER EDUCATION

Duties of responsible bodies

28R Discrimination against disabled students and prospective students

- (1) It is unlawful for the body responsible for an educational institution to discriminate against a disabled person—
 - (a) in the arrangements it makes for determining admissions to the institution;
 - (b) in the terms on which it offers to admit him to the institution; or
 - (c) by refusing or deliberately omitting to accept an application for his admission to the institution.
- (2) It is unlawful for the body responsible for an educational institution to discriminate against a disabled student in the student services it provides, or offers to provide.
- (3) It is unlawful for the body responsible for an educational institution to discriminate against a disabled student by excluding him from the institution, whether permanently or temporarily.
- (4) 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.

Status: This is the original version (as it was originally enacted).

- (5) The body responsible for an educational institution is to be determined in accordance with Schedule 4B, and in the remaining provisions of this Chapter is referred to as the “responsible body”.
 - (6) “Educational institution”, in relation to England and Wales, means an institution—
 - (a) within the higher education sector;
 - (b) within the further education sector; or
 - (c) designated in an order made by the Secretary of State.
 - (7) “Educational institution”, in relation to Scotland, means—
 - (a) an institution within the higher education sector (within the meaning of section 56(2) of the Further and Higher Education (Scotland) Act 1992);
 - (b) a college of further education with a board of management within the meaning of section 36 of that Act;
 - (c) a central institution within the meaning of section 135 of the Education (Scotland) Act 1980;
 - (d) a college of further education maintained by an education authority in the exercise of their further education functions in providing courses of further education within the meaning of section 1(5)(b)(ii) of that Act;
 - (e) an institution designated in an order made by the Secretary of State.
 - (8) Subsection (6) is to be read with section 91 of the Further and Higher Education Act 1992.
 - (9) The Secretary of State may not make an order under subsection (6)(c) or (7)(e) unless he is satisfied that the institution concerned is wholly or partly funded from public funds.
 - (10) Before making an order under subsection (7)(e), the Secretary of State must consult the Scottish Ministers.
 - (11) “Student services” means services of any description which are provided wholly or mainly for students.
 - (12) Regulations may make provision as to services which are, or are not, to be regarded for the purposes of subsection (2) as student services.”
- (2) In the 1995 Act, insert the Schedule set out in Schedule 4.

27 **Meaning of “discrimination”**

In the 1995 Act, insert the following section—

“28S Meaning of “discrimination”

- (1) For the purposes of section 28R, 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 28R, a responsible body also discriminates against a disabled person if—
 - (a) it fails, to his detriment, to comply with section 28T; 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 (9) apply in determining whether, for the purposes of this section—
 - (a) less favourable treatment of a person, or
 - (b) failure to comply with section 28T,
 is justified.
- (6) Less favourable treatment of a person is justified if it is necessary in order to maintain—
 - (a) academic standards; or
 - (b) standards of any other prescribed kind.
- (7) Less favourable treatment is also justified if—
 - (a) it is of a prescribed kind;
 - (b) it occurs in prescribed circumstances; or
 - (c) it is of a prescribed kind and it occurs in prescribed circumstances.
- (8) Otherwise less favourable treatment, or a failure to comply with section 28T, is justified only if the reason for it is both material to the circumstances of the particular case and substantial.
- (9) If, in a case falling within subsection (1)—
 - (a) the responsible body is under a duty imposed by section 28T in relation to the disabled person, but
 - (b) fails without justification to comply with that duty,
 its treatment of that person cannot be justified under subsection (8) unless that treatment would have been justified even if it had complied with that duty.”

28 Disabled students not to be substantially disadvantaged

In the 1995 Act, insert the following section—

“28T Disabled students not to be substantially disadvantaged

- (1) The responsible body for an educational institution 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 admissions to the institution, disabled persons are not placed at a substantial disadvantage in comparison with persons who are not disabled; and
 - (b) in relation to student services provided for, or offered to, students by it, disabled students are not placed at a substantial disadvantage in comparison with students who are not disabled.
- (2) 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.
- (3) Subsection (4) applies if a person has made a confidentiality request of which a responsible body is aware.
- (4) 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.
- (5) “Confidentiality request” means a request made by a disabled person, which asks for the nature, or asks for the existence, of his disability to be treated as confidential.
- (6) 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.”

29 Further education etc. provided by local education authorities and schools

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

“Other providers of further education or training facilities

28U Further education etc. provided by local education authorities and schools

- (1) Part 1 of Schedule 4C modifies this Chapter for the purpose of its application in relation to—
 - (a) higher education secured by a local education authority;
 - (b) further education—
 - (i) secured by a local education authority; or
 - (ii) provided by the governing body of a maintained school;
 - (c) recreational or training facilities secured by a local education authority.
- (2) Part 2 of that Schedule modifies this Chapter for the purpose of its application in relation to—

- (a) further education, within the meaning of section 1(5)(b)(iii) of the Education (Scotland) Act 1980;
- (b) facilities whose provision is secured by an education authority under section 1(3) of that Act.”

(2) In the 1995 Act, insert the Schedule set out in Schedule 5.

Enforcement

30 Right of redress

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

“Enforcement, etc.

28V Enforcement, remedies and procedure

- (1) A claim by a person—
 - (a) that a responsible body has discriminated against him in a way which is unlawful under this Chapter,
 - (b) that a responsible body is by virtue of section 57 or 58 to be treated as having discriminated against him in such a way, or
 - (c) that a person is by virtue of section 57 to be treated as having discriminated against him in such a way,
 may be made the subject of civil proceedings in the same way as any other claim in tort or (in Scotland) in reparation for breach of statutory duty.
- (2) For the avoidance of doubt it is hereby declared that damages in respect of discrimination in a way which is unlawful under this Chapter may include compensation for injury to feelings whether or not they include compensation under any other head.
- (3) Proceedings in England and Wales may be brought only in a county court.
- (4) Proceedings in Scotland may be brought only in a sheriff court.
- (5) The remedies available in such proceedings are those which are available in the High Court or (as the case may be) the Court of Session.
- (6) The fact that a person who brings proceedings under this Part against a responsible body may also be entitled to bring proceedings against that body under Part 2 is not to affect the proceedings under this Part.
- (7) Part 4 of Schedule 3 makes further provision about the enforcement of this Part and about procedure.”

(2) In Schedule 3 to the 1995 Act (enforcement and procedure), insert the provisions set out in paragraph 2 of Schedule 3.

31 Occupation of premises by educational institutions

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

“28W Occupation of premises by educational institutions

- (1) This section applies if—
 - (a) premises are occupied by an educational institution under a lease;
 - (b) but for this section, the responsible body would not be entitled to make a particular alteration to the premises; and
 - (c) the alteration is one which the responsible body proposes to make in order to comply with section 28T.
 - (2) Except to the extent to which it expressly so provides, the lease has effect, as a result of this subsection, as if it provided—
 - (a) for the responsible body to be entitled to make the alteration with the written consent of the lessor;
 - (b) for the responsible body to have to make a written application to the lessor for consent if it wishes to make the alteration;
 - (c) if such an application is made, for the lessor not to withhold his consent unreasonably; and
 - (d) for the lessor to be entitled to make his consent subject to reasonable conditions.
 - (3) In this section—

“lease” includes a tenancy, sub-lease or sub-tenancy and an agreement for a lease, tenancy, sub-lease or sub-tenancy; and

“sub-lease” and “sub-tenancy” have such meaning as may be prescribed.
 - (4) If the terms and conditions of a lease—
 - (a) impose conditions which are to apply if the responsible body alters the premises, or
 - (b) entitle the lessor to impose conditions when consenting to the responsible body’s altering the premises,

the responsible body is to be treated for the purposes of subsection (1) as not being entitled to make the alteration.
 - (5) Part 3 of Schedule 4 supplements the provisions of this section.”
- (2) In Schedule 4 to the 1995 Act (premises occupied under leases), at the end insert the provisions set out in Schedule 6.

32 Validity and revision of agreements

In the 1995 Act, insert the following section—

“28X Validity and revision of agreements

Section 28P applies for the purposes of this Chapter as it applies for the purposes of Chapter 1, but with the substitution, for paragraphs (a) and (b) of subsection (2), of “under section 28V”.”

33 Interpretation

In the 1995 Act, insert the following section—

“Interpretation of Chapter 2

31A Interpretation

- (1) Subsections (2) to (4) apply for the purpose of interpreting this Chapter.
- (2) “Disabled student” means a student who is a disabled person.
- (3) “Student” means a person who is attending, or undertaking a course of study at, an educational institution.
- (4) “Educational institution”, “responsible body” and “student services” have the meaning given in section 28R.”

34 Removal of certain duties of funding bodies

- (1) In section 65 of the Further and Higher Education Act 1992 (c. 13) (administration of funds by higher education funding councils), omit subsections (4A) and (4B).
- (2) In section 40 of the Further and Higher Education (Scotland) Act 1992 (c. 37), omit subsections (5) and (6).
- (3) Section 528 of the 1996 Act ceases to have effect.
- (4) Before section 30 of the 1995 Act, insert—

“Duties of funding councils”.

- (5) In section 30 of the 1995 Act (further and higher education of disabled persons), omit subsection (6).
- (6) In section 31 of the 1995 Act (further and higher education of disabled persons: Scotland), omit subsection (3).
- (7) In section 6 of the Learning and Skills Act 2000 (c. 21) (conditions imposed on financial resources in England), omit subsections (4) and (6).
- (8) In section 35 of that Act (conditions imposed on financial resources in Wales), omit subsections (4) and (6).

CHAPTER 3

MISCELLANEOUS

35 Extension of role of Disability Rights Commission

Schedule 7 extends the role of the Disability Rights Commission in relation to discrimination made unlawful by Chapters 1 and 2 of Part 4 of the 1995 Act.

36 Codes of practice

(1) Section 53A of the 1995 Act (codes of practice) is amended as follows.

(2) For subsection (1) substitute—

“(1) The Disability Rights Commission may prepare and issue codes of practice giving practical guidance on how to avoid discrimination, or on any other matter relating to the operation of any provision of Part 2, 3 or 4, to—

- (a) employers;
- (b) service providers;
- (c) bodies which are responsible bodies for the purposes of Chapter 1 or 2 of Part 4; or
- (d) other persons to whom the provisions of Parts 2 or 3 or Chapter 2 of Part 4 apply.

(1A) The Commission may also prepare and issue codes of practice giving practical guidance to any persons on any other matter with a view to—

- (a) promoting the equalisation of opportunities for disabled persons and persons who have had a disability; or
- (b) encouraging good practice in the way such persons are treated, in any field of activity regulated by any provision of Part 2, 3 or 4.

(1B) Neither subsection (1) nor (1A) applies in relation to any duty imposed by or under sections 28D or 28E.”

(3) In subsection (8), omit the words after first “proceedings”.

(4) After subsection (8), insert—

“(8A) But if a provision of a code of practice appears to a court, tribunal or other body hearing any proceedings under Part 2, 3 or 4 to be relevant, it must take that provision into account.”

(5) In subsection (9), in the definition of “discrimination”, for “or Part III” substitute “, 3 or 4”.

37 Conciliation for disputes under Part 4 of the 1995 Act

In the 1995 Act, insert the following section—

“CHAPTER 3**SUPPLEMENTARY****31B Conciliation for disputes**

- (1) The Disability Rights Commission may make arrangements with any other person for the provision of conciliation services by, or by persons appointed by, that person in connection with disputes.
- (2) In deciding what arrangements (if any) to make, the Commission must have regard to the desirability of securing, so far as reasonably practicable, that

conciliation services are available for all disputes which the parties may wish to refer to conciliation.

- (3) No member or employee of the Commission may provide conciliation services in connection with disputes.
- (4) The Commission must ensure that arrangements under this section include appropriate safeguards to prevent the disclosure to members or employees of the Commission of information obtained by any person in connection with the provision of conciliation services in accordance with the arrangements.
- (5) Subsection (4) does not apply to information which is disclosed with the consent of the parties to the dispute to which it relates.
- (6) Subsection (4) does not apply to information which—
 - (a) does not identify a particular dispute or a particular person; and
 - (b) is reasonably required by the Commission for the purpose of monitoring the operation of the arrangements concerned.
- (7) Anything communicated to a person providing conciliation services in accordance with arrangements under this section is not admissible in evidence in any proceedings except with the consent of the person who communicated it.
- (8) “Conciliation services” means advice and assistance provided to the parties to a dispute, by a conciliator, with a view to promoting its settlement otherwise than through a court, tribunal or other body.
- (9) “Dispute” means a dispute arising under Chapter 1 or 2 concerning an allegation of discrimination.
- (10) “Discrimination” means anything which is made unlawful discrimination by a provision of Chapter 1 or 2.”

38 Relationship with other Parts of the 1995 Act

- (1) The 1995 Act is amended as follows.
- (2) In section 2 (past disabilities)—
 - (a) in subsection (1), for “and III” substitute “to 4” and
 - (b) in subsection (4), for “or Part III” substitute “, 3 or 4”.
- (3) In subsection (3) of section 3 (courts etc. to have regard to guidance), for “A tribunal or court” substitute “An adjudicating body”.
- (4) After that subsection, insert—

“(3A) “Adjudicating body” means—

 - (a) a court;
 - (b) a tribunal; and
 - (c) any other person who, or body which, may decide a claim under Part 4.”
- (5) In section 19 (meaning of “discrimination” in Part 3) omit—
 - (a) paragraphs (a) to (ab) of subsection (5); and
 - (b) subsection (6).

- (6) In that section, insert after subsection (5)—
- “(5A) Nothing in this Part applies to the provision of a service in relation to which discrimination is made unlawful by section 28A, 28F or 28R.”
- (7) In section 55 (victimisation), in subsection (1), for “or Part III” substitute “, Part 3 or Part 4”.
- (8) In that section, after subsection (3), insert—
- “(3A) For the purposes of Chapter 1 of Part 4—
- (a) references in subsection (2) to B include references to—
 - (i) a person who is, for the purposes of that Chapter, B’s parent; and
 - (ii) a sibling of B; and
 - (b) references in that subsection to this Act are, as respects a person mentioned in sub-paragraph (i) or (ii) of paragraph (a), restricted to that Chapter.”
- (9) In subsection (1) of section 57 (aiding unlawful acts), for “act made unlawful by this Act” substitute “unlawful act”.
- (10) After subsection (5) of that section, insert—
- “(6) “Unlawful act” means an act made unlawful by any provision of this Act other than a provision contained in Chapter 1 of Part 4.”
- (11) In paragraph 2 of Schedule 2 (past disabilities) for “and III” substitute “to 4”.
- (12) After that paragraph, insert—
- “2A References in Chapter 1 of Part 4 to a disabled pupil are to be read as references to a pupil who has had a disability.
- 2B References in Chapter 2 of Part 4 to a disabled student are to be read as references to a student who has had a disability.”
- (13) After paragraph 4 of that Schedule, insert—
- “4A In section 28B(3)(a) and (4), after “disabled” insert “or that he had had a disability”.
- 4B In section 28C(1), in paragraphs (a) and (b), after “not disabled” insert “and who have not had a disability”.
- 4C In section 28S(3)(a) and (4), after “disabled” insert “or that he had had a disability”.
- 4D In subsection (1) of section 28T, after “not disabled” insert “and who have not had a disability”.
- 4E In that subsection as substituted by paragraphs 2 and 6 of Schedule 4C, after “not disabled” insert “and who have not had a disability”.
- (14) Omit paragraph 129 of Schedule 37 to the 1996 Act (amendment of section 19(5) of the 1995 Act).
- (15) Omit section 38 of the Teaching and Higher Education Act 1998 (c. 30) (amendment of section 19(6) of the 1995 Act).

- (16) Omit paragraph 49 of Schedule 9 to the Learning and Skills Act 2000 (c. 21) (amendment of section 19(5) of the 1995 Act).

39 Application to the Isles of Scilly

In the 1995 Act, insert the following section—

“31C Application to Isles of Scilly

This Part applies to the Isles of Scilly—

- (a) as if the Isles were a separate non-metropolitan county (and the Council of the Isles of Scilly were a county council), and
- (b) with such other modifications as may be specified in an order made by the Secretary of State.”

40 Duty of Teacher Training Agency

- (1) In the 1995 Act, omit section 29 (education of disabled persons).
- (2) In section 1 of the Education Act 1994 (c. 30) (establishment of the Teacher Training Agency) add, at the end—
 - “(4) In exercising their functions, the Teacher Training Agency shall have regard to the requirements of persons who are disabled persons for the purposes of the Disability Discrimination Act 1995.”