

2006 No. 1721

DISABLED PERSONS

**The Disability Discrimination Act 1995 (Amendment) (Further
and Higher Education) Regulations 2006**

<i>Made</i> - - - -	<i>29th June 2006</i>
<i>Laid before Parliament</i>	<i>10th July 2006</i>
<i>Coming into force</i> - -	<i>1st September 2006</i>

Whereas the Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972(a) in relation to discrimination(b).

The Secretary of State for Education and Skills, in exercise of the powers conferred by section 2(2) of that Act makes the following Regulations:—

PART 1
INTRODUCTORY

Citation, commencement, extent and interpretation

1.—(1) These Regulations may be cited as the Disability Discrimination Act 1995 (Amendment) (Further and Higher Education) Regulations 2006.

(2) These Regulations shall come into force on the day after that on which they are made so far as enabling anything to be done for the purposes of preparing and bringing into force on or after 1st September 2006 a code of practice under section 53A of the 1995 Act(c) concerning any provision of that Act as it will have effect on or after that date by virtue of these Regulations.

(3) Except as provided for by paragraph (2) and regulation 23, these Regulations shall come into force on 1st September 2006.

(4) These Regulations shall not extend to Northern Ireland.

2. In these Regulations “the 1995 Act” means the Disability Discrimination Act 1995(d).

(a) 1972 c.68.

(b) The European Communities (Designation) (No. 3) Order 2002 (S.I. 2002/1819).

(c) Section 53A of the 1995 Act was inserted by section 9 of the 1999 Act and amended by section 36 of the Special Educational Needs and Disability Act 2001 (c.10). It was further amended by regulation 20 of the Disability Discrimination Act 1995 (Amendment) Regulations 2003 (S.I. 2003/1673), and by section 16(2) of, and paragraph 28 of Schedule 1 to, the Disability Discrimination Act 2005 (c.13).

(d) 1995 c.50.

Transitional provisions

3. Subsection (1A) of section 28V of the 1995 Act (inserted by regulation 15) applies in relation to a claim presented to a county court (or sheriff court, in Scotland) before the commencement date as well as one presented on or after that date; but it does not affect any claim which was determined by a county court (or sheriff court) before 1st September 2006.

Amendments to the 1995 Act and to the Equality Act 2006(a)

4.—(1) The 1995 Act is amended as provided in Parts 2 to 6 of these Regulations, and the Equality Act is amended as provided in Part 7 of these Regulations.

(2) Part 8 of these Regulations makes transitory modifications to the 1995 Act.

PART 2

AMENDMENTS TO CHAPTER 2 OF PART 4 OF THE 1995 ACT

Discrimination against disabled students and prospective students, and harassment

5. The following subsections are inserted after subsection (3) of section 28R (discrimination against disabled students and prospective students)—

“(3A) It is unlawful for the body responsible for an educational institution to discriminate against a disabled person—

- (a) in the arrangements which it makes for the purpose of determining upon whom to confer a qualification;
- (b) in the terms on which it is prepared to confer a qualification on him;
- (c) by refusing or deliberately omitting to grant any application by him for a qualification; or
- (d) by withdrawing a qualification from him or varying the terms on which he holds it.

(3B) It is unlawful for the body responsible for an educational institution to subject to harassment a disabled person who—

- (a) holds or applies for a qualification conferred by the institution;
- (b) is a student at the institution; or
- (c) seeks admission as a student to the institution.”.

Meaning of “discrimination” and “harassment”

6.—(1) In subsection (1) of section 28S (meaning of “discrimination”), for “section 28R” there is substituted “this Chapter”.

(2) For subsection (2) of section 28S there is substituted—

“(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 section 28T or 28UA(5) in relation to the disabled person.”.

(3) Subsection (4) of section 28S shall be omitted.

(4) For subsections (5) to (9) of section 28S there are substituted—

“(5) Treatment, other than the application of a competence standard, is (subject to subsections (7) to (9)), justified for the purposes of subsection (1)(b) if, but only if, the reason for it is both material to the circumstances of the particular case and substantial.

(a) 2006 c.3.

(6) The application by a responsible body of a competence standard to a disabled person is (subject to subsections (8) and (9)) justified for the purposes of subsection (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 subsection (1), other than a case where the treatment is the application of a competence standard, a responsible body is under a duty under section 28T or 28UA(5) in relation to the disabled person, but fails to comply with that duty, its treatment of that person cannot be justified under subsection (5) unless that treatment would have been justified even if it had complied with that duty.

(8) Subject to subsection (9), regulations may make provision, for purposes of this section, 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 subsection (5), (6) or (8) if it amounts to direct discrimination falling within subsection (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 section and section 28T, "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."

7. The following section is inserted after section 28S (and before section 28T)—

"28SA. Meaning of "harassment"

(1) For the purposes of this Chapter, a responsible body subjects a disabled person to harassment where, for a reason which relates to the disabled person's disability, that body engages in unwanted conduct which has the purpose or effect of—

- (a) violating the disabled person's dignity, or
- (b) creating an intimidating, hostile, degrading, humiliating or offensive environment for him.

(2) Conduct shall be regarded as having the effect referred to in subsection (1) (a) or (b) only if, having regard to all the circumstances, including in particular the perception of the disabled person, it should reasonably be considered as having that effect."

Duty to make reasonable adjustments

8. The following heading is substituted for that of section 28T and the following subsections are substituted for subsection (1) of that section—

"28T. Responsible bodies' duties to make adjustments

(1) Where—

- (a) a provision, criterion or practice, other than a competence standard, is applied by or on behalf of a responsible body,
- (b) it is a provision, criterion or practice relating to—
 - (i) the arrangements it makes for determining admissions to the institution, or
 - (ii) student services provided for, or offered to, students by the responsible body,and

- (c) that provision, criterion or practice places disabled persons at a substantial disadvantage in comparison with persons who are not disabled,

it is the duty of the responsible body to take such steps as it is reasonable, in all the circumstances of the case, for it to have to take in order to prevent the provision, criterion or practice having that effect.

(1A) Where—

- (a) a provision, criterion or practice, other than a competence standard, is applied by or on behalf of a responsible body,
- (b) it is a provision, criterion or practice for determining on whom a qualification is to be conferred,
- (c) a disabled person is, or has notified the body that he may be, an applicant for the conferment of that qualification, and
- (d) the provision, criterion or practice places the disabled person at a substantial disadvantage in comparison with persons who are not disabled,

it is the duty of the responsible body to take such steps as it is reasonable, in all the circumstances of the case, for it to have to take in order to prevent the provision, criterion or practice having that effect.

(1B) Where—

- (a) a provision, criterion or practice, other than a competence standard, is applied by or on behalf of a responsible body,
- (b) it is a provision, criterion or practice other than one mentioned in subsection (1)(b) or (1A)(b), and
- (c) it places a disabled person who—
 - (i) holds a qualification conferred by the responsible body, or
 - (ii) applies for a qualification which the responsible body confers,at a substantial disadvantage in comparison with persons who are not disabled,

it is the duty of the responsible body to take such steps as it is reasonable, in all the circumstances of the case, for it to have to take in order to prevent the provision, criterion or practice having that effect.

(1C) Where any physical feature of premises occupied by a responsible body places disabled persons at a substantial disadvantage in comparison with persons who are not disabled in relation to—

- (a) the arrangements which that body makes for determining admissions to the institution, or
- (b) student services provided for, or offered to, students by that body,

it is the duty of the body to take such steps as it is reasonable, in all the circumstances of the case, for it to have to take in order to prevent the feature having that effect.

(1D) Where any physical feature of premises occupied by a responsible body places a disabled person who—

- (a) applies for a qualification which that body confers, or
- (b) holds a qualification which was conferred by that body,

at a substantial disadvantage in comparison with persons who are not disabled, it is the duty of the body to take such steps as it is reasonable, in all the circumstances of the case, for it to have to take in order to prevent the feature having that effect.”.

9. In sections 28T(2) and (4), for “subsection (1)” there is substituted “any of subsections (1) to (1D)”.

Substitution of new section 28U

10. The following section is substituted for section 28U (Further education etc provided by local education authorities and schools)—

“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 higher and further education secured by a local education authority.

(2) Part 1A of that Schedule modifies this Chapter for the purpose of its application in relation to recreational or training facilities secured by a local education authority and further education provided by the governing body of a maintained school.

(3) Part 2 of that Schedule modifies this Chapter for the purpose of its application in relation to further education, within the meaning of section 1(5)(b)(iii) of the Education (Scotland) Act 1980.

(4) Part 2A of that Schedule modifies this Chapter for the purpose of its application in relation to facilities whose provision is secured by an education authority under section 1(3) of the Education (Scotland) Act 1980.”.

Other unlawful acts

11. The following heading is inserted after section 28U—

“Other unlawful acts”.

12. The following section is inserted after section 28U—

“28UA. Relationships which have come to an end—

(1) This section applies where—

- (a) there has been a relevant relationship between a disabled person and a responsible body, and
- (b) that relationship has come to an end.

(2) In this section a “relevant relationship” is a relationship during the course of which an act of discrimination against, or harassment of, one party to the relationship by the other party to it is unlawful under any preceding provision of this Chapter.

(3) It is unlawful for the responsible body—

- (a) to discriminate against the disabled person by subjecting him to a detriment, or
- (b) to subject the disabled person to harassment,

where the discrimination or harassment arises out of and is closely connected to the relevant relationship.

(4) This subsection applies where—

- (a) a provision, criterion or practice applied by the responsible body to the disabled person in relation to any matter arising out of the relevant relationship, or
- (b) a physical feature of premises which are occupied by the responsible body,

places the disabled person at a substantial disadvantage in comparison with persons who are not disabled but are in the same position as the disabled person in relation to the responsible body.

(5) Where subsection (4) applies, it is the duty of the responsible body to take such steps as it is reasonable, in all the circumstances of the case, for him to have to take in order to prevent the provision, criterion or practice, or feature, having that effect.

(6) Subsection (5) 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.

(7) Nothing in subsection (5) imposes any duty on the responsible body if it does not know and could not reasonably be expected to know, that the person has a disability and is likely to be affected in the way mentioned in that subsection.

(8) In subsection (2), reference to an act of discrimination or harassment which is unlawful includes, in the case of a relationship which has come to an end before the commencement of this section, reference to such an act which would, after the commencement of this section, be unlawful.”.

13. The following section is inserted after new section 28UA—

“28UB. Instructions and pressure to discriminate

(1) It is unlawful for a responsible body to instruct another person to do any act which is unlawful under this Chapter or to procure or attempt to procure the doing of any such unlawful act by that other person.

(2) It is also unlawful for a responsible body to induce, or attempt to induce, another person to do any act which is unlawful under this Chapter by—

- (a) providing or offering to provide that person with any benefit, or
- (b) subjecting or threatening to subject that person to any detriment.

(3) An attempted inducement is not prevented from falling within subsection (2) because it is not made directly to the person in question, if it is made in such a way that he is likely to hear of it.

(4) Proceedings in respect of a contravention of subsection (1) may be brought only—

- (a) by the Commission for Equality and Human Rights, and
- (b) in accordance with section 25 of the Equality Act 2006.”.

14. The following section is inserted after new section 28UB—

“28UC. Discriminatory advertisements

(1) It is unlawful for a responsible body to publish or cause to be published an advertisement which—

- (a) invites applications in relation to any course or student service provided or offered by it, or any qualification conferred by it, and
- (b) indicates, or might reasonably be understood to indicate, that such an application will or may be determined to any extent by reference to—
 - (i) the applicant not having any disability, or any particular disability, or
 - (ii) any reluctance on the part of the person determining the application to comply with a duty imposed on it by section 28T.

(2) Subsection (1) does not apply where it would not in fact be unlawful under this Chapter for an application to be determined in the manner indicated (or understood to be indicated) in the advertisement.

(3) In this section, “advertisement” includes every form of advertisement or notice, whether to the public or not.

(4) Proceedings in respect of a contravention of subsection (1) may be brought only—

- (a) by the Commission for Equality and Human Rights, and
- (b) in accordance with section 25 of the Equality Act 2006.”.

Enforcement, remedies and procedure

15.—(1) Section 28V (enforcement, remedies and procedure) is amended as follows.

(2) In subsection (1)—

- (a) in paragraph (a), after “him” there is inserted “, or subjected him to harassment,”, and

(b) in paragraphs (b) and (c), for “discriminated against him in such a way” there is substituted “done so”.

(3) After subsection (1) there is inserted—

“(1A) Where—

(a) a claim is brought under subsection (1), and

(b) the claimant (or pursuer, in Scotland) proves facts from which the court could, apart from this subsection, conclude in the absence of an adequate explanation that the defendant (or defender, in Scotland) has acted in a way which is unlawful under this Chapter,

the court shall uphold the claim unless the defendant (or defender, in Scotland) proves that he did not so act.”.

Occupation of premises

16. In section 28W(1)(c) (occupation of premises by educational institutions), after “section 28T” insert “or section 28UA(5)”.

Interpretation provisions

17. In section 31A(1), for “(4)” there is substituted “(10)” and the following are inserted after subsection (4)—

“(5) ”Provision, criterion or practice” includes any arrangements.

(6) ”Qualification” means any authorisation, qualification, approval or certification conferred by a responsible body.

(7) “Discriminate, “discrimination” and other related expressions are to be construed in accordance with section 28S.

(8) “Harassment” is to be construed in accordance with section 28SA.

(9) References (however expressed) to the conferment of a qualification on a person by a responsible body include—

(i) the renewal or extension of a qualification, and

(ii) the authentication of a qualification awarded to him by another person.

(10) ”Physical feature”, in relation to any premises, includes any of the following (whether permanent or temporary)—

(a) any feature arising from the design or construction of a building on the premises,

(b) any feature on the premises of any approach to, exit from or access to such a building,

(c) any fixtures, fittings, furnishings, furniture, equipment or material in or on the premises, and

(d) any other physical element or quality of any land comprised in the premises.”.

PART 3

AMENDMENT OF SCHEDULE 2

18.—(1) Schedule 2 (past disabilities) is amended as follows.

(2) For paragraph 4C substitute—

“**4C.** In section 28S

(a) in subsection (3)(a), after “disabled” insert “or that he had had a disability”,

(b) in subsection (6)(a), after “who do not have” insert “and have not had”, and

- (c) in subsection (10), for “that particular disability” substitute “and who has not had that particular disability and”.
- (3) In paragraph 4D, for “subsection (1)” substitute “subsections (1), (1A), (1B) (1C) and (1D)”.
- (4) In paragraph 4E—
 - (a) for “that subsection” substitute “subsection (1) of that section”, and
 - (b) for “and 6” substitute “9, 14 and 21”.

PART 4

AMENDMENT OF SCHEDULE 3

- 19.—(1) Schedule 3 (enforcement and procedure) is amended as follows.
- (2) In paragraph 12(1)—
 - (a) for “section 28V” there is substituted “Chapter 2 of Part 4”, and
 - (b) for “Chapter 2 of Part 4” there is substituted “that Chapter”.
- (3) In paragraph 13(4)(a) omit the words “of discrimination”.

PART 5

AMENDMENT OF SCHEDULE 4

- 20. In paragraph 10 of Schedule 4 (premises occupied under leases), after “section 28T” insert “or section 28UA(5)”.

PART 6

SUBSTITUTION OF NEW SCHEDULE 4C

- 21. The following Schedule is substituted for Schedule 4C (modifications of Chapter 2 of Part 4)—

“Part 1

Modifications for England and Wales – Further Education, etc Provided by Local Education Authorities

- 1. The following is substituted for section 28R—

“28R Higher and further education secured by local education authorities

- (1) Subsections (2) to (4) apply in relation to—
 - (a) any course of higher education secured by a local education authority under section 120 of the Education Reform Act 1988, and
 - (b) any course of further education secured by a local education authority.
- (2) It is unlawful for the local education authority to discriminate against a disabled person—
 - (a) in the arrangements they make for determining who should be enrolled on the course;
 - (b) in the terms on which they offer to enrol him on the course; or

- (c) by refusing or deliberately omitting to accept an application for his enrolment on the course.
- (3) It is unlawful for the local education authority to discriminate against a disabled person who has enrolled on the course in the services which they provide or offer to provide.
- (4) It is unlawful for the local education authority to subject to harassment a disabled person who—
 - (a) seeks enrolment on the course,
 - (b) is enrolled on the course, or
 - (c) is a user of any services provided by that authority in relation to the course .
- (5) "Services", in relation to a course, means services of any description which are provided wholly or mainly for persons enrolled on the course.
- (6) In relation to further education secured by a local education authority—
 - (a) "course" includes each of the component parts of a course of further education if, in relation to the course, there is no requirement imposed on persons registered for any component part of the course to register for any other component part of that course; and
 - (b) "enrolment", in relation to such a course, includes registration for any one of those parts.
- (7) In this Chapter—
 - "responsible body" means a local education authority in relation to a course of further or higher education secured by them;
 - "further education" in relation to a course secured by the local education authority, has the meaning given in section 2(3) of the Education Act 1996;
 - "higher education" has the meaning given in section 579(1) of the Education Act 1996; and
 - "local education authority" has the meaning given in section 12 of the Education Act 1996."

2. Subsections (1A) to (1D) of section 28T (responsible bodies' duties to make adjustments) are omitted and the following subsection is substituted for subsection (1) of that section —

"(1) Each responsible body must take such steps as it is reasonable for it to have to take to ensure that—

- (a) in relation to its arrangements for enrolling persons on a course of further and higher education provided by it, and
 - (b) in relation to services provided or offered by it,
- disabled persons are not placed at a substantial disadvantage in comparison with persons who are not disabled."

3. In subsections (2) and (4) of section 28T, for "any of subsections (1) to (1D)" there is substituted "subsection (1)".

4. In section 28W(1)(a) for "by an educational institution" there is substituted "by a responsible body wholly or partly for the purpose of its functions".

5. Section 31A is omitted.

Part 1A

Modifications for England and Wales – Further Education Provided by Schools, etc

6. The following is substituted for section 28R—

“28R Further education provided by schools and recreational or training facilities provided by local education authorities

(1) Subsections (2) and (3) apply in relation to any course of further education provided by the governing body of a maintained school under section 80 of the School Standards and Framework Act 1998.

(2) It is unlawful for the governing body to discriminate against a disabled person—

- (a) in the arrangements they make for determining who should be enrolled on the course;
- (b) in the terms on which they offer to enrol him on the course; or
- (c) by refusing or deliberately omitting to accept an application for his enrolment on the course.

(3) It is unlawful for the governing body to discriminate against a disabled person who has enrolled on the course in the services which they provide or offer to provide.

(4) “Services”, in relation to a course, means services of any description which are provided wholly or mainly for persons enrolled on the course.

(5) It is unlawful for a local education authority to discriminate against a disabled person in the terms on which they provide or offer to provide recreational or training facilities.

(6) In this Chapter—

“Responsible body” means—

- (a) the governing body of a maintained school, in relation to a course of further education provided under section 80 of the School Standards and Framework Act 1998, and
- (b) a local education authority in relation to recreational or training facilities;

“Further education”, in relation to a course provided under section 80 of the School Standards and Framework Act 1998, means education of a kind mentioned in subsection (1) of that section;

“Local education authority” has the meaning given in section 12 of the Education Act 1996;

“Governing Body” and “maintained school” have the same meaning as in Chapter 1;

“Recreational or training facilities” means any facilities secured by a local education authority under subsection (1), or provided by it under subsection (1A), of section 508 of the Education Act 1996 (recreation and social and physical training).”.

7. In section 28S (meaning of “discrimination”), the following subsection is substituted for subsection (2) —

“(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.”.

8. In section 28S, the following subsections are substituted for subsections (5) to (11) –
- “(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 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.”.
9. Subsections (1A) to (1D) of section 28T (responsible bodies’ duties to make adjustments) are omitted and the following subsection is substituted for subsection (1) of that section—
- “(1) Each responsible body must take such steps as it is reasonable for it to have to take to ensure that—
- (a) in relation to its arrangements for enrolling persons on a course of further education provided by it, and
 - (b) in relation to services provided or offered by it,
- disabled persons are not placed at a substantial disadvantage in comparison with persons who are not disabled.”.
10. In subsections (2) and (4) of section 28T, for “any of subsections (1) to (1D)” there is substituted “subsection (1).
11. In section 28W(1)(a) for “by an educational institution” there is substituted “by a responsible body wholly or partly for the purpose of its functions”.
12. Sections 28SA, 28UA, 28UB, 28UC, 28V(1A) and 31A are omitted.

Part 2

Modifications for Scotland – Further Education

13. The following is substituted for section 28R—

“28R. Further education etc provided by education authorities in Scotland

(1) Subsections (2) and (3) apply to any course of further education secured by an education authority.

(2) It is unlawful for the education authority to discriminate against a disabled person—

- (a) in the arrangements they make for determining who should be enrolled on the course;
- (b) in the terms on which they offer to enrol him on the course; or
- (c) by refusing or deliberately omitting to accept an application for his enrolment on the course.

(3) It is unlawful for the education authority to discriminate against a disabled person who has enrolled on the course in the services which they provide or offer to provide.

(4) It is unlawful for the education authority to subject to harassment a disabled person who—

- (a) seeks enrolment on a course offered by that authority,
- (b) is enrolled on a course offered by that authority, or
- (c) is a user of services provided by that authority.

(5) "Services", in relation to a course, means services of any description which are provided wholly or mainly for persons enrolled on the course.

(6) In this Chapter —

"Responsible body" means an education authority;

"Further education" has the meaning given in section 1(5) of the Education (Scotland) Act 1980;

"Education authority" has the meaning given in section 135(1) of that Act."

14. Subsections (1A) to (1D) of section 28T are omitted and the following subsection is substituted for subsection (1) of that section—

"(1) Each responsible body must take such steps as it is reasonable for it to have to take to ensure that—

- (a) in relation to its arrangements for enrolling persons on a course of further education provided by it, and
- (b) in relation to services provided or offered by it,

disabled persons are not placed at a substantial disadvantage in comparison with persons who are not disabled."

15. In subsections (2) and (4) of section 28T, for "any of subsections (1) to (1D)" there is substituted "subsection (1)".

16. In section 28W(1)(a) for "by an educational institution" there is substituted "by a responsible body wholly or partly for the purpose of its functions".

17. Section 31A is omitted.

Part 2A

Modifications for Scotland – Recreational or Training Facilities

18. The following is substituted for section 28R—

"28R. Recreational or training facilities provided by education authorities

(1) It is unlawful for an education authority to discriminate against a disabled person in the terms on which they provide, or offer to provide, recreational or training facilities.

(2) In this Chapter —

“Responsible body” means an education authority;

“Education authority” has the meaning given in section 135(1) of the Education (Scotland) Act 1980.”.

19. In section 28S (Meaning of “discrimination”), the following subsection is substituted for subsection (2)—

“(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.”.

20. In section 28S (Meaning of “discrimination”), the following subsections are substituted for subsections (5) to (11)—

“(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 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.”.

21. Subsections (1A) to (1D) of section 28T are omitted and the following subsection is substituted for subsection (1) of that section—

“(1) Each responsible body must take such steps as it is reasonable for it to have to take to ensure that, in relation to services provided or offered by it for any recreational or training facilities, disabled persons are not placed at a substantial disadvantage in comparison with persons who are not disabled.”.

22. In subsections (2) and (4) of section 28T, for “any of subsections (1) to (1D)” there is substituted “subsection (1)”.

23. In section 28W(1)(a) for “by an educational institution” there is substituted “by a responsible body wholly or partly for the purpose of its functions”.

24. Sections 28SA, 28UA, 28UB, 28UC, 28V(1A) and 31A are omitted.”.

PART 7

Amendments to the Equality Act 2006

22. In section 25(1) of the Equality Act 2006 (application to restrain unlawful advertising, pressure, &c.), immediately before “and” at the end of paragraph (c) insert—

“(ca) sections 28UB and 28UC of that Act (advertising; and instructions or pressure to discriminate).”.

PART 8

Transitory Provisions

23.—(1) This regulation applies if section 25 of the Equality Act 2006 does not come into force on or before 1st September 2006.

(2) Until that section comes into force, the 1995 Act is to have effect—

- (a) with the omission of section 28UB(4) (as inserted by regulation 13) and section 28UC(4) (as inserted by regulation 14), and
- (b) as if after section 28V there were inserted—

“28VA. Enforcement of section 28UB and 28UC

(1) This section applies to an act which is unlawful under section 28UB or 28UC.

(2) Legal proceedings in relation to an act to which this section applies may only be brought by the Commission in accordance with this section.

(3) Where the Commission thinks that a person has done an act to which this section applies the Commission may apply to a county court (in England and Wales) or the sheriff (in Scotland).

(4) On an application under subsection (3) in respect of an alleged act to which this section applies, the court or sheriff shall determine whether the allegation is correct.

(5) The Commission may apply to a county court (in England and Wales) for an injunction restraining a person from doing an act to which this section applies where —

- (a) either —
 - (i) a court has determined under subsection (4) that the person has done an act to which this section applies, or
 - (ii) the Commission thinks that the person has done an act to which this section applies, and
- (b) the Commission thinks that if unrestrained the person is likely to do another act to which this section applies.

(6) The Commission may apply to the sheriff (in Scotland) for an interdict prohibiting a person from doing an act to which this section applies where —

- (a) either —
 - (i) the sheriff has determined under subsection (4) that the person has done an act to which this section applies, or
 - (ii) the Commission thinks that the person has done an act to which this section applies, and

- (b) the Commission thinks that without an interdict the person is likely to do another act to which this section applies.
- (7) Subsection (1) does not apply to an act which constitutes an offence.
- (8) In this section “the Commission” means the Disability Rights Commission.

28VB. Enforcement of sections 28UB and 28UC: supplemental matters

- (1) An application under section 28VA(3) may be presented or made only—
 - (a) within the period of six months beginning with the date (or last date) on which the alleged unlawful act occurred, or
 - (b) with the permission of the court or sheriff.
- (2) A determination under section 28VA(4) shall not be relied upon by a county court or sheriff in proceedings under section 28VA(5) or (6) while an appeal against the determination—
 - (a) is pending, or
 - (b) may be brought (disregarding the possibility of an appeal out of time with permission).
- (3) An application under section 28VA(5) or (6) may be made only—
 - (a) within the period of five years beginning with the date (or last date) on which the unlawful act referred to in that subsection occurred, or
 - (b) with the permission of the court or sheriff.”.

29th June 2006

Andrew Adonis
Parliamentary Under Secretary of State
Department for Education and Skills

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement (in Great Britain) the provisions of Council Directive 2000/78/EC (OJ No. L 303, 2.12.2000, p.16), establishing a general framework for equal treatment in employment and occupation (“the Directive”), so far as it relates to disability discrimination but only insofar as the Directive’s obligations impact upon Chapter 2 of Part 4 of the Disability Discrimination Act 1995 (c.50) (“the Act”). The Disability Discrimination Act 1995 (Amendment) Regulations 2003 (S.I. 2003/1673), which came into force on 1st October 2004, implemented the Directive’s obligations with respect to Parts 2 and 3 of the Act.

New section 28R(3A) of the Act prohibits discrimination as regards the conferment of qualifications by educational institutions or the arrangements made for the purpose of conferring such qualifications. (*Regulation 5*).

The institutions made subject to duties under Chapter 2 of Part 4 of the Act must be determined by reference to Schedule 4B and 4C of that Act.

New sections 28R(3B) and 28SA prohibit harassment by relevant institutions and define what harassment means. (*Regulation 5 and 7*).

New section 28S(2) imposes a duty to make reasonable adjustments. The extent and meaning of that duty is set out in new sections 28T(1) to (1D). (*Regulation 6 and 8*).

New sections 28S(5) to (11) amend the definition of “discrimination” and set out the ambit of the justification defence for an act which constitutes discrimination. (*Regulation 6*).

New sections 28S(9) and (10) prohibit direct discrimination and define what that term means.

New section 28UA prohibits discrimination and harassment and imposes duties to make reasonable adjustments in relationships which have come to an end, and new section 28UB prohibits instructions and pressure to discriminate. (*Regulations 12 & 13*).

New section 28UC prohibits publishing discriminatory advertisements (*Regulation 14*).

Enforcement of sections 28UB and 28UC will be in accordance with section 25 of the Equality Act 2006, and until that provision comes into force, new sections 28VA and 28VB set out the transitional enforcement procedure for those sections. 28UB and 28UC, until section 25 of the Equality Act 2006 comes into force (*Regulations 22 and 23*).

New section 28V(1A) makes provision for the burden of proof in proceedings brought under Chapter 2 and these Regulations also include transitional provisions concerning the burden of proof. (*Regulation 3 and 15*).

Part 6 of these Regulations substitutes a new Schedule 4C into the Act to implement the Directive's obligations with respect to further and higher education provided by local education authorities and, in Scotland, further education provided by education authorities.

These Regulations make provision for commencement on the day after they are made so far as enabling anything to be done for the purposes of preparing and bringing into force on or after 1st September 2006 a code of practice under section 53A of the 1995 Act concerning any provisions of that Act as it will have effect on or after that date by virtue of these Regulations. Otherwise, the Regulations come into force on 1st September 2006. (*Regulation 1*).

A copy of the Transposition Note in relation to the implementation of the Directive for Chapter 2 of Part 4 of the Act may be obtained from Equality and Diversity Unit, Department for Education and Skills, Caxton House, 6-12 Tothill Street, London, SW1H 9NA; and a copy has also been placed in the library of each house of Parliament.

£3.00

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Stationery Office and Queen's Printer of Acts of Parliament.

E0873 7/2006 160873T 19585