



# Special Educational Needs and Disability Act 2001

## CHAPTER 10

Explanatory Notes have been produced to assist the reader in the understanding of this Act and are available separately





# Special Educational Needs and Disability Act 2001

## CHAPTER 10

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# Special Educational Needs and Disability Act 2001

## 2001 CHAPTER 10

An Act to amend Part 4 of the Education Act 1996; to make further provision against discrimination, on grounds of disability, in schools and other educational establishments; and for connected purposes. [11th May 2001]

**B**E IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### PART 1

#### SPECIAL EDUCATIONAL NEEDS

##### *Mainstream education*

#### **1 Education in mainstream schools of children with special educational needs**

In the Education Act 1996 (“the 1996 Act”), for section 316 substitute—

##### **“316 Duty to educate children with special educational needs in mainstream schools**

- (1) This section applies to a child with special educational needs who should be educated in a school.
- (2) If no statement is maintained under section 324 for the child, he must be educated in a mainstream school.
- (3) If a statement is maintained under section 324 for the child, he must be educated in a mainstream school unless that is incompatible with—
  - (a) the wishes of his parent, or

- (b) the provision of efficient education for other children.
- (4) In this section and section 316A “mainstream school” means any school other than—
  - (a) a special school, or
  - (b) an independent school which is not—
    - (i) a city technology college,
    - (ii) a city college for the technology of the arts, or
    - (iii) a city academy.

### **316A Education otherwise than in mainstream schools**

- (1) Section 316 does not prevent a child from being educated in—
  - (a) an independent school which is not a mainstream school, or
  - (b) a school approved under section 342,
 if the cost is met otherwise than by a local education authority.
- (2) Section 316(2) does not require a child to be educated in a mainstream school during any period in which—
  - (a) he is admitted to a special school for the purposes of an assessment under section 323 of his educational needs and his admission to that school is with the agreement of—
    - (i) the local education authority,
    - (ii) the head teacher of the school or, if the school is in Wales, its governing body,
    - (iii) his parent, and
    - (iv) any person whose advice is to be sought in accordance with regulations made under paragraph 2 of Schedule 26;
  - (b) he remains admitted to a special school, in prescribed circumstances, following an assessment under section 323 at that school;
  - (c) he is admitted to a special school, following a change in his circumstances, with the agreement of—
    - (i) the local education authority,
    - (ii) the head teacher of the school or, if the school is in Wales, its governing body, and
    - (iii) his parent;
  - (d) he is admitted to a community or foundation special school which is established in a hospital.
- (3) Section 316 does not affect the operation of—
  - (a) section 348, or
  - (b) paragraph 3 of Schedule 27.
- (4) If a local education authority decide—
  - (a) to make a statement for a child under section 324, but
  - (b) not to name in the statement the school for which a parent has expressed a preference under paragraph 3 of Schedule 27,
 they shall, in making the statement, comply with section 316(3).
- (5) A local education authority may, in relation to their mainstream schools taken as a whole, rely on the exception in section 316(3)(b) only



- if they show that there are no reasonable steps that they could take to prevent the incompatibility.
- (6) An authority in relation to a particular mainstream school may rely on the exception in section 316(3)(b) only if it shows that there are no reasonable steps that it or another authority in relation to the school could take to prevent the incompatibility.
  - (7) The exception in section 316(3)(b) does not permit a governing body to fail to comply with the duty imposed by section 324(5)(b).
  - (8) An authority must have regard to guidance about section 316 and this section issued –
    - (a) for England, by the Secretary of State,
    - (b) for Wales, by the National Assembly for Wales.
  - (9) That guidance shall, in particular, relate to steps which may, or may not, be regarded as reasonable for the purposes of subsections (5) and (6).
  - (10) “Prescribed”, in relation to Wales, means prescribed in regulations made by the National Assembly for Wales.
  - (11) “Authority” –
    - (a) in relation to a maintained school, means each of the following –
      - (i) the local education authority,
      - (ii) the school’s governing body, and
    - (b) in relation to a maintained nursery school or a pupil referral unit, means the local education authority.”

*General duties of local education authorities*

**2 Advice and information for parents**

In the 1996 Act, insert the following section –

*“General duties of local education authorities*

**332A Advice and information for parents**

- (1) A local education authority must arrange for the parent of any child in their area with special educational needs to be provided with advice and information about matters relating to those needs.
- (2) In making the arrangements, the authority must have regard to any guidance given –
  - (a) for England, by the Secretary of State,
  - (b) for Wales, by the National Assembly for Wales.
- (3) The authority must take such steps as they consider appropriate for making the services provided under subsection (1) known to –
  - (a) the parents of children in their area,
  - (b) the head teachers and proprietors of schools in their area, and
  - (c) such other persons as they consider appropriate.”

### 3 Resolution of disputes

In the 1996 Act, insert the following section –

#### **“332B Resolution of disputes**

- (1) A local education authority must make arrangements with a view to avoiding or resolving disagreements between authorities (on the one hand) and parents of children in their area (on the other) about the exercise by authorities of functions under this Part.
- (2) A local education authority must also make arrangements with a view to avoiding or resolving, in each relevant school, disagreements between the parents of a relevant child and the proprietor of the school about the special educational provision made for that child.
- (3) The arrangements must provide for the appointment of independent persons with the function of facilitating the avoidance or resolution of such disagreements.
- (4) In making the arrangements, the authority must have regard to any guidance given –
  - (a) for England, by the Secretary of State,
  - (b) for Wales, by the National Assembly for Wales.
- (5) The authority must take such steps as they consider appropriate for making the arrangements made under subsections (1) and (2) known to –
  - (a) the parents of children in their area,
  - (b) the head teachers and proprietors of schools in their area, and
  - (c) such other persons as they consider appropriate.
- (6) The arrangements cannot affect the entitlement of a parent to appeal to the Tribunal.
- (7) In this section –
  - “authorities” means the governing bodies of maintained schools and the local education authority,
  - “relevant child” means a child who has special educational needs and is a registered pupil at a relevant school.
- (8) For the purposes of this section a school is a relevant school in relation to a child if it is –
  - (a) a maintained school or a maintained nursery school,
  - (b) a pupil referral unit,
  - (c) a city technology college, a city college for the technology of the arts or a city academy,
  - (d) an independent school named in the statement maintained for the child under section 324, or

- (e) a school approved under section 342.”

#### 4 Compliance with orders

In the 1996 Act, insert the following section –

##### “336A Compliance with orders

- (1) If the Tribunal makes an order, the local education authority concerned must comply with the order before the end of the prescribed period beginning with the date on which it is made.
- (2) Regulations under this section, so far as they relate to Wales, require the agreement of the National Assembly for Wales.”

#### *Appeals*

#### 5 Unopposed appeals

In the 1996 Act, insert the following section –

##### “326A Unopposed appeals

- (1) This section applies if –
  - (a) the parent of a child has appealed to the Tribunal under section 325, 328, 329 or 329A or paragraph 8(3) of Schedule 27 against a decision of a local education authority, and
  - (b) the authority notifies the Tribunal that they have determined that they will not, or will no longer, oppose the appeal.
- (2) The appeal is to be treated as having been determined in favour of the appellant.
- (3) If an appeal is treated as determined in favour of the appellant as a result of subsection (2), the Tribunal is not required to make any order.
- (4) Before the end of the prescribed period, the authority must –
  - (a) in the case of an appeal under section 325, make a statement under section 324 of the child’s educational needs,
  - (b) in the case of an appeal under section 328, 329 or 329A, make an assessment of the child’s educational needs,
  - (c) in the case of an appeal under paragraph 8(3) of Schedule 27 against a determination of the authority not to comply with the parent’s request, comply with the request.
- (5) An authority required by subsection (4)(a) to make a statement under section 324 must maintain the statement under that section.
- (6) Regulations under this section, so far as they relate to Wales, require the agreement of the National Assembly for Wales.”

**6 Maintenance of statement during appeal**

In paragraph 11 of Schedule 27 to the 1996 Act (circumstances in which a local education authority may cease to maintain a statement), after sub-paragraph (4) insert –

- “(5) A local education authority may not, under this paragraph, cease to maintain a statement if –
- (a) the parent of the child has appealed under this paragraph against the authority’s determination to cease to maintain the statement, and
  - (b) the appeal has not been determined by the Tribunal or withdrawn.”

*Identification and assessment of educational needs***7 Duty to inform parent where special educational provision made**

- (1) In the 1996 Act, insert the following section –

**“317A Duty to inform parent where special educational provision made**

- (1) This section applies if –
- (a) a child for whom no statement is maintained under section 324 is a registered pupil at –
    - (i) a community, foundation or voluntary school, or
    - (ii) a pupil referral unit,
  - (b) special educational provision is made for him at the school because it is considered that he has special educational needs, and
  - (c) his parent has not previously been informed under this section of special educational provision made for him at the school.
- (2) If the school is a pupil referral unit, the local education authority must secure that the head teacher informs the child’s parent that special educational provision is being made for him at the school because it is considered that he has special educational needs.
- (3) In any other case, the governing body must inform the child’s parent that special educational provision is being made for him there because it is considered that he has special educational needs.”
- (2) After subsection (3) of section 123 of the School Standards and Framework Act 1998 (c. 31) (provision for children with special educational needs), insert –

- “(3A) Subsection (3B) applies if –
- (a) a local education authority or other person providing relevant nursery education for a child makes special educational provision for him because it is considered that he has special educational needs;
  - (b) no statement under section 324 of the Education Act 1996 is maintained for the child; and
  - (c) his parent has not previously been informed under subsection (3B) of the special educational provision made for him.

- (3B) The local education authority or other person concerned must inform the child’s parent that special educational provision is being made for him because it is considered that he has special educational needs.”

## 8 Review or assessment of educational needs at request of responsible body

In the 1996 Act, insert the following section –

### “329A Review or assessment of educational needs at request of responsible body

- (1) This section applies if—
  - (a) a child is a registered pupil at a relevant school (whether or not he is a child in respect of whom a statement is maintained under section 324),
  - (b) the responsible body asks the local education authority to arrange for an assessment to be made in respect of him under section 323, and
  - (c) no such assessment has been made within the period of six months ending with the date on which the request is made.
- (2) If it is necessary for the authority to make an assessment or further assessment under section 323, they must comply with the request.
- (3) Before deciding whether to comply with the request, the authority must serve on the child’s parent a notice informing him—
  - (a) that they are considering whether to make an assessment of the child’s educational needs,
  - (b) of the procedure to be followed in making the assessment,
  - (c) of the name of their officer from whom further information may be obtained, and
  - (d) of the parent’s right to make representations, and submit written evidence, to them before the end of the period specified in the notice (“the specified period”).
- (4) The specified period must not be less than 29 days beginning with the date on which the notice is served.
- (5) The authority may not decide whether to comply with the request until the specified period has expired.
- (6) The authority must take into account any representations made, and any evidence submitted, to them in response to the notice.
- (7) If, as a result of this section, a local education authority decide to make an assessment under section 323, they must give written notice to the child’s parent and to the responsible body which made the request, of the decision and of their reasons for making it.
- (8) If, after serving a notice under subsection (3), the authority decide not to assess the educational needs of the child—
  - (a) they must give written notice of the decision and of their reasons for making it to his parent and to the responsible body which made the request, and
  - (b) the parent may appeal to the Tribunal against the decision.

- 
- (9) A notice given under subsection (8)(a) to the child’s parent must –
- (a) inform the parent of his right to appeal, and
  - (b) contain such other information (if any) as may be prescribed.
- (10) On an appeal under subsection (8) the Tribunal may –
- (a) dismiss it, or
  - (b) order the authority to arrange for an assessment to be made in respect of the child under section 323.
- (11) This section applies to a child for whom relevant nursery education is provided as it applies to a child who is a registered pupil at a relevant school.
- (12) “Relevant school” means –
- (a) a maintained school,
  - (b) a maintained nursery school,
  - (c) a pupil referral unit,
  - (d) an independent school,
  - (e) a school approved under section 342.
- (13) “The responsible body” means –
- (a) in relation to a maintained nursery school or a pupil referral unit, the head teacher,
  - (b) in relation to any other relevant school, the proprietor or head teacher, and
  - (c) in relation to a provider of relevant nursery education, the person or body of persons responsible for the management of the provision of that nursery education.
- (14) “Relevant nursery education” has the same meaning as in section 123 of the School Standards and Framework Act 1998, except that it does not include nursery education provided by a local education authority at a maintained nursery school.
- (15) “Prescribed”, in relation to Wales, means prescribed in regulations made by the National Assembly for Wales.”

## **9 Duty to specify named school**

In section 324 of the 1996 Act (statement of special educational needs), after subsection (4) insert –

- “(4A) Subsection (4)(b) does not require the name of a school or institution to be specified if the child’s parent has made suitable arrangements for the special educational provision specified in the statement to be made for the child.”

*Amendment of statement of special educational needs*

## **10 Amendment of statement of special educational needs**

Schedule 1 makes further provision concerning the rights of parents and others where a statement of special educational needs is amended.

## 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;
  - (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;
  - (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.
- (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 –
  - (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.
- (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.
- (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.”



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**PART 3**

SUPPLEMENTARY

**41 Expenses of Secretary of State**

There shall be paid out of money provided by Parliament any increase attributable to this Act in the sums so payable under any other enactment.

**42 Minor amendments and repeals**

- (1) Schedule 8 makes minor and consequential amendments.
- (2) Unless made with the agreement of the National Assembly for Wales, regulations made under the power to make regulations conferred as a result of paragraph 13(3) and (5) of that Schedule do not apply to Wales.
- (3) If, as a result of any other amendment made by Part 1 of that Schedule, a power to make regulations is conferred, that power is exercisable so far as it relates to Wales by the National Assembly for Wales.
- (4) But each of the powers conferred as a result of subsection (3) –
  - (a) is to be treated as if it had been transferred to the National Assembly for Wales by an Order in Council under section 22 of the Government of Wales Act 1998 (c. 38); and
  - (b) that transfer may be revoked by an Order in Council under that section.
- (5) For the purposes of section 22 of the Government of Wales Act 1998, an Order in Council made as a result of subsection (4)(b) is to be treated as if it were revoking a previous Order in Council.
- (6) The repeals set out in Schedule 9 have effect.

**43 Short title, interpretation, commencement and extent**

- (1) This Act may be cited as the Special Educational Needs and Disability Act 2001.
- (2) In this Act –
  - “the 1995 Act” means the Disability Discrimination Act 1995 (c. 50); and
  - “the 1996 Act” means the Education Act 1996 (c. 56).
- (3) Except as provided in subsections (4) and (6), this Act (apart from this section) comes into force on such day as the Secretary of State may appoint by order.
- (4) The following provisions of this Act come into force on the day on which it is passed –
  - (a) section 4,
  - (b) section 5,
  - (c) section 9,
  - (d) section 42(2) to (4), and
  - (e) paragraphs 6 to 10, 13(1) to (4) and 14(3) of Schedule 8 (and section 42(1) so far as relating to those provisions),but only so far as is necessary for enabling the making of any regulations for which they provide.

- 
- (5) Nothing in subsection (4) affects the operation of section 13 of the Interpretation Act 1978 (c. 30) in relation to this Act.
  - (6) The following provisions come into force as respects Wales on such day as the National Assembly for Wales may appoint by order –
    - (a) sections 1 to 3;
    - (b) sections 7 and 8;
    - (c) section 9 (so far as not brought into force by subsection (4));
    - (d) sections 14 and 15;
    - (e) section 22, so far as it gives the National Assembly for Wales power to give directions under section 28M(1) or (3) of the 1995 Act or makes provision in relation to such a direction;
    - (f) subsections (1) and (6) of section 42 (but only in so far as they relate to the provisions mentioned in paragraphs (g) to (i));
    - (g) in Part 1 of Schedule 8 –
      - (i) paragraphs 1, 5, 11 and 12; and
      - (ii) paragraphs 6 to 10 and 14 (so far as not brought into force by subsection (4));
    - (h) in Part 2 of that Schedule, paragraphs 16 to 18; and
    - (i) in Schedule 9, the entries relating to –
      - (i) the Disabled Persons (Services, Consultation and Representation) Act 1986 (c. 33); and
      - (ii) section 325(1) of, and Schedule 27 to, the 1996 Act.
  - (7) Different days may be appointed for different provisions and for different purposes.
  - (8) An order under this section –
    - (a) must be made by statutory instrument; and
    - (b) may contain incidental, supplemental, consequential or transitional provisions and savings.
  - (9) Subsection (10) applies to an order bringing any provision made by –
    - (a) section 28, or
    - (b) paragraph 2 or 6 of Schedule 5,into force.
  - (10) The order may, in particular, include provision for the duty imposed by section 28T(1) of the 1995 Act to have effect with such modifications as may be specified in the order for a period which ends –
    - (a) on a date so specified; or
    - (b) on the making by the Secretary of State of an order made by statutory instrument bringing the period to an end.
  - (11) Amendments made by this Act to the 1996 Act have the same extent as that Act.
  - (12) Parts 2 and 3 do not extend to Northern Ireland.
  - (13) Nothing in this Act shall impose any charge on the people or on public funds, or vary the amount or incidence of or otherwise alter any such charge in any manner, or affect the assessment, levying, administration or application of any money raised by any such charge.

## SCHEDULES

### SCHEDULE 1

Section 10.

#### AMENDMENT TO STATEMENT OF SPECIAL EDUCATIONAL NEEDS

##### PART 1

#### PROCEDURE FOR MAKING AMENDMENT TO STATEMENT OF SPECIAL EDUCATIONAL NEEDS

- 1 Schedule 27 to the 1996 Act (making and maintenance of statement of special educational needs) is amended as follows.
- 2 For paragraph 1 substitute—
  - “1 In this Schedule—
    - “amendment notice” has the meaning given in paragraph 2A,
    - “statement” means a statement under section 324,
    - “periodic review” means a review conducted in accordance with section 328(5)(b), and
    - “re-assessment review” means a review conducted in accordance with section 328(5)(a).”
- 3 For paragraph 2 substitute—
  - “2 (1) Before making a statement, a local education authority shall serve on the parent of the child concerned a copy of the proposed statement.
  - (2) But that is subject to sub-paragraphs (3) and (4).
  - (3) The copy of the proposed statement shall not specify any prescribed matter.
  - (4) The copy of the proposed statement shall not specify any matter in pursuance of section 324(4).

#### *Amendments to a statement*

- 2A (1) A local education authority shall not amend a statement except—
  - (a) in compliance with an order of the Tribunal,
  - (b) as directed by the Secretary of State under section 442(4),  
or
  - (c) in accordance with the procedure laid down in this Schedule.
- (2) If, following a re-assessment review, a local education authority propose to amend a statement, they shall serve on the parent of the child concerned a copy of the proposed amended statement.

- (3) Sub-paragraphs (3) and (4) of paragraph 2 apply to a copy of a proposed amended statement served under sub-paragraph (2) as they apply to a copy of a proposed statement served under paragraph 2(1).
- (4) If, following a periodic review, a local education authority propose to amend a statement, they shall serve on the parent of the child concerned –
  - (a) a copy of the existing statement, and
  - (b) an amendment notice.
- (5) If, at any other time, a local education authority propose to amend a statement, they shall proceed as if the proposed amendment were an amendment proposed after a periodic review.
- (6) An amendment notice is a notice in writing giving details of the amendments to the statement proposed by the authority.

*Provision of additional information*

- 2B (1) Sub-paragraph (2) applies when a local education authority serve on a parent –
    - (a) a copy of a proposed statement under paragraph 2,
    - (b) a copy of a proposed amended statement under paragraph 2A, or
    - (c) an amendment notice under paragraph 2A.
  - (2) The local education authority shall also serve on the parent a written notice explaining (to the extent that they are applicable) –
    - (a) the arrangements under paragraph 3,
    - (b) the effect of paragraph 4, and
    - (c) the right to appeal under section 326.
  - (3) A notice under sub-paragraph (2) must contain such other information as may be prescribed.”
- 4 In paragraph 3, in sub-paragraph (1), for the words from “a parent” to “paragraph 2” substitute “a parent –
- (a) on whom a copy of a proposed statement has been served under paragraph 2,
  - (b) on whom a copy of a proposed amended statement has been served under paragraph 2A, or
  - (c) on whom an amendment notice has been served under paragraph 2A which contains a proposed amendment about –
    - (i) the type or name of a school or institution, or
    - (ii) the provision made for the child concerned under arrangements made under section 319,
 to be specified in the statement.”
- 5 In that paragraph, in sub-paragraph (2), for “paragraph 2(b)” substitute “paragraph 2B”.
- 6 In that paragraph omit sub-paragraph (4).
- 7 After that paragraph, insert –

*“Consultation on specifying name of school in statement*

- 3A (1) Sub-paragraph (2) applies if a local education authority are considering –
- (a) specifying the name of a maintained school in a statement, or
  - (b) amending a statement –
    - (i) if no school was specified in the statement before the amendment, so that a maintained school will be specified in it,
    - (ii) if a school was specified in the statement before the amendment, so that a different school, which is a maintained school, will be specified in it.
- (2) The local education authority shall –
- (a) serve a copy of the proposed statement or amended statement, or of the existing statement and of the amendment notice, on each affected body, and
  - (b) consult each affected body.
- (3) “Affected body” means –
- (a) the governing body of any school which the local education authority are considering specifying; and
  - (b) if a school which the local education authority are considering specifying is maintained by another local education authority, that authority.”
- 8 In paragraph 4, in sub-paragraph (1) –
- (a) after “paragraph 2” insert “, or on whom a proposed amended statement or an amendment notice has been served under paragraph 2A,”;
  - (b) in paragraphs (a) and (b), for “statement” substitute “proposed statement or the statement as it will have effect if amended in the way proposed by the authority”.
- 9 In that paragraph, in sub-paragraph (2), after “sub-paragraph (1)(b)” insert “in relation to –
- (c) a proposed statement, or
  - (d) an amendment proposed following a re-assessment review,”.
- 10 In that paragraph, in sub-paragraphs (4)(a) and (5), for “paragraph 2(b)” substitute “paragraph 2B”.
- 11 In paragraph 5, in sub-paragraph (1), after “make” insert “or amend”.
- 12 In that paragraph, in sub-paragraph (2), for “The statement” substitute “If a local education authority make a statement, it”.
- 13 After that sub-paragraph insert –
- “(2A) If a local education authority amend a statement following service of a proposed amended statement under paragraph 2A, the amended statement made may be in the form proposed or in a form modified in the light of the representations.
  - (2B) If a local education authority amend a statement following service of an amendment notice, the amendments may be those proposed

in the notice or amendments modified in the light of the representations.”

- 14 For paragraph 6, substitute –
- “6 (1) Where a local education authority make or amend a statement they shall serve a copy of the statement, or the amended statement, on the parent of the child concerned.
- (2) They shall, at the same time, give the parent written notice of his right to appeal under section 326(1) against –
- (a) the description in the statement of the authority’s assessment of the child’s special educational needs,
- (b) the special educational provision specified in the statement (including the name of a school specified in the statement), or
- (c) if no school is named in the statement, that fact.
- (3) A notice under sub-paragraph (2) must contain such other information as may be prescribed.”
- 15 In paragraph 8(1)(b) –
- (e) in sub-paragraph (ii), after “statement” insert “or amended statement”; and
- (f) omit sub-paragraph (iii).
- 16 In paragraph 9 –
- (g) in sub-paragraph (1), omit “amend or” and “10 or”; and
- (h) in sub-paragraph (2) –
- (i) after paragraph (a), insert “or”,
- (ii) omit paragraph (b), the word “or” after paragraph (c) and paragraph (d).
- 17 Omit paragraph 10.

## PART 2

### APPEALS AGAINST AMENDMENTS TO STATEMENT OF SPECIAL EDUCATIONAL NEEDS

- 18 Section 326 of the 1996 Act is amended as follows.
- 19 For subsection (1) substitute –
- “(1) The parent of a child for whom a local education authority maintain a statement under section 324 may appeal to the Tribunal –
- (a) when the statement is first made,
- (b) if an amendment is made to the statement, or
- (c) if, after conducting an assessment under section 323, the local education authority determine not to amend the statement.
- (1A) An appeal under this section may be against any of the following –
- (a) the description in the statement of the local education authority’s assessment of the child’s special educational needs,
- (b) the special educational provision specified in the statement (including the name of a school so specified),
- (c) if no school is specified in the statement, that fact.”

20 In subsection (2), for “paragraph 10” substitute “paragraph 2A”.

SCHEDULE 2

Section 11(2).

RESPONSIBLE BODIES FOR SCHOOLS

The following is the Schedule inserted into the 1995 Act.

“SCHEDULE 4A

Section 28A.

RESPONSIBLE BODIES FOR SCHOOLS

- 1 (1) The bodies responsible for schools in England and Wales are set out in the following table.
- (2) In that Table –
  - “the local education authority” has the meaning given by section 22(8) of the School Standards and Framework Act 1998; and
  - “proprietor” has the meaning given by section 579 of the Education Act 1996.

TABLE

<i>Type of school</i>	<i>Responsible body</i>
1. Maintained school.	The local education authority or governing body, according to which has the function in question.
2. Pupil referral unit.	The local education authority.
3. Maintained nursery school.	The local education authority.
4. Independent school.	The proprietor.
5. Special school not maintained by a local education authority.	The proprietor.

- 2 (1) The bodies responsible for schools in Scotland are set out in the following table.
- (2) In that Table “board of management”, “education authority”, “managers” and “proprietor” each have the meaning given in section 135(1) of the Education (Scotland) Act 1980.

TABLE

<i>Type of school</i>	<i>Responsible body</i>
1. School managed by an education authority	The education authority.
2. Independent school.	The proprietor.
3. Self-governing school.	The board of management.
4. School in respect of which the managers are for the time being receiving grants under section 73(c) or (d) of the Education (Scotland) Act 1980.	The managers of the school.”

## SCHEDULE 3

Sections 19(2) and 30(2).

## AMENDMENT OF SCHEDULE 3 TO THE 1995 ACT

- 1 The following provisions are inserted in Schedule 3 to the 1995 Act as Part 3.

## “PART 3

## DISCRIMINATION IN SCHOOLS

*Restriction on proceedings for breach of Part 4, Chapter 1*

- 9 (1) Except as provided by sections 28I, 28K and 28L, no civil or criminal proceedings may be brought against any person in respect of an act merely because the act is unlawful under Chapter 1 of Part 4.
- (2) Sub-paragraph (1) does not prevent the making of an application for judicial review.

*Period within which proceedings must be brought*

- 10 (1) The Tribunal shall not consider a claim under section 28I unless proceedings in respect of the claim are instituted before the end of the period of six months beginning when the act complained of was done.
- (2) If, in relation to proceedings or prospective proceedings under section 28I, the dispute concerned is referred for conciliation in pursuance of arrangements under section 31B before the end of the period of six months mentioned in sub-paragraph (1), the period allowed by that sub-paragraph shall be extended by two months.



- (3) The Tribunal may consider any claim under section 28I which is out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so.
- (4) But sub-paragraph (3) does not permit the Tribunal to decide to consider a claim if a decision not to consider that claim has previously been taken under that sub-paragraph.
- (5) For the purposes of sub-paragraph (1) –
  - (a) if an unlawful act of discrimination is attributable to a term in a contract, that act is to be treated as extending throughout the duration of the contract;
  - (b) any act extending over a period shall be treated as done at the end of that period; and
  - (c) a deliberate omission shall be treated as done when the person in question decided upon it.
- (6) In the absence of evidence establishing the contrary, a person shall be taken for the purposes of this paragraph to decide upon an omission –
  - (a) when he does an act inconsistent with doing the omitted act; or
  - (b) if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the omitted act if it was to be done.

#### *Evidence*

- 11 (1) In any proceedings under section 28I, 28K or 28L, a certificate signed by or on behalf of a Minister of the Crown and certifying that any conditions or requirements specified in the certificate –
    - (a) were imposed by a Minister of the Crown, and
    - (b) were in operation at a time or throughout a time so specified,shall be conclusive evidence of the matters certified.
  - (2) A document purporting to be such a certificate shall be received in evidence and, unless the contrary is proved, be deemed to be such a certificate.”
- 2 The following provisions are inserted in Schedule 3 to the 1995 Act as Part 4.

#### “PART 4

#### DISCRIMINATION IN FURTHER AND HIGHER EDUCATION INSTITUTIONS

#### *Restriction on proceedings for breach of Part 4, Chapter 2*

- 12 (1) Except as provided by section 28V, no civil or criminal proceedings may be brought against any person in respect of an act merely because the act is unlawful under Chapter 2 of Part 4.
- (2) Sub-paragraph (1) does not prevent the making of an application for judicial review.

*Period within which proceedings must be brought*

- 13 (1) A county court or a sheriff court shall not consider a claim under section 28V unless proceedings in respect of the claim are instituted before the end of the period of six months beginning when the act complained of was done.
- (2) If, in relation to proceedings or prospective proceedings under section 28V, the dispute concerned is referred for conciliation in pursuance of arrangements under section 31B before the end of the period of six months mentioned in sub-paragraph (1), the period allowed by that sub-paragraph shall be extended by two months.
- (3) A court may consider any claim under section 28V which is out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so.
- (4) For the purposes of sub-paragraph (1)–
- (a) if an unlawful act of discrimination is attributable to a term in a contract, that act is to be treated as extending throughout the duration of the contract;
  - (b) any act extending over a period shall be treated as done at the end of that period; and
  - (c) a deliberate omission shall be treated as done when the person in question decided upon it.
- (5) In the absence of evidence establishing the contrary, a person shall be taken for the purposes of this paragraph to decide upon an omission–
- (a) when he does an act inconsistent with doing the omitted act; or
  - (b) if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the omitted act if it was to be done.

*Compensation for injury to feelings*

- 14 In any proceedings under section 28V, the amount of any damages awarded as compensation for injury to feelings shall not exceed the prescribed amount.

*Evidence*

- 15 (1) In any proceedings under section 28V, a certificate signed by or on behalf of a Minister of the Crown and certifying that any conditions or requirements specified in the certificate–
- (a) were imposed by a Minister of the Crown, and
  - (b) were in operation at a time or throughout a time so specified,
- is conclusive evidence of the matters certified.
- (2) A document purporting to be such a certificate is to be –
- (a) received in evidence; and
  - (b) deemed to be such a certificate unless the contrary is proved.”

SCHEDULE 4

Section 26(2).

RESPONSIBLE BODIES FOR EDUCATIONAL INSTITUTIONS

The following is the Schedule inserted in the 1995 Act.

“SCHEDULE 4B

Section 28R

RESPONSIBLE BODIES FOR EDUCATIONAL INSTITUTIONS

- 1 (1) The bodies responsible for educational institutions in England and Wales are set out in the following table.
- (2) In that Table “governing body” has the meaning given by section 90 of the Further and Higher Education Act 1992.

TABLE

<i>Type of institution</i>	<i>Responsible body</i>
1. Institution within the further education sector.	The governing body.
2. University.	The governing body.
3. Institution, other than a university, within the higher education sector.	The governing body.
4. Institution designated under section 28R(6)(c).	The body specified in the order as the responsible body.

- 2 (1) The bodies responsible for relevant institutions in Scotland are set out in the following table.
- (2) In that Table –
  - “board of management” has the meaning given in section 36(1) of the Further and Higher Education (Scotland) Act 1992 (“the 1992 Act”);
  - “central institution”, “education authority” and “managers” have the meaning given in section 135(1) of the Education (Scotland) Act 1980; and
  - “governing body” has the meaning given in section 56(1) of the 1992 Act.

TABLE

<i>Type of institution</i>	<i>Responsible body</i>
1. Designated institution within the meaning of Part 2 of the 1992 Act.	The governing body.
2. University.	The governing body.
3. College of further education with a board of management.	The board of management.
4. Institution maintained by an education authority in the exercise of their further education functions.	The education authority.
5. Central institution.	The governing body.
6. School in respect of which the managers are for the time being receiving grants under section 73(c) or (d) of the Education (Scotland) Act 1980.	The managers of the school.
7. Institution designated under section 28R(7)(e).	The body specified in the order as the responsible body.”

## SCHEDULE 5

Section 29.

## MODIFICATIONS OF CHAPTER 2 OF PART 4 OF THE 1995 ACT

The following is the Schedule inserted in the 1995 Act.

## “SCHEDULE 4C

Section 28U.

## MODIFICATIONS OF CHAPTER 2 OF PART 4

## PART 1

## MODIFICATIONS FOR ENGLAND AND WALES

1 For section 28R, substitute –

**“28R Further education etc. provided by local education authorities and schools**

(1) Subsections (2) and (3) 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;
  - (b) any course of further education –
    - (i) secured by a local education authority; or
    - (ii) 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 local education authority or 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 local education authority or 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) a local education authority, in relation to –
    - (i) a course of further or higher education secured by them;
    - (ii) recreational or training facilities; and
  - (b) 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.
- (7) “Further education” –
- (a) in relation to a course secured by a local education authority, has the meaning given in section 2(3) of the Education Act 1996; and
  - (b) 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.
- (8) In relation to further education secured by a local education authority –
- “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
- “enrolment”, in relation to such a course, includes registration for any one of those parts.

- (9) “Higher education” has the meaning given in section 579(1) of the Education Act 1996.
  - (10) “Local education authority” has the meaning given in section 12 of the Education Act 1996.
  - (11) “Governing body” and “maintained school” have the same meaning as in Chapter 1.
  - (12) “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).”
- 2 For subsection (1) of section 28T, substitute –
- “(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 or 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 section 28W(1)(a) for “by an educational institution” substitute “by a responsible body wholly or partly for the purpose of its functions”.
- 4 Omit section 31A.

## PART 2

### MODIFICATIONS FOR SCOTLAND

- 5 For section 28R, substitute –
- “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) “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 an 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 an education authority.
  - (7) “Further education” has the meaning given in section 1(5) of the Education (Scotland) Act 1980.
  - (8) “Education authority” has the meaning given in section 135(1) of that Act.”
- 6 For subsection (1) of section 28T, substitute –
- “(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.”
- 7 In section 28W(1)(a) for “by an educational institution” substitute “by a responsible body wholly or partly for the purpose of its functions”.
- 8 Omit section 31A.”

## SCHEDULE 6

Section 31(2).

### AMENDMENT OF SCHEDULE 4 TO THE 1995 ACT

The following provisions are inserted in Schedule 4 to the 1995 Act as Part 3.

#### “PART 3

#### OCCUPATION BY EDUCATIONAL INSTITUTIONS

##### *Failure to obtain consent*

- 10 If any question arises as to whether a responsible body has failed to comply with the duty imposed by section 28T, by failing to make a particular alteration to premises, any constraint attributable to the fact that the premises are occupied by the educational institution under a lease is to be ignored unless the responsible body has applied to the lessor in writing for consent to the making of the alteration.

##### *Reference to court*

- 11 (1) If the responsible body has applied in writing to the lessor for consent to the alteration and –
- (a) that consent has been refused, or
  - (b) the lessor has made his consent subject to one or more conditions,

that body or a disabled person who has an interest in the proposed alteration to the premises being made, may refer the matter to a county court or, in Scotland, to the sheriff.

- (2) On such a reference the court must determine whether the lessor's refusal was unreasonable or (as the case may be) whether the condition is, or any of the conditions are, unreasonable.
- (3) If the court determines –
  - (a) that the lessor's refusal was unreasonable, or
  - (b) that the condition is, or any of the conditions are, unreasonable,
 it may make such declaration as it considers appropriate or an order authorising the responsible body to make the alteration specified in the order.
- (4) An order under sub-paragraph (3) may require the responsible body to comply with conditions specified in the order.

*Joining lessors in proceedings under section 28V*

- 12 (1) In proceedings on a claim under section 28V, in a case to which this Part of this Schedule applies, the claimant, the pursuer or the responsible body concerned may ask the court to direct that the lessor be joined or sisted as a party to the proceedings.
- (2) The request must be granted if it is made before the hearing of the claim begins.
- (3) The court may refuse the request if it is made after the hearing of the claim begins.
- (4) The request may not be granted if it is made after the court has determined the claim.
- (5) If a lessor has been so joined or sisted as a party to the proceedings, the court may determine –
  - (a) whether the lessor has –
    - (i) refused consent to the alteration, or
    - (ii) consented subject to one or more conditions, and
  - (b) if so, whether the refusal or any of the conditions was unreasonable.
- (6) If, under sub-paragraph (5), the court determines that the refusal or any of the conditions was unreasonable it may take one or more of the following steps –
  - (a) make such a declaration as it considers appropriate;
  - (b) make an order authorising the responsible body to make the alteration specified in the order;
  - (c) order the lessor to pay compensation to the complainant.
- (7) An order under sub-paragraph (6)(b) may require the responsible body to comply with conditions specified in the order.
- (8) If the court orders the lessor to pay compensation it may not order the responsible body to do so.



*Regulations*

- 13 Regulations may make provision as to circumstances in which –
- (a) a lessor is to be taken, for the purposes of section 28W and this Part of this Schedule to have –
    - (i) withheld his consent;
    - (ii) withheld his consent unreasonably;
    - (iii) acted reasonably in withholding his consent;
  - (b) a condition subject to which a lessor has given his consent is to be taken to be reasonable;
  - (c) a condition subject to which a lessor has given his consent is to be taken to be unreasonable.

*Sub-leases etc.*

- 14 Regulations may make provision supplementing, or modifying, section 28W or any provision made by or under this Part of this Schedule in relation to cases where the premises of the educational institution are occupied under a sub-lease or sub-tenancy.”

SCHEDULE 7

Section 35.

AMENDMENTS TO THE DISABILITY RIGHTS COMMISSION ACT 1999

- 1 The Disability Rights Commission Act 1999 is amended as follows.
- 2 In section 2 (general functions), in the definition of “discrimination” in subsection (5), for “or Part III” substitute “, Part 3 or Chapter 1 or 2 of Part 4”.
- 3 In section 4 (non-discrimination notices), in subsection (5), for “or Part III” substitute “, Part 3 or Chapter 1 or 2 of Part 4”.
- 4 In section 5 (agreements in lieu of enforcement action), in subsection (11), for “or Part III” substitute “, Part 3 or Chapter 1 or 2 of Part 4”.
- 5 In subsection (1) of section 6 (persistent discrimination), for paragraphs (b) and (c) substitute –
- “(b) a finding in proceedings under section 8, 25, 28I, 28K, 28L, 28N or 28V of the 1995 Act that a person has committed an act which is unlawful discrimination for the purposes of any provision of Part 2, Part 3 or Chapter 1 or 2 of Part 4 of that Act, or
  - (c) a finding by a court or tribunal in any other proceedings that a person has committed an unlawful act of a description prescribed under subsection (4),”.
- 6 In subsection (4) of that section, for “or Part III” substitute “, Part 3 or Chapter 1 or 2 of Part 4”.
- 7 In subsection (5) of that section, omit “of a court or tribunal”.
- 8 In section 7(1)(a) (proceedings in relation to which assistance may be given) –
- (a) for “or 25” substitute “, 25, 28I, 28K, 28L, 28N or 28V”; and

(b) for “and III” substitute “to 4”.

- 9 In paragraph 3(10) of Schedule 3 (formal investigations and non-discrimination notices), for “or Part III” substitute “, Part 3 or Chapter 1 or 2 of Part 4”.

## SCHEDULE 8

Section 42(1).

### MINOR AND CONSEQUENTIAL AMENDMENTS

#### PART 1

#### THE 1996 ACT

- 1 The 1996 Act is amended as follows.

#### *The re-naming of the Tribunal*

- 2 In section 313(5), for “Special Educational Needs Tribunal” substitute “Special Educational Needs and Disability Tribunal”.
- 3 In section 333, for subsection (1) substitute –
- “(1) The Tribunal shall exercise the jurisdiction conferred on it by this Part.”
- 4 In paragraph 118(3) of Schedule 37, omit paragraph (d).

#### *Annual reports*

- 5 In section 317(5) (annual report to contain information on implementation of policy on special educational needs), for the words from the beginning to “school” substitute “Each governors’ report”.

#### *Contents and service of notices*

- 6 (1) In section 325 (appeal against decision not to make a statement), in subsection (1), omit “, and of the effect of subsection (2) below,”.
- (2) After subsection (2) of that section insert –
- “(2A) A notice under subsection (1) must inform the parent of the right of appeal under subsection (2) and contain such other information as may be prescribed.
- (2B) Regulations may provide that where a local education authority are under a duty under this section to serve any notice, the duty must be performed within the prescribed period.”
- 7 (1) In section 328 (reviews of educational needs), in subsection (3)(a), for the words from “notice” to “below” substitute “notice in writing of that fact”.
- (2) After subsection (3) of that section insert –
- “(3A) A notice under subsection (3)(a) must inform the parent of the right of appeal under subsection (3)(b) and contain such other information as may be prescribed.

- (3B) Regulations may provide that where a local education authority are under a duty under this section to serve any notice, the duty must be performed within the prescribed period.”
- 8 (1) In section 329 (assessment of educational needs at request of child’s parent), in subsection (2)(a), for the words from “notice” to “below” substitute “notice in writing of that fact”.
- (2) After subsection (2) of that section insert –
- “(2A) A notice under subsection (2)(a) must inform the parent of the right of appeal under subsection (2)(b) and contain such other information as may be prescribed.”
- 9 (1) In paragraph 8 of Schedule 27 (change of name of school), in sub-paragraph (3)(a), for the words from “notice” to “below” substitute “notice in writing of that fact”.
- (2) After sub-paragraph (3) of that paragraph insert –
- “(3A) A notice under sub-paragraph (3)(a) must inform the parent of the right of appeal under sub-paragraph (3)(b) and contain such other information as may be prescribed.”
- 10 (1) In paragraph 11 of that Schedule (ceasing to maintain a statement), in sub-paragraph (2)(a), for the words from “notice” to “below” substitute “notice in writing of that fact”.
- (2) After sub-paragraph (2) of that paragraph insert –
- “(2A) A notice under sub-paragraph (2)(a) must inform the parent of the right of appeal under sub-paragraph (2)(b) and contain such other information as may be prescribed.”

*Proposals to make an assessment*

- 11 (1) In section 323(1)(a) (assessment of special educational needs), for “propose” substitute “are considering whether”.
- (2) In paragraph 4(1) of Schedule 26 (making of assessments under section 323), for “propose” substitute “are considering whether”.

*Statements: suitable arrangements made by parents*

- 12 In section 347 (provision for children with special educational needs in independent schools), after subsection (5) insert –
- “(5A) But that does not apply to a local education authority deciding, for the purposes of section 324(5), whether a parent has made suitable arrangements.”

*Procedure regulations*

- 13 (1) Section 336 is amended as follows.
- (2) In subsection (2) –
- (a) omit paragraph (d); and
- (b) in paragraph (g), for “discovery” substitute “disclosure”.
- (3) After subsection (2), insert –

“(2A) Proceeding before the Tribunal shall be held in private, except in prescribed circumstances.”

(4) In subsection (4), for “that Act” substitute “that Part”.

(5) After that subsection, insert—

“(4A) The regulations may make provision for an appeal under this Part to be heard, in prescribed circumstances, with a claim under Chapter 1 of Part 4 of the Disability Discrimination Act 1995.”

*Time limits with respect to assessments*

14 (1) Paragraph 3 of Schedule 26 (manner and timing of assessments under section 323) is amended as follows.

(2) In sub-paragraph (2), for “paragraph 10” substitute “paragraph 2A”.

(3) For sub-paragraphs (3) and (4) substitute—

“(3) Regulations may provide—

- (a) that where a local education authority are under a duty under section 323, 329 or 329A to serve any notice, the duty must be performed within the prescribed period,
- (b) that where a local education authority have served a notice under section 323(1) or 329A(3) on a child’s parent, they must decide within the prescribed period whether or not to make an assessment of the child’s educational needs,
- (c) that where a request has been made to a local education authority under section 329(1), they must decide within the prescribed period whether or not to comply with the request, and
- (d) that where a local education authority are under a duty to make an assessment, the duty must be performed within the prescribed period.

(4) Provision made under sub-paragraph (3)—

- (a) may be subject to prescribed exceptions, and
- (b) does not relieve the authority of the duty to serve a notice, or make a decision or assessment, which has not been served or made within the prescribed period.”

*School attendance orders: amendment of statement of special educational needs*

15 (1) Section 441 (amendment of statement on service of school attendance order) is amended as follows.

(2) In subsection (3)(a), omit “in accordance with paragraph 10 of Schedule 27”.

(3) After that subsection, insert—

“(3A) An amendment to a statement required to be made under subsection (3)(a) shall be treated for the purposes of Schedule 27 as if it were an amendment proposed following a periodic review (within the meaning of that Schedule).”

PART 2

OTHER ENACTMENTS

*The Disabled Persons (Services, Consultation and Representation) Act 1986 (c. 33)*

- 16 Section 5 of the Disabled Persons (Services, Consultation and Representation) Act 1986 is amended as follows.
- 17 In subsection (1) (requirement to obtain opinion of local authority officer as to whether child is a disabled person) –
- (a) in paragraph (a), omit “under the age of 14”; and
  - (b) in paragraph (b) –
    - (i) in sub-paragraph (i), for “the first annual review of the statement following the child’s fourteenth birthday” substitute “a review of the statement prescribed for the purposes of this paragraph”; and
    - (ii) in sub-paragraph (ii), for “that birthday” substitute “they have carried out the review prescribed for the purposes of sub-paragraph (i)”.
- 18 In subsection (9) (interpretation), after the definition of “establishment of higher or further education” insert –
- ““prescribed” means prescribed in regulations made –
  - (a) in relation to England, by the Secretary of State; and
  - (b) in relation to Wales, by the National Assembly for Wales;”.

*The Tribunals and Inquiries Act 1992 (c. 53)*

- 19 The Tribunals and Inquiries Act 1992 is amended as follows.
- 20 In section 11(1) (appeals from certain tribunals) –
- (a) for “15(a), (d) or (e)” substitute “15(a) or (d)”; and
  - (b) after “40A” insert “, 40B”.
- 21 In paragraph 15 of Schedule 1 (bodies subject to the supervision of the Council) omit sub-paragraph (e).
- 22 After paragraph 40A of that Schedule, insert –

“Special educational needs and disability discrimination.

40B. The Special Educational Needs and Disability Tribunal.”.

*The School Standards and Framework Act 1998 (c. 31)*

- 23 (1) The School Standards and Framework Act 1998 is amended as follows.
- (2) In paragraph 8 of Schedule 4 (duty of school organisation committees to have regard to anti-discrimination duties of other bodies) –
- (a) omit “or”, at the end of sub-paragraph (a); and
  - (b) after sub-paragraph (b), insert “or

- (c) Chapter 1 of Part 4 of the Disability Discrimination Act 1995,”.
- (3) In paragraph 6 of Schedule 5 (duty of adjudicators to have regard to anti-discrimination duties of other bodies) –
- (a) omit “or”, at the end of sub-paragraph (a); and
- (b) after sub-paragraph (b), insert “or
- (c) Chapter 1 of Part 4 of the Disability Discrimination Act 1995,”.
- (4) In Schedule 30 (minor and consequential amendments), omit paragraph 186(2)(b).

## SCHEDULE 9

Section 42(6).

## REPEALS

<i>Short title and chapter</i>	<i>Extent of repeal</i>
The Disabled Persons (Services, Consultation and Representation) Act 1986 (c. 33)	In section 5(1)(a), the words “under the age of 14”.
The Further and Higher Education Act 1992 (c. 13)	In section 65, subsections (4A) and (4B).
The Further and Higher Education (Scotland) Act 1992 (c. 37)	In section 40, subsections (5) and (6).
The Tribunals and Inquiries Act 1992 (c. 53)	In Schedule 1, paragraph 15(e).
The Disability Discrimination Act 1995 (c. 50)	Section 19(5)(a) to (ab) and (6). Section 29. Section 30(6). Section 31(3). In section 53A(8), the words after first “proceedings”.
The Education Act 1996 (c. 56)	In section 325(1), the words “, and of the effect of subsection (2) below,”. In section 336(2), paragraph (d). In section 441(3)(a), the words “in accordance with paragraph 10 of Schedule 27”. Section 528. In Schedule 27, paragraph 3(4), paragraph 8(1)(b)(iii), in paragraph 9(1), the words “amend, or” and “10 or”, and paragraph 10. In Schedule 37, paragraphs 118(3)(d) and 129.
The Teaching and Higher Education Act 1998 (c. 30)	Section 38.
The School Standards and Framework Act 1998 (c. 31)	In paragraph 8 of Schedule 4, the word “or” after sub-paragraph (a). In paragraph 6 of Schedule 5, the word “or” after sub-paragraph (a). In Schedule 30, paragraph 186(2)(b).

<i>Short title and chapter</i>	<i>Extent of repeal</i>
The Disability Rights Commission Act 1999 (c. 17)	In section 6(5), the words “of a court or tribunal”.
The Learning and Skills Act 2000 (c. 21)	In section 6, subsections (4) and (6).  In section 35, subsections (4) and (6). In Schedule 9, paragraph 49.