

Disabled People (Duties of Public Authorities) Bill

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Department for Work and Pensions with the consent of Bridget Prentice MP, the Member in charge of the Bill, will be published separately as Bill 32-EN.

Disabled People (Duties of Public Authorities) Bill

CONTENTS

- 1 Persons exercising public functions: statutory duties
- 2 Commencement
- 3 Short title and extent

A
B I L L

TO

Make provision in relation to public authorities for the elimination of discrimination against disabled persons and for the promotion of equality of opportunity for such persons.

BE 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:—

1 Persons exercising public functions: statutory duties

- (1) In Part 8 of the Disability Discrimination Act 1995 (c. 50) (in this Act referred to as the 1995 Act), before section 60 (appointment by Secretary of State of advisers) there is inserted—

“59A Duties of persons exercising public functions

5

- (1) The Secretary of State may by order specify persons who, in carrying out their functions, must have regard to the following principles—

- (a) unlawful discrimination against and unlawful harassment of disabled persons must be eliminated;
- (b) equalisation of opportunity for disabled persons is to be pursued.

10

- (2) But an order under subsection (1) must not specify a person unless he exercises functions of a public nature.

- (3) The Secretary of State may by regulations require such persons specified in an order under subsection (1) as he considers appropriate to do such things as he considers appropriate for the purpose of ensuring the better performance by those persons of their duties under subsection (1).

15

- (4) Before making regulations under subsection (3) the Secretary of State must consult the Disability Rights Commission.

20

- (5) The Secretary of State may by order vary an order under subsection (1).

- (6) But an order under subsection (5) must not add a person to the persons specified in an order under subsection (1) unless he exercises functions of a public nature.
- (7) Nothing in this section affects the exercise of a function which is not a function of a public nature. 5
- (8) This section is subject to section 59C and does not affect any requirement to comply with any other provision of this Act.

59B Persons exercising public functions: supplementary

- (1) In section 59A(1) –
- (a) discrimination is discrimination within the meaning of any provision of this Act; 10
 - (b) discrimination is unlawful if it is unlawful by virtue of any provision of this Act;
 - (c) harassment is harassment within the meaning of any provision of this Act; 15
 - (d) harassment is unlawful if it is unlawful by virtue of any provision of this Act.
- (2) Section 59A(1)(b) does not apply to any function relating to the employment of a person for service in any of the naval, military or air forces of the Crown. 20
- (3) In section 59A(1) disabled persons include persons who have had a disability; and for this purpose section 1 has effect subject to the modification to Schedule 1 mentioned in paragraph 5 of Schedule 2.
- (4) A power in section 59A to make an order or regulations includes power to make provision amending or repealing provision made by or under this Act or any other enactment. 25
- (5) Subsection (4) does not affect the powers conferred by section 67(2) and (3).

59C Persons exercising public functions: Scotland and Wales

- (1) For the purposes of the Scotland Act 1998 section 59A(3) and (4) and section 67 (so far as it applies to section 59A(3)) are to be taken to be pre-commencement enactments within the meaning of that Act. 30
- (2) Before making regulations under section 59A(3) as regards functions exercisable in relation to Wales by a person who is not a Welsh public authority, the Secretary of State must consult the National Assembly for Wales. 35
- (3) The Secretary of State must not make regulations under section 59A(3) in relation to functions of a Welsh public authority except with the consent of the National Assembly for Wales.
- (4) In this section Welsh public authority means any person whose functions are exercisable only in relation to Wales and includes the National Assembly for Wales. 40

- 59D Persons exercising public functions: codes of practice**
- (1) The Disability Rights Commission may issue codes of practice in relation to the performance by persons of duties imposed on them by virtue of subsections (1) and (3) of section 59A.
- (2) A code of practice issued in pursuance of subsection (1) must contain such practical guidance as the Commission thinks fit in relation to the performance of those duties. 5
- (3) The Commission must, when requested to do so by the Secretary of State, issue a code of practice dealing with the matters specified in the request. 10
- (4) Before the Commission issues a code of practice it –
- (a) must prepare and publish a draft of the code;
 - (b) must consider any representations made to it about the draft;
 - (c) may modify the draft accordingly.
- (5) In preparing a draft code of practice the Commission must consult such persons as it thinks fit. 15
- (6) After the Commission has acted under subsections (4) and (5) it must submit the draft code of practice to the Secretary of State who must consult the Scottish Ministers and the National Assembly for Wales.
- (7) After consulting the Scottish Ministers and the Assembly the Secretary of State must – 20
- (a) if he approves of the draft code, lay it before both Houses of Parliament;
 - (b) if he does not approve of it, give the Commission a written statement of his reasons. 25
- (8) If, within the 40-day period, either House resolves not to approve the draft code there are to be no further proceedings in relation to it.
- (9) But the passing of a resolution as referred to in subsection (8) does not prevent a new draft being laid before Parliament.
- (10) If no resolution is passed as referred to in subsection (8) the Commission must issue the code of practice (conforming in all material respects to the draft laid before Parliament) and the code is to come into effect on such day as the Secretary of State may (after consulting the Scottish Ministers and the Assembly) by order appoint. 30
- 59E Persons exercising public functions: further provisions in relation to codes of practice** 35
- (1) A code of practice –
- (a) may be revised in whole or part by the Commission;
 - (b) may be revoked by an order made by the Secretary of State at the request of the Commission. 40
- (2) If the Commission revises the whole or any part of a code it must issue the revised code and –
- (a) section 59D(4) to (10), and
 - (b) subsections (3) and (4) below,
- apply to the revised code as they apply to the first issue of a code. 45

- (3) An order under subsection (10) of section 59D may contain such transitional provisions or savings as appear to the Secretary of State to be necessary or expedient in connection with the code of practice.
- (4) Subsection (3) does not affect the powers conferred by section 67(2) and (3). 5
- (5) A failure to observe any provision of a code of practice does not by reason only of that failure make a person liable in any civil or criminal proceedings.
- (6) But a code of practice is admissible in evidence in such proceedings and a court or tribunal may take account of any failure to comply with its provisions in determining any question in the proceedings. 10
- (7) In section 59D(8) 40-day period has the same meaning in relation to a draft code of practice as it has in section 3 in relation to a draft of proposed guidance.
- (8) In section 59D and in this section code of practice means a code of practice issued under section 59D(10) (including a code issued in pursuance of subsection (2) above). 15
- 59F Persons exercising public functions: compliance notices**
- (1) If the Commission is satisfied that a person has failed to comply with or is failing to comply with any duty imposed on him by virtue of regulations under section 59A(3) the Commission may serve on that person a notice (a compliance notice). 20
- (2) A compliance notice must require the person concerned –
- (a) to comply with the duty concerned;
 - (b) before the end of the period of 28 days beginning with the day on which the notice is served, to inform the Commission of the steps that the person has taken, or is taking, to comply with the duty. 25
- (3) A compliance notice may also require the person concerned to furnish the Commission with such other written information as may be reasonably required by the notice in order to verify that the person has complied with the duty. 30
- (4) The notice may specify –
- (a) the time at which information is to be furnished to the Commission under subsection (3); 35
 - (b) the manner and form in which the information is to be furnished.
- (5) The time specified for the purposes of subsection (4)(a) must not be later than the end of the period of three months beginning with the day on which the notice is served. 40
- (6) A compliance notice must not require a person to furnish information which the person could not be compelled to furnish in evidence in civil proceedings before the High Court or the Court of Session.

59G Persons exercising public functions: enforcement of compliance notices

- (1) The Commission may apply to a county court (or, in Scotland, a sheriff court) for an order requiring a person specified by order under section 59A(1) to furnish any information required by a compliance notice if— 5
- (a) the person fails to furnish the information to the Commission in accordance with the notice;
 - (b) the Commission has reasonable cause to believe that the person does not intend to furnish the information.
- (2) Subsection (3) applies if the Commission considers that a person specified by order under section 59A(1) has not, within 3 months of the date on which a compliance notice was served on it, complied with any requirement of the notice for that person to comply with a duty imposed by regulations under section 59A(3). 10
- (3) The Commission may apply to a county court (or, in Scotland, a sheriff court) for an order requiring the person to comply with that requirement. 15
- (4) If the court is satisfied that the application is well-founded it may grant the order in—
- (a) the terms applied for; 20
 - (b) more limited terms.
- (5) The sanctions mentioned in section 59F and in this section are the only sanctions for breach of any duty imposed by regulations under section 59A(3).
- (6) Subsection (5) does not affect the enforcement of any other provision of this Act (if the breach is also a contravention of such provision).” 25
- (2) Section 67 (regulations and orders) of the 1995 Act is amended as follows—
- (a) in subsection (4), insert “or 59A(1)” after “50(3)”;
 - (b) after subsection (4), insert— 30
 - “(4A) Subsection (4B) applies if provision as mentioned in section 59B(4) is included in regulations under section 59A(3) or an order under section 59A(5).
 - (4B) The regulations or order (as the case may be) must not be made unless a draft of the statutory instrument containing the regulations or order has been laid before Parliament and approved by a resolution of each House.” 35
 - (c) in subsection (5), insert “, 59D(10)” after “53A(6)(a).”

2 Commencement

Section 1 of this Act comes into force on such day as the Secretary of State may by order appoint. 40

3 Short title and extent

- (1) This Act may be cited as the Disabled People (Duties of Public Authorities) Act 2003.

(2) This Act does not extend to Northern Ireland.

Disabled People (Duties of Public Authorities) Bill

A

B I L L

To make provision in relation to public authorities for the elimination of discrimination against disabled persons and for the promotion of equality of opportunity for such persons.

*Presented by Bridget Prentice
supported by
Mr Roger Berry, Angela Eagle, Helen Jones,
Mr Greg Pope and Mr Tom Watson.*

*Ordered, by the House of Commons,
to be Printed, 11th December 2002.*

© Parliamentary copyright House of Commons 2003
*Applications for reproduction should be made in writing to the Copyright Unit,
Her Majesty's Stationery Office, St. Clements House, 2-16 Colegate, Norwich, NR3 1BQ*

PUBLISHED BY AUTHORITY OF THE HOUSE OF COMMONS
LONDON: THE STATIONERY OFFICE
Printed in the United Kingdom by
The Stationery Office Limited
£x.xx net