

## Racial and Religious Hatred Act 2006

The Public Order Act 1986 (see below) is amended by the Racial and Religious Hatred Act 2006 to create offences which involve stirring up hatred on racial and/or religious grounds. The offences cover: use of words or behaviour or display of written material; publishing or distributing written material; the public performance of a play; distributing, showing or playing a recording; broadcasting programmes; and possession of inflammatory material. There are powers of entry to property and seizure of material. The Act makes clear that freedom of speech is protected in terms of discussion and also, for example, criticism. The police have powers of arrest but there is no power for a citizen's arrest. The Act does not apply to reports of parliamentary or judicial proceedings. Offences are triable either way and a conviction on indictment attracts a penalty of a maximum of seven years' imprisonment or an unlimited fine or both. On conviction before magistrates the maximum imprisonment is six months and/or a fine of up to £5,000. The bringing of proceedings requires the consent of the Attorney-General.

## Discrimination

We shall now consider the rules of law which are designed to prevent discrimination against natural persons. Discrimination in employment is dealt with in Chapter 19.

### Racial discrimination

The Race Relations Act 1976 and the Public Order Act 1986 are designed to deal with discrimination on racial grounds and with relations between different racial groups. It should be noted before considering the main provisions of the Acts that under s 72 of the 1976 Act a term in a contract which purports to exclude or limit any provisions of that Act is unenforceable by any person in whose favour the term would operate.

### The Race Relations Act 1976

#### *Discrimination to which the Act applies*

Section 1 provides that it is *direct discrimination* to treat a person less favourably on racial grounds and *indirect discrimination* where there is some requirement or condition, e.g. of employment, which, although it applies to all potential employees, is discriminatory since a smaller proportion (or none) of black applicants can comply with it than white. Thus a rule insisting that bus conductors wear company caps could be *indirect discrimination* against Sikh applicants, who were held to be a protected ethnic group by the House of Lords in *Mandla v Dowell Lee* [1983] 1 All ER 1062.

Section 2 deals with *discrimination by way of victimisation* of a person who has, for example, brought or given evidence in proceedings under the Act against a discriminator or alleged discriminator. Thus if A brings proceedings against his employer, B, for alleged discrimination and as a consequence A's landlord, C, will not allow A to use a goods lift provided for common use in the block of flats where A lives, then C could be guilty of victimisation under s 2. Under s 3, 'racial grounds' means colour, race, nationality, or ethnic or national origins, and 'racial group' means a group of persons defined by reference to colour, race, nationality, or ethnic or national origin.

For example in *Commission for Racial Equality v Dutton* (1988) *The Times*, 29 July, the Court of Appeal held that gypsies were a racial group for the purposes of the Act. They were not, however, synonymous with 'travellers' so that a notice in a public house saying 'sorry, no

travellers' did not directly discriminate against them. It did, however, indirectly discriminate against them. However, in *Crown Suppliers (PSA) v Dawkins* [1993] IRLR 284, the Court of Appeal decided that Rastafarians are not a group defined by ethnic origin within the meaning of the 1976 Act. Therefore, a van driver who was turned down for a job because he would not cut his hair had not been discriminated against. Rastafarians were a religious sect not an ethnic group. The Act still permits discrimination on grounds of religious belief unless that constitutes racial discrimination, as it would if the religion was Jewish but not if it was Catholic or Protestant since the last two named are not matters of race.

As regards *harassment*, the Race Relations Act 1976 did not contain an express definition of harassment. Case law has found a remedy for harassment by regarding it as a 'detriment' within the terms of the 1976 Act. The Race Relations Act 1976 (Amendment) Regulations 2003 introduce a new test for racial harassment that is applied also to harassment on the grounds of sexual orientation or religion or belief and is applied to disability discrimination from 1 October 2004. For these purposes, harassment is defined as occurring where – on grounds of race or ethnic or national origins or sexual orientation or religion or belief or for a reason that relates to a person's disability A engages in unwanted conduct which has the purpose of:

- violating B's dignity; or
- creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

The conduct is deemed to have the required effect if having regard to all the circumstances including, in particular, the perception of B it should reasonably be considered as having that effect.

Areas of racial discrimination not relating directly to the contract of employment appear below.

### **Partnerships**

Section 10 of the 1976 Act extends protection against discrimination to partnerships as regards failure to offer a partnership or the terms on which it is offered, including benefits, facilities and services. Thus discrimination would exist if a partner was refused a cheap loan for house purchase under the firm's scheme or was refused the use of a firm's car. The section applied only to firms of six or more partners. The exemption for partnerships of fewer than six partners was removed by the Race Relations Act 1976 (Amendment) Regulations 2003. The section also covers discrimination in cases where persons are preparing to form themselves into a partnership.

### **Trade unions, etc.**

Section 11 renders unlawful discriminatory practices by trade unions, employers' associations and professional trade bodies. Surprisingly, individual discriminatory action by shop stewards is not covered by the Act. Thus if a shop steward discriminates with the authority of his union, the union will be liable, but if he acts without authority, no one is liable. This appears to be a defect in the Act since it is well known that white organised labour has in several areas of the country held back black development in employment.

### **Qualifying bodies**

Section 12 provides that it is unlawful for an authority or body which can confer an authorisation or qualification which is needed for, or facilitates employment in, a particular trade or profession, e.g. the General Medical Council, to discriminate against a person in terms of conferring that authorisation or qualification.

### Discrimination in education

Sections 17–19 make it unlawful for responsible bodies, e.g., governing bodies of educational establishments including both state and private schools, to discriminate on racial grounds as regards, for example, allocation of places or dress. These matters are also often covered by the Convention on Human Rights, which can be used as a basis for complaint to the court (see *R (on the application of SB) v Headteacher and Governors of Denbigh High School* [2005] 3 All ER 396).

### Discrimination in provision of goods, facilities or services

Under s 20, discrimination by, for example, shops, hotels, boarding houses and banks is outlawed as is discrimination in clubs which have 25 or more members. When membership of a club reaches 25 or more a licence to serve intoxicating liquor must be sought. Clubs with membership of less than 25 members are excluded and may discriminate.

In terms of public authorities, the 1976 Act was weak because it protected against racial discrimination only in terms of the provision of goods, facilities and services and its application to the police required strengthening. Public authorities not only supply goods, facilities and services, they make *decisions*, e.g. in the field of planning permission where there could be discrimination. The 2000 Act inserts new sections and amends Sch 1 of the 1976 Act to achieve the wider coverage. A police authority is covered and chief officers of police are made vicariously liable (see Chapter 20) for acts of racial discrimination by police officers. Direct and indirect discrimination is covered. The making of Orders by the UK and Scottish Parliaments is covered as is the Welsh Assembly and the enforcement agencies such as Customs and Excise, which are now on the same footing as a bank or building society.

### Discrimination in the disposal or management of premises

Section 21 states that discrimination on racial grounds by a seller of property in terms of the buyer or by, say, a brewery in terms of who shall manage a public house, is unlawful. The section does not apply to owner-occupiers of houses who sell the property without employing an estate agent or advertising it for sale (s 21(3)). There is also an exemption for the letting of accommodation in premises where the occupier or a near relative of his resides and intends to continue to reside on the premises which are ‘small premises’ under s 22(2), e.g. where there is not room for more than six persons in addition to the occupier and members of his household. Section 23 provides for exemptions allowing discrimination where a person takes into his home and treats as a member of his family a child, an elderly person or a person requiring a special degree of care and attention. Thus discrimination on racial grounds in the choice of foster children is not unlawful. Section 24 provides that where a tenant requires the licence or consent of the landlord to assign or sublet to another person it is unlawful for that licence or consent to be withheld in a discriminatory way, as where a landlord will not allow a tenant to assign to a black tenant.

As we have seen, discrimination in clubs with 25 or more members is unlawful but s 26 provides an exemption for organisations whose main object is to confer benefits on ethnic or national groups and does not exclude others. Thus the London Welsh Club is still a lawful association but must not exclude black Welshmen.

By s 27 the Act applies only to benefits, facilities and services in Great Britain. However, it does extend outside Great Britain in some cases. For example, discrimination in Great Britain in regard to the provision of facilities for travel is unlawful even though the facilities are to be supplied outside Great Britain.

### Discrimination in the legal profession

The Race Relations Act 1976 did not make unlawful discrimination on the grounds of race either by or within barristers’ chambers or by solicitors in relation to barristers approached

to take on cases. The Courts and Legal Services Act 1990 inserts a new section, s 26A, into the 1976 Act making it unlawful for a barrister or a barrister's clerk to discriminate against current or prospective pupils or members of chambers on the grounds of race. It also makes it unlawful to discriminate on the grounds of race in regard to the giving or withholding of instructions to a barrister.

### **Discriminatory practices**

Under s 28 there may be a discriminatory practice, even where there is no victim. Thus a factory which has discriminatory recruiting procedures may be regarded as discriminating even during a recession when there has been no recruitment for some time. However, proceedings under s 28 can be brought only by the Commission for Racial Equality.

### **Advertisements**

Section 29 makes discriminatory advertisements unlawful, as in *Commission for Racial Equality v Dutton*, 1988, unless, as in an employment advertisement, there is, for example, a GOQ (genuine occupational qualification), e.g. being Chinese is a GOQ for employment in a Chinese restaurant, but not a take-away.

### **Instructions, pressure or inducement to discriminate**

Under ss 30 and 31 it is unlawful to instruct a person to discriminate or to put pressure on a person to discriminate in a way which the 1976 Act makes *unlawful*. The act must be unlawful so instructions by a landlord to his tenant not to take black foster children would not be unlawful. Under s 32 an employer is vicariously liable (see Chapter 20) together with the offending employee for any act done by the employee in course of employment, whether the act was done with the knowledge or approval of the employer or not. Similarly, principals will be liable for the *authorised* acts of their agents but in neither case does vicarious liability extend to criminal proceedings. An employer (not a principal) is given a defence if he can show that he took such steps as were reasonably practicable to prevent his employee doing discriminatory acts. Under s 33 those who assist others to do unlawful acts are also liable.

*The Commission for Racial Equality v Imperial Society of Teachers of Dancing*, 1983 – Inducement to discriminate (38)



### **Charities**

Section 34 makes it clear that any provision in an existing or future charitable instrument, e.g. a trust, which confers benefits on persons of a different colour is void. Further, it is unlawful to do any act in Great Britain to give effect to such a provision.

### **General exceptions**

Certain general exceptions from liability are set out in Part IV of the Act. Under s 35 acts done to meet the special needs of racial groups with regard, for example, to education, training and welfare, such as special language training for groups whose first language is not English, are not unlawful. Sections 37 and 38 allow positive discrimination in favour of particular racial groups by training bodies, employers and trade unions, employers' associations, and professional and trade associations, by encouraging members of those groups to take work by giving special talks and guided tours of factories and premises. Under s 39 the selection of sports teams on the basis of nationality, place of birth, and length of residence is exempted from the provisions of the Act. Thus a country may continue to select its football

teams from among those born in the country but cannot refuse to select a person otherwise willing and able who was born in the country but of parents born elsewhere.

### Equality Act 2006

Before considering the Commission for Racial Equality, it should be appreciated that the Equality Act 2006 creates the Commission for Equality and Human Rights (CEHR) to take over and build on the work of the existing bodies, i.e. the Equal Opportunities Commission (EOC), the Commission for Racial Equality (CRE) and the Disability Rights Commission (DRC). The CEHR will be established in 2007 but the CRE will continue until April 2009, when its functions will also transfer to the CEHR.

### The Commission for Racial Equality

Section 43 sets up the Commission (CRE) which is to work towards the elimination of discrimination, to promote equality of opportunity and good relations between different racial groups, and to keep under review the working of the Act. Under s 47 the CRE has issued codes of practice giving guidance on ways of achieving equality of opportunity and eliminating discrimination in the employment field and in housing including rented housing. Sections 48–52 give the CRE power to conduct formal investigations, for example into alleged discriminatory employment practices, in order to carry out its duties. The court may prevent such an investigation going ahead on the grounds, e.g., that the concern to be investigated has not been given an opportunity to make representations of its own position (*R v Commission for Racial Equality, ex parte Prestige Group plc* [1983] IRLR 408).

Section 47 empowers the Commission for Racial Equality to issue *codes of practice* in the field of employment. While such codes are not binding in law, they are taken into account in the decisions of employment tribunals concerned with racial discrimination in employment.

### Enforcement

The enforcement provisions which are set out in Part VIII are of two types:

**(a) Complaints by an individual** who is the subject of unlawful conduct other than ‘discriminatory practices’, advertising or pressures or instructions to discriminate. In employment cases the complaint goes to an employment tribunal (s 54) (see below). Complaints of discrimination in education and in the provision of goods, facilities and services and in housing may be made to the county court (s 57). Complaints that a responsible body in an educational establishment has discriminated must be notified to the Secretary of State for Education who must be given a maximum of two months to consider the matter before court proceedings can be commenced (s 57(5)). It should be noted that an individual is now given direct access to courts and tribunals in race relations matters; under previous legislation only the Race Relations Board (now abolished) could institute proceedings.

No compensation will be awarded for indirect discrimination on the grounds of race if the defendant proves that he did not *intend* to treat the claimant unfavourably (s 57).

**(b) Enforcement by the CRE.** This involves: (i) the issuing of a non-discrimination notice (s 58); (ii) proceedings in the county court or employment tribunal where there are discriminatory practices, advertisements or pressures or instructions to discriminate (s 63); (iii) proceedings in the county court for an injunction where there has been persistent discrimination (s 62); (iv) assisting individual complainants in certain matters of principle or complexity or other special considerations (s 66).

It should be noted that a non-discrimination notice will require a person not to commit any further discriminatory acts and, where in order to comply with this it is necessary to

change practices or arrangements, to inform the CRE that the changes have been effected and bring these changes to the attention of other persons concerned. There is a right of appeal within six weeks against such a notice to an employment tribunal which may modify or quash the notice (s 59). If an appeal against a notice is dismissed, the notice becomes final and is entered on the CRE's Register of Notices (s 61).

## Sex discrimination

The three main Acts of Parliament involved here are the Sex Discrimination Acts 1975 and 1986 and the Equal Pay Act 1970, to which amendments have been made by the Equal Pay (Amendment) Regulations 1983. Some provisions of the above legislation relate to the field of employment and are dealt with in Chapter 19.

### Sex Discrimination Act 1975

The form of drafting used in the Race Relations Act 1976 was based on the Sex Discrimination Act 1975, and the reader will recognise many similar features.

Under the Act of 1975 it is unlawful to treat anyone, on the grounds of sex, less favourably than a person of the opposite sex is or would be treated in the same circumstances. Once again, a term in a contract which purports to exclude or limit any provision of the Act is unenforceable by any person in whose favour the term would operate (s 73(3)).

### Sex discrimination defined

There are two kinds of discrimination as follows:

- (a) **Direct** discrimination which involves, for example, treating a woman less favourably than a man because she is a woman *or because of marital status*.
- (b) **Indirect** discrimination which occurs where conditions are applied which favour, quite unjustifiably, one sex more than the other, as where a firm advertises for clerical workers who must be six feet tall.

It should be noted that although the Act is written in terms of discrimination against women, it applies equally to discrimination against men either because they are men *or because of marital status*. Thus in *Jepson and Dyas-Elliott v The Labour Party* (1996) 543 IRLB 10 it was held that the Labour Party's policy of shortlisting only women as prospective parliamentary candidates in some constituencies was unlawful direct sex discrimination against two men who but for their sex would have been considered.

### Areas of discrimination

Areas of sexual discrimination not relating directly to the contract of employment appear below.

- (a) **Partnerships.** The sex discrimination provisions were extended to all partnerships regardless of the number of partners by the Sex Discrimination Act 1986. The provisions cover failure to offer a person a partnership on grounds of sex or to offer it but on worse terms or to refuse benefits or give inferior benefits, facilities and services to a partner on the grounds of sex.
- (b) **Trade unions and qualifying bodies.** The provisions relating to sex discrimination are applied as they are for racial discrimination with the necessary changes being made.
- (c) **Education.** Co-educational schools, colleges, and universities may not discriminate in the provision of facilities or in their admissions. Thus it would be unlawful to refuse a girl admission to a metalwork class because she is a girl. In addition, the Careers Service must not discriminate in the advice and assistance offered to girls and boys, though single-sex schools are still permissible.



Local education authorities are required to provide secondary education without discriminating on the grounds of sex. In *R v Birmingham City Council, ex parte Equal Opportunities Commission* [1989] 1 All ER 769 it appeared that the Council provided considerably fewer grammar school places for girls than for boys. The House of Lords approved a declaration that the Council's arrangements were unlawful.

**(d) Housing, goods, facilities and services.** In general, no one providing housing, goods, facilities or services to the public may discriminate because of sex. There are some exceptions where discrimination will not be unlawful; these include, for example, situations where it is necessary to preserve decency and privacy, e.g. public lavatories.

Discrimination must not be used in the buying or renting of accommodation and a hotel, boarding house or restaurant may not refuse accommodation or refreshment on the grounds of sex.

In addition, a bank, building society, finance house or other credit business must offer credit, a mortgage or loan on the same terms that it would offer the facilities to someone of the opposite sex.

*Gill v El Vino Co Ltd*, 1983 – Sex discrimination: facilities and services (39)

*Quinn v Williams Furniture Ltd*, 1981 – Sex discrimination: credit (40)



**(e) Advertising.** Advertisements with job descriptions such as 'salesgirl, waiter, stewardess, postman' are deemed to discriminate unless they contain an indication that both men and women are eligible, though it should be noted that only the Equal Opportunities Commission (EOC) can bring proceedings in matters to do with advertising.

### Victimisation

The provisions here are similar to those set out in the Race Relations Act 1976, so that the law will protect a person if they are victimised for bringing a complaint under the Sex Discrimination Act 1975.

### The Equal Opportunities Commission

The Equal Opportunities Commission was set up to ensure effective enforcement of the Sex Discrimination Act and the Equal Pay Act (see Chapter 19) and to promote equal opportunity between the sexes. The Commission has power to hold formal investigations, and if satisfied that practices are unlawful, can issue non-discrimination notices requiring that they cease. When holding a formal investigation, either on its own initiative or because it has been asked to do so by the Secretary of State, the Commission has power to require any person to furnish information and to attend hearings to give evidence.

The Commission has power to help individuals in the preparation and conduct of complaints in both courts and tribunals, and as well as investigating areas of inequality between the sexes, the Commission has a duty to make recommendations to the government about the operation of existing law. It is also empowered to undertake or assist others to undertake research and educational work and generally to advise people as to their rights.

The Race Relations Act 1976 made minor amendments in the Sex Discrimination Act. In particular, the EOC was given power to issue codes of practice giving practical guidance on equality of opportunity and the elimination of discrimination between men and women, i.e. powers matching those given to the CRE. This was achieved by adding s 56A to the Sex Discrimination Act 1975.

## Enforcement

The provisions, which are similar to those of the Race Relations Act 1976, are as follows:

**(a) Individuals' rights.** Complaints in the employment field may be made to employment tribunals (see further Chapter 2).

Complaints in all other fields may be made to a county court and if the court finds in favour of the complainant it may award: (i) an order declaring the rights of the parties as e.g. in *Gill v El Vino Co Ltd* (1983) 1 All ER 398 (Case 39); (ii) an injunction; or (iii) damages which may include loss of earnings and also compensation for injured feelings. The Sex Discrimination and Equal Pay (Miscellaneous Amendments) Regulations 1996 (SI 1996/438) give power to make an award of compensation in cases of unintentional indirect discrimination. This does not apply to race discrimination cases where no such award can be made unless a tribunal is satisfied that the defendant intended the discriminatory consequences of the imposition of the relevant condition or requirement.

**(b) The Equal Opportunities Commission.** The functions of the EOC in regard to enforcement are as follows:

- (i) the Commission may conduct formal investigations into any matter in order to carry out its duties and where it discovers conduct which contravenes the Sex Discrimination Act or the Equal Pay Act it is empowered to issue a non-discrimination notice. The result of issuing such a notice is the same as that under the Race Relations Act 1976;
- (ii) the Commission can institute legal proceedings in respect of persistent discrimination, including judicial review (*R v Birmingham City Council, ex parte EOC* (1989) (see above));
- (iii) the Commission has the sole right to institute legal proceedings in respect of discriminatory practices in advertisements, and instructions and pressure to discriminate;
- (iv) the Commission has power to assist individual complainants in preparing their case on, e.g., difficult aspects of the law.

The effect of the Equality Act 2006 has already been noted (see p 72).

**(c) Qualifying bodies.** Where a qualifying body is required by law to satisfy itself as to the good character of an applicant for the authorisation or qualification it can confer, it must have regard, in deciding whether or not to issue, renew or extend the authorisation or qualification, to any evidence tending to show that the applicant, or any of his past or present employees or agents, has practised unlawful discrimination in, or in connection with, the carrying on of any profession or trade. Discrimination by persons who require such authorisations or qualifications to carry on their profession or trade may therefore be drawn to the attention of the appropriate qualifying body, e.g. the Law Society. An additional example would be an allegation against a person in the consumer credit or hire business, for which a licence from the Office of Fair Trading is required. Such an allegation may be referred to the Director-General who is required to have regard to evidence of discrimination when considering the fitness of a person to hold a licence under s 25 of the Consumer Credit Act 1974 as amended by the Consumer Credit Act 2006.

## Disability discrimination

To those forms of discrimination which relate to race and sex must now be added discrimination against the disabled. The Disability Discrimination Acts 1995 and 2005 apply and the main employment provisions will be considered in Chapter 19. Other provisions are considered below.



### *What is disability?*

Section 1 of the 1995 Act defines a disabled person as a person who has a physical or mental impairment which has a substantial and long-term effect on his or her ability to carry out normal day-to-day activities. Section 3 allows the Secretary of State to issue guidance. However Sch 1 states that impairment is of long-term effect if it has lasted for 12 months or is likely so to last or is likely to last for life. A severe disfigurement is included as is a progressive condition such as HIV, multiple sclerosis and cancer. Under the Disability Discrimination Act 2005 there is now no need to show current substantial effect and disability dates from diagnosis. Section 2 covers a person 'who has had a disability' even though he or she may no longer be disabled as in the case of a cancer which has gone into remission. This follows a government pledge that those with a history of disability should be covered.

### *Meaning of discrimination*

In terms of access to goods, facilities and services, a person discriminates against a disabled person if for a reason which relates to the disabled person's disability he treats him less favourably than he treats or would treat others to whom that reason does not nor would not apply *and* he cannot show that the treatment in question is justified (s 20(1)(a) and (b)).

### *Provision of goods, facilities or services*

Part III of the Act (ss 19–28) makes it unlawful for those who provide goods, services and other facilities, to the public or a section of the public, to discriminate against disabled persons by treating them less favourably for a reason relating to their disability than they treat or would treat others.

Thus providers must take reasonable steps:

- (1) to change any practice, policy or procedure which makes it unreasonably difficult or impossible for a disabled person to make use of a service which is provided to other members of the public;
- (2) to alter or remove any physical barrier which makes it unreasonably difficult or impossible for a disabled person to make use of such a service or to provide *alternative* means of making the service accessible; and
- (3) to provide other aids or services which would make it easier for disabled people to use their services.

A *code of practice* has been issued on rights of access to goods, facilities and services to help suppliers to make reasonable adjustments to comply with the law. The code is not legally binding but breach of its provisions may be taken into account by any court or tribunal when considering whether a breach of the 1995 Act has taken place. The code also gives examples of possible breaches of the law as follows:

- a hotel refusing to take a booking from a schizophrenic, saying that the hotel is fully booked when it is not;
- a fast-food outlet telling a person with a severe facial disfigurement to sit at a table out of sight of other customers, even though other tables are free; and
- a bookshop refusing to order a large print book for a visually impaired person, even though it does order books for other persons.

Giving the disabled more favourable treatment is not in general prevented by the Act, says the code.

There has been some confusion in business as to whether the 1995 Act applies to company meetings. It would seem that the Act will apply if a company meeting can be sensibly described as a meeting involving the public. In the case of a public company whose shares are

listed on the Stock Exchange and are widely held, the annual general meeting might well be regarded as a public meeting so that consideration should be given to access for disabled members and possibly as regards the provision of accounts in braille, together with systems designed to enable, e.g., the deaf to participate in the meeting and so on. However, since private unlisted companies are by far the major form of corporate structure in the UK, many with five or fewer members, it is unlikely that the Act would apply in that context except in employment situations (see Chapter 19). Of course, it does a company no harm to give proper consideration to its disabled members and there is an overriding rule of the common law that states in regard to all meetings that the organisers must ensure that all those attending can participate fully in the proceedings.

It is also unlawful under ss 22–24 of Part III to discriminate against a disabled person in regard to the sale, letting and management of premises in the sense, e.g., of refusing to sell or rent a property to a disabled person or offering it on worse terms than would be offered to anyone else, unless the less favourable treatment can be justified on grounds stated in s 24, e.g. on the grounds of health and safety, so that it is reasonable for the person selling or letting the property to apply the less favourable treatment. Thus it may be justifiable to refuse to let a flat to a disabled person if that person is unable to negotiate stairs safely or use the fire escape in an emergency. Thus in *Rose v Bouchet* [1999] IRLR 463 the landlord was held to be justified in refusing to let premises to a blind person because of the difficulty he would have in negotiating steps leading to them where a handrail was missing. It should be noted that in the context of selling of premises there is no duty to make reasonable adjustments to the property.

The Disability Discrimination Act 2005 amends the 1995 Act to bring in the letting of premises and a requirement to make adjustments, but not if this requires altering the physical features of the premises. For example, a landlord might be required to provide a clip-on receiver which vibrates when the door bell rings where the tenant is deaf. There would not in the case of a relevant disability be a requirement to provide a wheelchair where the tenant needed one for general purposes and not only for getting around the house. A tenant with mobility difficulties may have to be allowed to deposit rubbish in another place if it is too difficult to access the designated place. These changes would not apply where the letting was in the landlord's own home.

### **Disabled access to the Internet**

Access to websites is included in the scope of the Disability Rights Commission's Code of Practice and the 1995 Act. Website proprietors must therefore take reasonable steps to ensure that their websites are accessible to persons with a wide range of disabilities. Thus text-only versions of documents must be made available to allow visually impaired users access using a braille reader. New contracts for design and maintenance of websites should contain detailed provisions regarding compliance with the supplier's obligations to ensure that the website meets the requirements of the law. Changes to existing websites should also be made if this is necessary to comply with the legislation.

### **Enforcement**

Claims under Part III must be brought in the county court and the remedies available are the same as those which would be available in the High Court. The court may award damages and include an element of compensation for injury to feelings. There is no upper limit on the damages.

### **Discriminatory advertisements**

These were not included in the 1995 Act but are now following insertion of provisions by the 2005 Act. Where the publisher of the advertisement relies upon a statement by the person

placing the advertisement that it is not discriminatory and it is reasonable for him to do so, the publisher will not commit an offence but the person placing the advertisement will. The matter is triable summarily and can result in a fine of up to £5,000.

### Education

The education of children with special educational needs and of students with learning difficulties is consolidated in the Education Act 1996. The Disability Discrimination Act 1995 made some modest changes to legislation existing in 1995 requiring governing bodies and local authorities to provide *information* as to arrangements made and facilities for disabled pupils and students. These provisions are now to be found in the Education Act 1996 (see s 528 (duty to publish disability statements)).

### Public transport

Transport facilities are limited to access improvements provided this does not involve altering the physical features of the vehicle and, with rail, the changes relating to access do not take effect until 2020. Other forms of transport, e.g. by aircraft, may be brought in at some time in the future by regulations.

### The Disability Rights Commission

The Disability Rights Commission Act received the Royal Assent on 27 July 1999. It sets up the Disability Rights Commission. The DRC will:

- work towards eliminating discrimination against disabled people;
- promote equal opportunities for disabled people;
- provide information and advice in particular to disabled people, employers and service providers;
- prepare codes of practice and encourage their use;
- review the working of the Disability Discrimination Act 1995;
- investigate discrimination and ensure compliance with the law;
- arrange for a conciliation service between service providers and disabled people to help resolve disputes on access to goods and services.

The major powers of the Disability Rights Commission are as follows:

- **The conduct of formal investigations.** The Commission may conduct a formal investigation into alleged discrimination and it may be *required* to do so by the Secretary of State.
- **The issue of non-discrimination notices.** If after a formal investigation the Commission is satisfied that a person is committing or has committed an unlawful act, it may issue a non-discrimination notice which may include recommendations as to action which the person concerned could reasonably be expected to take to comply with the law. The notice may also require the drawing up of an *action plan* by the person who is the subject of the notice to change procedures, practices and policies or other arrangements which have caused or contributed to the breach of law.
- **Non-discrimination agreements.** As an alternative to setting up an investigation or issuing a non-discrimination notice the DRC may make an agreement with the person concerned that no action will be taken if there is an agreement that the person concerned will take such action as may be specified in the agreement.

Non-compliance with a non-discrimination notice, agreement or action plan makes the offender liable to a fine of up to £5,000.