

2003 No. 109

DISABLED PERSONS

**The Disability Discrimination (Providers of Services)
(Adjustment of Premises) Regulations (Northern Ireland) 2003**

Made - - - - - *28th February 2003*

Coming into operation *1st October 2004*

The Office of the First Minister and deputy First Minister, in exercise of the powers conferred on it by sections 21(5)(a) and (b), 27(3) and 67(3) of, and paragraph 8(a) and (b) and paragraph 9 of Schedule 4 to, the Disability Discrimination Act 1995(a) and of all other powers enabling it in that behalf, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Disability Discrimination (Providers of Services) (Adjustment of Premises) Regulations (Northern Ireland) 2003 and shall come into operation on 1st October 2004.

Interpretation

2.—(1) In these Regulations –

“the Act” means the Disability Discrimination Act 1995;

“binding obligation” means a legally binding obligation (not contained in a lease) in relation to premises whether arising from an agreement or otherwise;

“building” means an erection or structure of any kind;

“relevant lessor” in relation to any premises means a lessor who has received a written application by or on behalf of the occupier of the premises for consent to make an alteration to premises for the purposes of section 27 of, and Part II of Schedule 4 to, the Act(b).

(2) The Interpretation Act (Northern Ireland) 1954(c) shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

Duty of providers of services to make adjustments: reasonable steps

3.—(1) This regulation prescribes particular circumstances, for the purposes of section 21 of the Act, in which it is reasonable, and in which it is not reasonable, for a provider of services to have to take the steps specified in this regulation.

(2) Where –

(a) 1995 c. 50; section 67(3) and paragraph 9 of Schedule 4 are modified in their application to Northern Ireland by paragraphs 46 and 51(5) of Schedule 8. For the meaning of “prescribed” and “regulations” see section 68(1) as modified by paragraph 47(1) of Schedule 8. See also S.R.1999 No. 481, Article 8(a) and Schedule 6, Part I for transfer of functions
(b) Schedule 4 is modified in its application to Northern Ireland by paragraph 51 of Schedule 8
(c) 1954 c. 33 (N.I.)

- (a) under any binding obligation a provider of services is required to obtain the consent of any person to an alteration to premises which he occupies, and
- (b) that alteration is one which, but for that requirement, it would be reasonable for the provider of services to have to make in order to comply with a duty under section 21 of the Act,

it is reasonable for the provider of services to have to request that consent; but it is not reasonable for him to have to make that alteration before that consent is obtained.

(3) It is not reasonable for a provider of services to have to remove or alter a physical feature where the feature concerned –

- (a) was provided in or in connection with a building for the purpose of assisting people to have access to the building or to use facilities provided in the building; and
- (b) satisfies the relevant design standard.

(4) The Schedule explains –

- (a) the meaning of “relevant design standard” for the purpose of paragraph (3)(b); and
- (b) the circumstances in which a physical feature is to be regarded as satisfying that standard.

Definition of sub-lease and sub-tenancy

4. For the purposes of section 27 of the Act –

“sub-lease” means any sub-term created out of, or deriving from, a superior leasehold interest; and

“sub-tenancy” means any tenancy created out of, or deriving from, a superior tenancy.

Lessor withholding consent

5.—(1) This regulation prescribes particular circumstances in which a relevant lessor is to be taken, for the purposes of section 27 of, and Part II of Schedule 4 to, the Act to have withheld his consent for alterations to premises.

(2) Subject to paragraph (3), a relevant lessor is to be taken to have withheld such consent where, within the period of 42 days beginning with the date on which he receives the application for consent, he –

- (a) fails to reply consenting to or refusing the application; or
- (b) does reply consenting to the application subject to obtaining the consent of another person required under a superior lease or pursuant to a binding obligation, but fails to seek that consent.

(3) A relevant lessor is not to be taken to have withheld his consent for the purposes of paragraph (2) where –

- (a) the applicant fails to submit with the application such plans and specifications as it is reasonable for him to require before consenting to the alteration, and
- (b) within the period of 21 days beginning with the date on which he receives the application, he replies requesting the applicant to submit such plans and specifications.

(4) However, where such plans and specifications are submitted to a relevant lessor in response to a request made in accordance with paragraph (3)(b), he shall be taken to have withheld his consent to the alteration where, within the period of 42 days beginning with the date on which he receives those plans and specifications, he –

- (a) fails to reply consenting to or refusing the alteration; or
- (b) does reply consenting to the alteration subject to obtaining the consent of another person required under a superior lease or pursuant to a binding obligation, but fails to seek that consent.

(5) A relevant lessor who, having sought the consent of the other person referred to in paragraphs (2)(b) or (4)(b), receives that consent, shall be taken to have withheld his consent

to the alteration where, within the period of 14 days beginning with the day on which he receives the consent, he fails to inform the applicant in writing that he has received it.

(6) A relevant lessor who, but for the requirements as to time, complies with the requirements of paragraphs (2), (4) or (5) shall be taken to have withheld his consent until such time as he so complies.

(7) For the purposes of this regulation –

(a) a relevant lessor is to be treated as not having sought another person’s consent unless –

(i) he has applied in writing to that person indicating that –

(aa) the occupier has applied for consent to the alteration of the premises in order to comply with a section 21 duty; and

(bb) the relevant lessor has given his consent conditionally upon obtaining the other person’s consent; and

(ii) he submits to that other person any plans and specifications which have been submitted to him;

(b) “to reply” means to reply in writing.

Lessor withholding consent unreasonably

6.—(1) This regulation prescribes particular circumstances in which a relevant lessor is to be taken, for the purposes of section 27 of, and Part II of Schedule 4 to, the Act to have acted unreasonably in withholding his consent for alterations to premises.

(2) The circumstances so prescribed are that the lease provides that he shall give his consent to an alteration of the kind in question and he has withheld his consent to that alteration.

Lessor withholding consent reasonably

7.—(1) This regulation prescribes particular circumstances in which a relevant lessor is to be taken, for the purposes of section 27 of, and Part II of Schedule 4 to, the Act to have acted reasonably in withholding his consent for alterations to premises.

(2) The circumstances so prescribed are where –

(a) there is a binding obligation requiring the consent of any person to the alteration and

(i) the relevant lessor has taken steps to seek that consent; and

(ii) that consent has not been given, or has been given subject to a condition making it reasonable for him to withhold his consent; or

(b) the relevant lessor does not know, and could not reasonably be expected to know, that the alteration is one which the occupier proposes to make in order to comply with a section 21 duty.

Lessor’s consent subject to conditions

8.—(1) This regulation prescribes particular circumstances in which a condition, subject to which a relevant lessor has given his consent to alterations to premises, is to be taken, for the purposes of section 27 of, and Part II of Schedule 4 to, the Act to be reasonable.

(2) The circumstances so prescribed are where the condition is to the effect that –

(a) the occupier must obtain any necessary planning permission and any other consent or permission required by or under any statutory provision;

(b) the work must be carried out in accordance with any plans or specifications approved by the lessor;

(c) the lessor must be permitted a reasonable opportunity to inspect the work (whether before or after it is completed);

(d) the consent of another person required under a superior lease or a binding agreement must be obtained;

(e) the occupier must repay to the lessor the costs reasonably incurred in connection with the giving of his consent.

Modification of section 27 and paragraphs 5 to 7 of Schedule 4 to the Act

9.—(1) In relation to any case where the occupier occupies premises under a sub-lease or sub-tenancy, the provisions of section 27 of, and Part II of Schedule 4 to, the Act shall have effect as if they contained the following modifications.

(2) In section 27(2), for “the lessor” substitute “his immediate landlord” where it occurs in sub-paragraphs (a) and (b) and “the immediate landlord” where it occurs in sub-paragraphs (c) and (d).

(3) After section 27(2), insert the following subsection –

“(2A) Except to the extent to which it expressly so provides, any superior lease in respect of premises shall have effect in relation to the lessor and lessee who are parties to that superior lease as if it provided –

- (a) for the lessee to be entitled to give his consent to the alteration with the written consent of the lessor;
- (b) for the lessee to have to make a written application to the lessor for consent if he wishes to give his consent to 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.”.

(4) In paragraphs 5 and 6(1) of Schedule 4, for “the lessor” substitute “his immediate landlord”.

(5) After paragraph 6(1) of Schedule 4, insert the following paragraph –

“(1A) Where the lessee of any superior lease in relation to the premises has applied in writing to his 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,

the occupier, lessee 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.”.

(6) In paragraphs 6(3) and 6(4) of Schedule 4, for “lessor’s” substitute “immediate landlord’s”.

(7) In paragraph 7 of Schedule 4 –

- (a) in sub-paragraph (1), for “the lessor”, substitute “any lessor (including any superior landlord)” ;
- (b) for sub-paragraph (2), substitute –

“(2) Unless it appears to the court that another lessor should be joined as a party to the proceedings, the request shall be granted if it is made before the hearing of the claim begins.”.

Sealed with the Official Seal of the Office of the First Minister and deputy First Minister on 28th February 2003.

(L.S.)

P. McAuley
Assistant Secretary

SCHEDULE

(regulation 3(4))

REMOVAL OR ALTERATION OF PHYSICAL FEATURES: DESIGN STANDARDS

DEFINITION OF “RELEVANT DESIGN STANDARD”

1.—(1) Subject to sub-paragraph (2), a physical feature, in relation to a building situated in Northern Ireland, satisfies the relevant design standard for the purposes of regulation 3(3) where it accords with the relevant provisions set out in Technical Booklet R.

(2) However a physical feature does not satisfy the relevant design standard where more than 10 years have elapsed since –

- (a) the day on which the construction or installation of the feature was completed; or
- (b) in the case of a physical feature provided as part of a larger building project, the day on which the works in relation to that project were completed.

2.—(1) For the purposes of this paragraph,

(a) “Technical Booklet R” means –

- (i) the booklet of that title prepared by the Department of the Environment for Northern Ireland which sets out provisions which, if followed, will satisfy the requirements of Part R of the Building Regulations, first published by Her Majesty’s Stationery Office in 1994 (ISBN 0 337 08328 2); or
- (ii) the booklet of that title prepared by the Department of Finance and Personnel which sets out provisions which, if followed, will satisfy the requirements of Part R of the Building Regulations, first published by The Stationery Office Limited in 2001 (ISBN 0 337 23709 3);

(b) “the Building Regulations” means the Building Regulations (Northern Ireland) 1994(a) or the Building Regulations (Northern Ireland) 2000(b).

(2) In the case of a physical feature provided as part of building works to which the Building Regulations applied, for the purposes of paragraph 1(1) any reference to Technical Booklet R is a reference to whichever edition sets out the provisions which were relevant in relation to satisfying the requirements of the Building Regulations which applied to those building works.

(3) In any other case, for the purposes of paragraph 1(1), Technical Booklet R is whichever edition was the last edition published at the time when the physical feature was provided in or in connection with the building.

(4) For the purpose of sub-paragraph (3), a physical feature is deemed to be provided in or in connection with the building on –

- (a) the day upon which the works to install or construct the feature were commenced; or
- (b) in the case of a physical feature provided as part of a larger building project, the day upon which the works in relation to that project were commenced.

(5) Where in relation to the physical feature in question any provision of Technical Booklet R refers to a standard or specification (in whole or in part), that standard or specification shall be construed as including any equivalent standard or specification recognised for use in any Member state of the European Community or European Economic Area.

(a) S.R. 1994 No. 243; revoked by S.R. 2000 No. 389

(b) S.R. 2000 No. 389

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These regulations are made under Part III of the Disability Discrimination Act 1995 (“the Act”) and apply to service providers and landlords of premises occupied by service providers.

Regulation 3 prescribes particular circumstances in which it is reasonable or not reasonable for a service provider to have to take steps under section 21 of the Act in relation to alterations to his premises. One prescribed circumstance is where under the terms of a binding obligation the service provider is required to obtain the consent of another person to the alteration. In such circumstances it is reasonable for him to have to request the consent and it is not reasonable for him to have to make the alteration before the consent is obtained. Another circumstance is where, in the circumstances set out in the Schedule, a physical feature provided to assist people to have access to a building or to use the facilities provided in the building satisfies the relevant design standards defined in the Schedule. In such a case it is not reasonable for the service provider to have to remove or alter the feature.

Regulation 4 defines the meaning of “sub-lease” and “sub-tenancy” for the purposes of section 27 of the Act.

Regulations 5 to 7 set out the circumstances for the purpose of section 27 of, and Part II of Schedule 4 to, the Act where a lessor will be taken to have withheld his consent or to have reasonably or unreasonably withheld his consent to an application to make an alteration to premises made by or on behalf of the service provider.

Regulation 8 sets out conditions for the purposes of section 27 of, and Part II of Schedule 4 to, the Act that it is reasonable for a lessor to attach to a grant of consent to an alteration of premises.

Regulation 9 modifies certain provisions of section 27 of, and Schedule 8 to, the Act that apply to a landlord who is the service provider’s immediate landlord so that they apply to a landlord who is a service provider’s superior landlord.

The Schedule explains the meaning of “relevant design standard” for the purpose of Regulation 3 and sets out the circumstances in which a feature is to be regarded as satisfying that standard.

These Regulations were notified in draft to the European Commission in accordance with Directive 98/34/EC.

The Schedule refers to “Technical Booklet R”. Copies of the December 2000 Technical Booklet R (ISBN 0 337 23709 3) are available from The Publications Centre (mail, telephone and fax orders only) PO Box 276, London SW8 5DT (Telephone orders 0171 873 9090; Fax orders 0171 873 8200) and from The Stationery Office Bookshop, 16 Arthur Street, Belfast BT1 4GD (Telephone 028 9023 8451; Fax 028 9023 5401). It is also available on the Department of Finance and Personnel’s website (www.dfpni.gov.uk/buildingregulations/techbooklets.htm).

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