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STATUTORY INSTRUMENTS

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**1996 No. 1456**

**DISABLED PERSONS**

**The Disability Discrimination (Employment) Regulations 1996**

*Made* - - - - *6th June 1996*  
*Laid before Parliament* *6th June 1996*  
*Coming into force* - - *2nd December 1996*

In exercise of the powers conferred on the Secretary of State by sections 5(6) and (7), 6(8)(a), (c) to (g) and (10), 12(3) of and paragraph 3(a) and (b) of Schedule 4 to the Disability Discrimination Act 1995<sup>(1)</sup> the Secretary of State for Education and Employment hereby makes the following Regulations:—

**Citation and commencement**

1. These Regulations may be cited as the Disability Discrimination (Employment) Regulations 1996 and shall come into force on 2nd December 1996.

**Interpretation**

2. 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 the premises whether arising from an agreement or otherwise;

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

“building regulations” has the meaning given by section 122 of the Building Act 1984<sup>(2)</sup>;

“lease” has the meaning assigned by section 16(3) of the Act;

“pay” means remuneration of any kind including any benefit;

“performance” includes performance as assessed by reference to any measure, whether relative or absolute, of output, efficiency or effectiveness in an employment;

“section 6 duty” means any duty imposed by or under section 6 of the Act;

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(1) 1995 c. 50. For the meaning of “prescribed” and of “regulations” see section 68. Paragraph 3 of Schedule 4 is modified (where premises are occupied under a sublease or subtenancy) by S.I.1996/1333.  
(2) 1984 c. 55.

“Technical Standards” means the technical standards for compliance with the Building Standards (Scotland) Regulations 1990(3) issued by the Scottish Office in 1990 and as amended by the substitute pages issued by the Scottish Office in and dated July 1993 and July 1994(4).

### **Pay**

3.—(1) For the purposes of section 5 of the Act, treatment is to be taken to be justified if it results from applying to the disabled person a term or practice—

- (a) under which the amount of a person’s pay is wholly or partly dependent on that person’s performance; and
- (b) which is applied to all of the employer’s employees or to all of a class of his employees which includes the disabled person but which is not defined by reference to any disability.

(2) Arrangements consisting of the application to a disabled person of a term or practice of the kind referred to in paragraph (1) above are not to be taken to place that disabled person at a substantial disadvantage of the kind mentioned in section 6(1) of the Act.

(3) Nothing in this regulation affects the operation of section 6 of the Act in relation to any arrangements or physical features of premises which, by placing a disabled person at a substantial disadvantage, cause reduced performance by him.

### **Occupational pension schemes**

4.—(1) For the purposes of section 5(1) of the Act less favourable treatment of a disabled person is to be taken to be justified in the circumstances described in paragraph (2) below if it results from applying the eligibility conditions set for receiving any benefit referred to in paragraph (3) below or from determining the amount of any such benefit.

(2) The circumstances are that by reason of the disabled person’s disability (including any clinical prognosis flowing from the disability) the cost of providing any benefit referred to in paragraph (3) below is likely to be substantially greater than it would be for a comparable person without that disability.

(3) The benefits are those provided under an occupational pension scheme in respect of any of the following:—

- (a) termination of service;
- (b) retirement, old age or death; or
- (c) accident, injury, sickness or invalidity.

### **Uniform rates of contributions**

5. For the purposes of section 5 of the Act, treatment is always to be taken to be justified if an employer requires from a disabled person the same rate of contribution to an occupational pension scheme as he requires from his other employees (or from any class of his employees which includes the disabled person but which is not defined by reference to any disability), notwithstanding that the disabled person is not eligible under that scheme, for a reason related to his disability, to receive a benefit or to receive a benefit at the same rate as a comparable person to whom that reason does not apply.

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(3) S.I. 1990/2179.

(4) These amendments to the Technical Standards were given effect to by S.I. 1993/1457 and S.I. 1994/1266.

## **Agricultural wages**

6. For the purposes of section 5 of the Act—
- (a) treatment of a disabled person is to be taken to be justified to the extent that the treatment relates to a matter within the terms and conditions of a permit granted to that person under section 5 of the Agricultural Wages Act 1948<sup>(5)</sup> or section 5 of the Agricultural Wages (Scotland) Act 1949<sup>(6)</sup> (permits to incapacitated persons) and accords with those terms and conditions, and
  - (b) failure to take a step otherwise required to comply with a section 6 duty is to be taken to be justified if that step would relate to a matter within the terms and conditions of the permit referred to in (a) above but would exceed the requirements of those terms and conditions.

## **Contract Work**

7.—(1) Paragraph (2) below applies for the purposes of section 6 of the Act (and that section as applied by section 12(3) of the Act) where a contract worker is likely to be placed at a similar substantial disadvantage by arrangements made by or on behalf of, or premises occupied by, all or most of the principals to whom he is or might be supplied.

(2) It is reasonable for the employer to have to take such steps as are within his power as it would be reasonable for him to have to take if the arrangements were made by him or on his behalf or, as the case may be, the premises were occupied by him.

(3) For the purposes of section 6 of the Act (and that section as applied by section 12(3) of the Act) it is not reasonable for any principal to whom a contract worker is supplied to have to take any step which it is reasonable for the employer to have to take pursuant to paragraph (2) above or otherwise.

## **Building Regulations**

8.—(1) This regulation applies only to a physical characteristic included within building works which—

- (a) was adopted with a view to meeting the requirements for the time being of—
  - (i) (in England and Wales) Part M of the building regulations<sup>(7)</sup>, and
  - (ii) (in Scotland) Part T of the Technical Standards,with regard to access and facilities for disabled people, and
- (b) met those requirements at the time the building works were carried out and continues substantially to meet those requirements which applied at the time the building works were carried out.

(2) For the purposes of section 6(1) of the Act it is never reasonable for an employer to have to take steps in relation to a disabled person to the extent that this would involve altering any physical characteristic to which this regulation applies.

## **Physical features**

9. For the purposes of section 6(1) of the Act the following are to be treated as physical features (whether permanent or temporary)—

- (a) any feature arising from the design or construction of a building on the premises;
- (b) any feature on the premises of any approach to, exit from or access to such a building;

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<sup>(5)</sup> 1948 c. 47.

<sup>(6)</sup> 1949 c. 30.

<sup>(7)</sup> The Regulations currently in force are the Building Regulations 1991 (S.I. 1991/2768). Schedule 1 contains Part M. Part M was originally introduced by the Building (Disabled People) Regulations 1987 (S.I. 1987/1445).

- (c) any fixtures, fittings, furnishings, furniture, equipment or materials in or on the premises;
- (d) any other physical element or quality of any land comprised in the premises.

### **Consent to an adjustment**

**10.**—(1) For the purposes of section 6(1) of the Act where under any binding obligation the employer is required to obtain the consent of any person to any alteration of the premises occupied by him it is always reasonable for the employer to have to take steps to obtain that consent and it is never reasonable for the employer to have to make that alteration before that consent is obtained.

(2) The steps referred to in paragraph (1) above shall not be taken to include an application to a court or tribunal.

### **Lessor withholding consent**

**11.**—(1) For the purposes of section 16 of and Part I of Schedule 4 to the Act a lessor is to be taken to have withheld his consent to an alteration where he has received a written application by or on behalf of the occupier for consent to make the alteration and has failed to meet the requirements specified in paragraph (2) below.

(2) The requirements are that the lessor within a period of 21 days (beginning with the day on which he receives the application referred to in paragraph (1) above) or such longer period as is reasonable—

- (a) replies consenting to or refusing the application, or
- (b) (i) replies consenting to the application subject to obtaining the consent of another person required under a superior lease or pursuant to a binding obligation, and
- (ii) seeks that consent.

(3) A lessor who fails to meet the requirements in paragraph (2) above but who subsequently meets those requirements (except as to time)—

- (a) shall be taken to have withheld his consent from the date of such failure, and
- (b) shall be taken not to have withheld his consent from the time he met those requirements (except as to time).

(4) For the purposes of this regulation, a lessor is to be treated as not having sought another person's consent unless he has applied in writing to that person, indicating—

- (i) that the lessor's consent to the alteration has been applied for in order to comply with a section 6 duty, and
- (ii) that he has given his consent conditionally upon obtaining the other person's consent.

### **Lessor withholding consent unreasonably**

**12.** For the purposes of section 16 of and Part I of Schedule 4 to the Act, a lessor is to be taken to have withheld his consent unreasonably where—

- (a) the lease provides that consent shall or will be given to an alteration of the kind in question; or
- (b) the lease provides that consent shall or will be given to an alteration of the kind in question if the consent is sought in a particular way and the consent has been sought in that way; or
- (c) the lessor is to be taken to have withheld his consent by virtue of regulation 11 above.

### **Lessor withholding consent reasonably**

**13.**—(1) For the purposes of section 16 of and Part I of Schedule 4 to the Act a lessor is to be taken to have acted reasonably in withholding his consent where—

- (a) there is a binding obligation requiring the consent of any person to the alteration;
- (b) he has taken steps to seek that consent; and
- (c) that consent has not been given or has been given subject to a condition making it reasonable for him to withhold his consent.

(2) For the purposes of section 16 of and Part I of Schedule 4 to the Act a lessor is to be taken to have acted reasonably in withholding his consent where—

- (a) he is bound by an agreement which allows him to consent to the alteration in question subject to a condition that he makes a payment, and
- (b) that condition does not permit the lessor to make his own consent subject to a condition that the occupier reimburse him the payment.

### **Lessor's consent subject to conditions**

**14.**—(1) For the purposes of section 16 of and Part I of Schedule 4 to the Act a condition subject to which a lessor has given his consent is to be taken to be reasonable in all circumstances if it is any of the following (or a condition to similar effect)—

- (a) that the occupier must obtain any necessary planning permission and any other consent or permission required by or under any enactment;
- (b) that the occupier must submit any plans or specifications for the alteration to the lessor for approval (provided that the condition binds the lessor not to withhold approval unreasonably) and that the work is carried out in accordance with such plans or specifications;
- (c) that the lessor must be permitted a reasonable opportunity to inspect the work when completed; and
- (d) that the occupier must repay to the lessor the costs reasonably incurred in connection with the giving of his consent.

(2) For the purposes of section 16 of and Part I of Schedule 4 to the Act in a case where it would be reasonable for the lessor to withhold consent, a condition that upon expiry of the lease the occupier (or any assignee or successor) must reinstate any relevant part of the premises which is to be altered to its state before the alteration was made is to be taken as reasonable.

### **Steps contrary to the terms of the lease**

**15.** For the purposes of section 6 of the Act it is not reasonable for an employer to have to take a step in relation to premises occupied by him which would otherwise be required in order to comply with a section 6 duty and which is contrary to the terms of any lease under which he occupies those premises if—

- (a) he has applied to the lessor in writing to take the step,
- (b) he has indicated in writing that he proposes to take the step, subject to that consent, in order to comply with a section 6 duty,
- (c) the lessor has withheld that consent, and
- (d) the occupier has informed the disabled person that he has applied for the consent of the lessor and that the lessor has withheld it.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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6th June 1996

*Henley*  
Minister of State,  
Department for Education and Employment

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations (made under the Disability Discrimination Act 1995) provide, among other things, for circumstances where treatment of a disabled employee (or a failure to make an adjustment to premises) is justified. These include:

- (a) where pay is linked to performance (regulation 3);
- (b) where there are uniform rates of contribution to an occupational pension scheme regardless of the benefits received (regulation 4);
- (c) where building works complied with (and continue to comply with) the building regulations in relation to access and facilities for disabled people at the time the works were carried out (regulation 8).

Regulations 11 to 15 deal with the position where the employer's premises are held under a lease or tenancy.