

This Statutory Instrument has been made in consequence of a defect in SI 2002/1458 and is being issued free of charge to all known recipients of that Statutory Instrument.

S T A T U T O R Y I N S T R U M E N T S

2005 No. 1070

DISABLED PERSONS

EDUCATION

**The Disability Discrimination (Educational Institutions)
(Alteration of Leasehold Premises) Regulations 2005**

Made - - - - - *31st March 2005*

Laid before Parliament *8th April 2005*

Coming into force - - - *1st May 2005*

The Secretary of State, in exercise of the powers conferred upon her by paragraphs 13 and 14 of Schedule 4 to the Disability Discrimination Act 1995(a), hereby makes the following Regulations:

Citation, commencement and extent

1. These Regulations, which extend to England, Scotland and Wales, may be cited as the Disability Discrimination (Educational Institutions) (Alteration of Leasehold Premises) Regulations 2005, and shall come into force on 1st May 2005.

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 premises whether arising from an agreement or otherwise;

“relevant lessor” means a lessor who has received a written application by or on behalf of the occupier for consent to make an alteration to premises for the purposes of section 28W of, and Part 3 of Schedule 4 to, the Act.

Lessor withholding consent

3.—(1) This regulation prescribes particular circumstances in which a relevant lessor is to be taken, for the purposes of section 28W of, and Part 3 of Schedule 4 to, the Act, to have withheld his consent for alterations to premises.

(a) 1995 c.50. Part 3 of Schedule 4 was inserted by section 31(2) and Schedule 6 of the Special Educational Needs and Disability Act 2001 (2001 c.10). For the meaning of “regulations” see section 68.

(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 alteration; or
- (b)
 - (i) replies consenting to the alteration subject to obtaining the consent of another person required under a superior lease or pursuant to a binding obligation, but
 - (ii) 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)
 - (i) replies consenting to the alteration subject to obtaining the consent of another person required under a superior lease or pursuant to a binding obligation, but
 - (ii) 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 28T 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

4.—(1) This regulation prescribes particular circumstances in which a relevant lessor is to be taken, for the purposes of section 28W of, and Part 3 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

5.—(1) This regulation prescribes particular circumstances in which a relevant lessor is to be taken, for the purposes of section 28W of, and Part 3 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)
 - (i) there is a binding obligation requiring the consent of any person to the alteration;
 - (ii) the relevant lessor has taken steps to seek that consent; and
 - (iii) 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 28T duty.

Lessor's consent subject to conditions

6.—(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 28W of, and Part 3 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 enactment;
- (b) the work must be carried out in accordance with any plans or specifications approved by the lessor, such approval not to be unreasonably withheld;
- (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 28W and paragraphs 10 to 12 of Schedule 4

7.—(1) In relation to any case where the occupier occupies premises under a sub-lease or sub-tenancy, the provisions of section 28W of, and Part 3 of Schedule 4 to, the Act shall have effect as if they contained the following modifications.

(2) After section 28W(2), insert the following subsection—

“(2A) Except to the extent to which it expressly so provides, any superior lease in respect of the 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.”.

(3) In section 28W(2), for “the lessor” substitute “his immediate landlord” where it occurs in sub-paragraphs (a) and (b) and “immediate landlord” where it occurs in sub-paragraphs (c) and (d).

(4) In paragraphs 10 and 11 of Schedule 4 for “the lessor” in each place where it occurs substitute “his immediate landlord”.

(5) After paragraph 11(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 or, in Scotland, to the sheriff.”.

(6) In paragraph 12 of Schedule 4—

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

(b) for sub-paragraph (2), substitute—

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

Revocation

8. The Disability Discrimination (Educational Institutions)(Alteration of Leasehold Premises) Regulations 2002(a) are hereby revoked.

31st March 2005

Margaret Hodge
Minister of State
Department for Education and Skills

(a) S.I. 2002/1458.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under paragraphs 13 and 14 of Schedule 4 of the Disability Discrimination Act 1995 and contain provisions in respect of consents required under the terms of leases and sub-leases occupied by educational institutions whose governing bodies are subject to the duty of reasonable adjustment set out in section 28T of that Act.

Regulations 3 to 5 set out circumstances for the purposes of section 28W of, and Part 3 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 6 sets out conditions for the purposes of section 28W of, and Part 3 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 7 modifies certain provisions of section 28W of, and Schedule 4 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.

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£3.00

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Printed and published in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, Controller of Her Majesty's
Stationery Office and Queen's Printer of Acts of Parliament.

E0733 4/2005 150733T 19585

ISBN 0-11-072751-7



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