

2006 No. 887

DISABLED PERSONS

The Disability Discrimination (Premises) Regulations 2006

Made - - - - *21st March 2006*

Laid before Parliament *28th March 2006*

Coming into force - - *4th December 2006*

The Secretary of State for Work and Pensions, in exercise of the powers conferred upon him by sections 22(3A), 22A(4), 24(4A) and (5), 24K(3), 24L(1) and (2), 67(3) and 68(1) of the Disability Discrimination Act 1995(a) makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as The Disability Discrimination (Premises) Regulations 2006 and shall come into force on 4th December 2006.

(2) In these Regulations—

“the 1995 Act” means the Disability Discrimination Act 1995;

“commonhold”, “commonhold association” and “commonhold community statement” have the same meaning as in Part 1 of the Commonhold and Leasehold Reform Act 2002(b).

Circumstances in which mental incapacity justification does not apply

2. The conditions specified in sections 24(3)(b) and 24K(2)(b) of the 1995 Act shall not apply where another person is acting for a disabled person by virtue of—

- (a) a power of attorney;
- (b) functions conferred by or under Part 7 of the Mental Health Act 1983(c); or
- (c) powers exercisable in relation to the disabled person’s property or affairs in consequence of the appointment, under the law of Scotland, of a guardian, tutor or judicial factor.

Circumstances in which less favourable treatment is justified: deposits

3.—(1) Where, for a reason which relates to the disabled person’s disability, a person with power to dispose of any premises (“the provider”) treats a disabled person less favourably than he treats or would treat others to whom that reason does not or would not apply, that treatment shall be taken to be justified for the purposes of section 24(1) of the 1995 Act in the circumstances specified in paragraph (2).

(a) 1995 c.50. Sections 22(3A), 22A and 24(4A) were inserted by, respectively, paragraphs 16, 17 and 19(5) of Schedule 1 to the Disability Discrimination Act 2005 (c.13); sections 24A to 24L were inserted by section 13 of that Act; section 67(3) was amended by paragraph 33(3) of Schedule 1 to that Act; section 68(1), which was amended by paragraph 34 of Schedule 1 to that Act, is cited because of the meaning there given to “prescribed” and “regulations”.

(b) 2002 c.15. See sections 1, 31 and 34 of that Act.

(c) 1983 c.20. Part 7 is repealed by section 66 of the Mental Capacity Act 2005 (c.9) which is not yet in force.

- (2) The circumstances referred to in paragraph (1) are that—
- (a) the provider grants a disabled person a right to occupy premises (whether by means of a formal tenancy agreement or otherwise);
 - (b) the disabled person is required to provide a deposit which is refundable at the end of the period of occupation provided that the premises and contents are not damaged;
 - (c) the provider refuses to refund some or all of the deposit because the premises or contents have been damaged for a reason which relates to the disabled person's disability, and the damage is above the level at which the provider would normally refund some or all of the deposit; and
 - (d) it is reasonable in all the circumstances for the provider to refuse to refund some or all of the deposit.

Physical features

- 4.—(1) This regulation applies for the purposes of sections 24E(1) and 24J(5) of the 1995 Act.
- (2) The following are to be treated as physical features—
- (a) any feature arising from the design or construction of the premises;
 - (b) any feature of any approach to, exit from, or access to the premises;
 - (c) any fixtures in or on the premises;
 - (d) any other physical element or quality of any land comprised in the premises.
- (3) Any furniture, furnishings, materials, equipment or other chattels in or on the premises are not to be treated as physical features.
- (4) The following are not to be treated as alterations of physical features—
- (a) the replacement or provision of any signs or notices;
 - (b) the replacement of any taps or door handles;
 - (c) the replacement, provision or adaptation of any door bell, or door entry system;
 - (d) changes to the colour of any surface (such as, for example, a wall or door).

Auxiliary aids or services

- 5.—(1) The following are to be treated as auxiliary aids or services for the purposes of sections 24C and 24J(1) and (2) of the 1995 Act—
- (a) the removal, replacement or (subject to paragraph (2)) provision of any furniture, furnishings, materials, equipment or other chattels;
 - (b) the replacement or provision of any signs or notices;
 - (c) the replacement of any taps or door handles;
 - (d) the replacement, provision or adaptation of any door bell, or door entry system;
 - (e) changes to the colour of any surface (such as, for example, a wall or door).
- (2) Paragraph (1)(a) does not include the provision of any item which would be a fixture when installed.
- (3) It is reasonable to regard a request for a matter falling within paragraph (1) as a request for the controller of premises to take steps in order to provide an auxiliary aid or service.
- (4) In paragraph (3), the “controller of premises” means, in relation to section 24C of the 1995 Act, the controller of let premises and, in relation to section 24J(1) and (2) of that Act, the controller of premises that are to let.

Reasonable steps where third party consent to change a term of a letting is required

- 6.—(1) Where—

- (a) under the terms of any lease or other binding obligation a controller of let premises is required to obtain the consent of any person to change a term of a letting; and
- (b) but for that requirement, it would be reasonable for the controller of let premises to change the term in order to comply with a duty under section 24D(3) of the 1995 Act,

it is reasonable for the controller of let premises to have to request that consent, but it is not reasonable for him to have to change the term of the letting before that consent is obtained.

(2) In this regulation “binding obligation” means any legally binding obligation in relation to premises, whether arising from an agreement or otherwise.

Reasonable steps where a term of a letting of a dwelling house prohibits improvements

7.—(1) Paragraph (2) prescribes circumstances in which it is reasonable for the purposes of section 24D(3) of the 1995 Act for a controller of let premises to have to take the steps specified in paragraph (3).

(2) The circumstances are as follows—

- (a) a controller of let premises is subject to a duty under section 24D(3) in relation to a term of the letting of a dwelling house;
- (b) the duty has arisen because a term of the letting prohibits the person to whom the premises are let from making alterations or improvements to the premises;
- (c) the terms of the letting contain no exception to that prohibition for alterations or improvements to be made with the consent of the controller of let premises;
- (d) the person to whom the premises are let has requested permission to make an improvement to the premises;
- (e) if the improvement in question were excluded from the prohibition, the term would no longer have the effect of making it impossible or unreasonably difficult for a relevant disabled person to enjoy the premises or make use of any benefit or facility which by reason of the letting is one of which he is entitled to make use(a); and
- (f) it would be reasonable in all the circumstances for the person to whom the premises are let to make the improvement in question.

(3) Where paragraph (2) applies, it is reasonable for the controller of let premises to have to take steps to change the term referred to in sub-paragraph (b) of that paragraph, so far as it relates to the improvement in question, so that it becomes a term which permits the making of that improvement, subject to the imposition of reasonable conditions by the controller of let premises.

(4) This regulation is subject to regulation 6.

Discrimination in relation to commonholds

8.—(1) A commonhold association which exercises functions in relation to any commonhold premises is to be treated as a person who manages the premises for the purposes of section 22(3) of the 1995 Act.

(2) For the purposes of section 22A of the 1995 Act—

- (a) “dispose”, in relation to an interest in a commonhold unit, includes granting a right to occupy the unit, and “disposal” shall be construed accordingly; and
- (b) an “interest in a commonhold unit” includes an interest in part only of a commonhold unit.

(a) See section 24D(1) of the 1995 Act. By section 24E(3) of that Act, the term “relevant disabled person” means a particular disabled person who is either a person to whom the premises are let, or a person who is lawfully under the letting an occupier of the premises.

Application of sections 24A to 24F of the 1995 Act to commonholds

9.—(1) Premises which are a commonhold unit of which a person is a unit-holder are to be treated as premises which are let to that person for the purposes of sections 24A to 24F of the 1995 Act.

(2) Where paragraph (1) applies—

- (a) a commonhold association which exercises functions in relation to the premises is to be treated as a person who manages the premises;
- (b) for the purposes of sections 24D and 24E of the 1995 Act, any reference to a term of the letting is to be treated as including a reference to—
 - (i) a term of the commonhold community statement; and
 - (ii) any other term applicable by virtue of the transfer of the unit to the unit-holder;
- (c) for the purposes of sections 24C(4) and 24D(1) of the 1995 Act, any benefit or facility which, by reason of the letting, is one of which a relevant disabled person is entitled to make use, shall be treated as including any benefit or facility which by reason of any term referred to in sub-paragraph (b)(i) or (b)(ii), is one of which a relevant disabled person is entitled to make use;
- (d) a person who is lawfully an occupier of the unit, although not a unit-holder nor a person lawfully occupying the unit under a letting of it, is to be treated as a person who, although not a person to whom the premises are let, is lawfully under a letting an occupier of them.

Revocation

10. The Disability Discrimination (Services and Premises) Regulations 1996^(a) and the Disability Discrimination (Services and Premises) (Amendment) Regulations 2002^(b) are revoked.

Signed by authority of the Secretary of State for Work and Pensions.

21st March 2006

Anne C. McGuire
Parliamentary Under-Secretary of State,
Department for Work and Pensions

^(a) S.I. 1996/1836. The Regulations are revoked in part by S.I. 2002/1980 and S.I. 2005/2901.
^(b) S.I. 2002/1980.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations should be read in conjunction with sections 22 to 24M of the Disability Discrimination Act 1995 (“the 1995 Act”), as amended by the Disability Discrimination Act 2005 (“the 2005 Act”).

Sections 22 to 24 of the 1995 Act make provision about discrimination in relation to the disposal of premises. By section 24(1), a person with power to dispose of any premises 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 or would not apply, and he cannot show that the treatment is justified under that section. Regulations 2 and 3 (which replaces regulation 7 of S.I. 1996/1836) make further provision about justification.

Sections 24A to 24L of the 1995 Act, which were inserted by the 2005 Act, make further provision about discrimination in relation to let premises and premises that are to let. By section 24A, a controller of let premises discriminates against a disabled person to whom premises are let, or who is a lawful occupier of such premises, if he fails to comply with a duty under section 24C or 24D (which concern the provision of auxiliary aids or services, and changes to practices, policies, procedures and terms of a letting) and he cannot show that the failure to comply was justified. Certain duties are also imposed by sections 24G to 24J in respect of premises that are to let.

Regulation 4 prescribes things which are, and are not, to be treated as physical features, and things which are not to be treated as alterations of physical features, for the purposes of sections 24E(1) and 24J(5) of the 1995 Act. Section 24E(1) provides that it is never reasonable for the purposes of sections 24C and 24D of the 1995 Act for a controller of let premises to have to take steps consisting of or including the removal or alteration of a physical feature. Section 24J(5) of the 1995 Act makes similar provision in respect of premises that are to let.

Regulation 5 prescribes things which are to be treated as auxiliary aids or services for the purposes of sections 24C and 24J(1) and (2) of the 1995 Act.

Regulation 6 makes provision for the purposes of section 24D(3) of the 1995 Act about the steps which it is reasonable for a controller of let premises to have to take, and steps which it is not reasonable to have to take, where it is necessary to obtain the consent of any person to change a term of a letting.

Regulation 7 makes provision for the purposes of section 24D(3) of the 1995 Act about the steps which it is reasonable for a controller of let premises to have to take in prescribed circumstances where a term of the letting of a dwelling house prohibits the making of alterations or improvements to the premises, and the person to whom the premises are let has requested permission to make a disability-related improvement to them. (Section 49G of the 1995 Act provides for cases where a term of the letting permits the making of improvements, subject to the consent of the landlord.)

Regulations 8 and 9 make provision about commonholds. Regulation 8(1) provides that the commonhold association is to be treated as a person managing any commonhold premises, thereby ensuring that section 22(3) of the 1995 Act, which provides that discrimination by a person managing any premises is unlawful, is applicable. Regulation 8(2) makes provision in relation to section 22A of the 1995 Act, which concerns discrimination in the disposal of an interest in a commonhold unit. Regulation 9 applies the duties imposed by sections 24C and 24D of the 1995 Act to commonholds.

An assessment of the impact of these Regulations on business, charities and the voluntary sector has been made. Copies of the Regulatory Impact Assessment have been placed in the libraries of both Houses of Parliament. Copies may be obtained from the Better Regulation Unit of the Department for Work and Pensions, level 4, The Adelphi, 1-11 John Adam Street, London WC2N 6HT.

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