

2010 No. 2128

EQUALITY

DISABLED PERSONS

The Equality Act 2010 (Disability) Regulations 2010

<i>Made</i> - - - -	<i>25th August 2010</i>
<i>Laid before Parliament</i>	<i>31st August 2010</i>
<i>Coming into force</i> - -	<i>1st October 2010</i>

The Secretary of State, in exercise of the powers conferred by sections 22(2)(a) and (e) 207(1), (2) and (4), and section 212(1) (a) of and paragraphs 1, 2(4), 3(2), 4 and 7(1) of Schedule 1 and paragraph 6 of Schedule 21 to the Equality Act 2010(b), makes the following Regulations:

PART 1

Introductory

Citation and Commencement

1. These Regulations may be cited as the Equality Act 2010 (Disability) Regulations 2010 and shall come into force on 1st October 2010.

Interpretation

2. In these Regulations —

“the Act” means the Equality Act 2010;

“addiction” includes a dependency;

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

“consultant ophthalmologist” means a consultant or honorary consultant appointed in the medical speciality of ophthalmology, who is employed for the purposes of providing any service as part of the health service continued under section 1(1) and (2) of the National Health Service Act 2006(c), section 1(1) and (2) of the National Health Service (Wales) Act 2006(d), section 1(1) of the National Health Service (Scotland) Act 1978(e) or section 2(1)(a) of the Health and Social Care (Reform) Act (Northern Ireland) 2009(f);

(a) section 212(1) defines “prescribed”.
(b) 2010 c. 15.
(c) 2006 c. 41.
(d) 2006 c. 42.
(e) 1978 c. 29.
(f) 2009 c.1 (N.I.).

“a second requirement duty” means a duty to comply with the second requirement contained in any of the following provisions of the Act—

- (a) paragraph 2 of Schedule 2;
- (b) paragraph 2 of Schedule 8;
- (c) paragraph 3 of Schedule 13;
- (d) paragraph 2 of Schedule 15.

PART 2

Determination of Disability

Addictions

3.—(1) Subject to paragraph (2) below, addiction to alcohol, nicotine or any other substance is to be treated as not amounting to an impairment for the purposes of the Act.

(2) Paragraph (1) above does not apply to addiction which was originally the result of administration of medically prescribed drugs or other medical treatment.

Other conditions not to be treated as impairments

4.—(1) For the purposes of the Act the following conditions are to be treated as not amounting to impairments:—

- (a) a tendency to set fires,
- (b) a tendency to steal,
- (c) a tendency to physical or sexual abuse of other persons,
- (d) exhibitionism, and
- (e) voyeurism.

(2) Subject to paragraph (3) below, for the purposes of the Act the condition known as seasonal allergic rhinitis shall be treated as not amounting to an impairment.

(3) Paragraph (2) above shall not prevent that condition from being taken into account for the purposes of the Act where it aggravates the effect of any other condition.

Tattoos and piercings

5. For the purposes of paragraph 3 of Schedule 1 to the Act, a severe disfigurement is not to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities if it consists of—

- (a) a tattoo (which has not been removed), or
- (b) a piercing of the body for decorative or other non-medical purposes, including any object attached through the piercing for such purposes.

Babies and young children

6. For the purposes of the Act, where a child under six years of age has an impairment which does not have a substantial and long-term adverse effect on the ability of that child to carry out normal day-to-day activities, the impairment is to be taken to have a substantial and long-term adverse effect on the ability of that child to carry out normal day-to-day activities where it would normally have that effect on the ability of a person aged 6 years or over to carry out normal day-to-day activities.

Persons deemed to have a disability

7. A person is deemed to have a disability, and hence to be a disabled person, for the purposes of the Act where that person is certified as blind, severely sight impaired, sight impaired or partially sighted by a consultant ophthalmologist.

PART 3

Auxiliary Aids or Services

Auxiliary aids or services

8.—(1) The following are to be treated as auxiliary aids or services for the purposes of paragraphs 2 to 4 of Schedule 4 to the Act—

- (a) the removal, replacement or (subject to paragraph (2)) provision of any furniture, furnishings, materials, equipment and 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 any 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 a controller of premises to take steps in order to provide an auxiliary aid or service.

(4) In paragraph (3), the “controller of premises” means—

- (a) in relation to paragraph 2 of Schedule 4 to the Act, the controller of let premises;
- (b) in relation to paragraph 3 of Schedule 4 to the Act, the controller of premises that are to let; and,
- (c) in relation to paragraph 4 of Schedule 4 to the Act, the commonhold association.

PART 4

Reasonable Adjustments to Physical Features

Reasonableness and design standards

9.—(1) This regulation prescribes particular circumstances, for the purposes of paragraph 2 of Schedule 2 and paragraph 2 of Schedule 15 to the Act, in which it is not reasonable for a provider of services, a public authority carrying out its functions or an association to have to take the steps specified in this regulation.

(2) It is not reasonable for a provider of services, a public authority carrying out its functions or an association 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.

(3) Whether a physical feature satisfies the relevant design standard shall be determined in accordance with the Schedule.

Landlord withholding consent

10.—(1) This regulation prescribes particular circumstances in which a relevant landlord (L) is to be taken, for the purposes of Schedule 21 to the Act, to have withheld consent for alterations to premises.

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

- (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) L is not to be taken to have withheld 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 L 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, L replies requesting the applicant to submit such plans and specifications.

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

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

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

(7) For the purposes of this regulation—

- (a) L is to be treated as not having sought another's consent unless he—
 - (i) 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 second requirement duty; and
 - (bb) L has given his consent conditionally upon obtaining the other person's consent; and
 - (ii) submits to that other person any plans and specifications which have been submitted to L;
- (b) “to reply” means to reply in writing.

Landlord withholding consent unreasonably

11.—(1) This regulation prescribes particular circumstances in which a relevant landlord (L) is to be taken, for the purposes of Schedule 21 to the Act, to have acted unreasonably in withholding consent for alterations to the premises.

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

Landlord withholding consent reasonably

12.—(1) This regulation prescribes particular circumstances in which a relevant landlord (L) is to be taken, for the purposes of Schedule 21 to the Act, to have acted reasonably in withholding 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) L has taken steps to obtain that consent; and
- (iii) that consent has not been given, or has been given subject to a condition making it reasonable for L to withhold consent; or
- (b) L does not know, and could not reasonably be expected to know, that the alteration is one which the occupier proposes to make to comply with a second requirement duty.

Landlord's consent subject to conditions

13.—(1) This regulation prescribes particular circumstances in which a condition, subject to which a relevant landlord (L) has given consent to alterations to premises, is to be taken, for the purposes of Schedule 21 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 L;
- (c) L 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 L the costs reasonably incurred in connection with the giving of the consent.

Modification of Schedule 21

14.—(1) In relation to any case where the occupier occupies premises under a sub-tenancy, the provisions of Schedule 21 to the Act shall have effect as if they contained the following modifications.

(2) In paragraph 3(3) and (4) and 4(1), for “the landlord” substitute “the immediate landlord” in each place it occurs.

(3) After paragraph 3(3), insert the following sub-paragraph—

“(3A) 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 landlord and tenant who are parties to that superior lease as if it provided—

- (a) for the tenant to be entitled to give his consent to the alteration with the written consent of the landlord;
- (b) for the tenant to have to make a written application to the landlord for consent if he wishes to give his consent to the alteration;
- (c) if such an application is made, for the landlord not to withhold his consent unreasonably; and
- (d) for the landlord to be entitled to make his consent subject to reasonable conditions.

”.

(4) After paragraph 4(2), insert the following sub-paragraph—

“(2A) Where the tenant of any superior lease in relation to the premises has applied in writing to his landlord for consent to the alteration and—

- (a) That consent has been refused, or
- (b) The landlord has made his consent subject to one or more conditions, the occupier, tenant or a disabled person who has an interest in the alteration being made may refer the matter to a county court or, in Scotland, the sheriff.”.

(5) In paragraph 5—

- (a) In sub-paragraph (2), for ‘the landlord’ substitute “any landlord (including any superior landlord)”;
- (b) In sub-paragraph (3), for paragraph (a), substitute—
 - “(a) must grant the request if it is made before the hearing of the complaint or claim begins, unless it considers that another landlord should be joined or sisted as a party to the proceedings.”.

Revocation

15.—(1) The Regulations listed in paragraph (2) are revoked.

(2) The Regulations referred to in paragraph (1) are-

- (i) the Disability Discrimination (Meaning of Disability) Regulations 1996**(a)**;
- (ii) the Disability Discrimination (Providers of Services) (Adjustment of Premises) Regulations 2001**(b)**;
- (iii) the Disability Discrimination (Blind and Partially Sighted Persons) Regulations 2003**(c)**;
- (iv) the Disability Discrimination (Employment Field) (Leasehold Premises) Regulations 2004**(d)**;
- (v) the Disability Discrimination (Educational Institutions) (Alteration of Leasehold Premises) Regulations 2005**(e)**;
- (vi) the Disability Discrimination (Service Providers and Public Authorities Carrying Out Functions) Regulations 2005**(f)**;
- (vii) the Disability Discrimination (Private Clubs etc) Regulations 2005**(g)**;
- (viii) the Disability Discrimination (Premises) Regulations 2006**(h)**.

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

Maria Miller
Parliamentary Under-Secretary of State,
Department for Work and Pensions

25th August 2010

(a) S.I. 1996/1455.
(b) S.I. 2001/3253.
(c) S.I. 2003/712.
(d) S.I. 2004/153.
(e) S.I. 2005/1070.
(f) S.I. 2005/2901.
(g) S.I. 2005/3258.
(h) S.I. 2006/887.

Removal or Alteration of Physical Features: Design Standards

Definition of “relevant design standard”

1.—(1) Subject to sub-paragraph (3), a physical feature, in relation to a building situated in England or Wales, satisfies the relevant design standard for the purpose of regulation 9(2) where it accords with the relevant objectives, design considerations and provisions in Approved Document M.

(2) Subject to sub-paragraph (3), a physical feature, in relation to a building situated in Scotland, satisfies the relevant design standard for the purposes of regulation 9(2) where—

- (a) it was provided in or in connection with the building on or after 30th June 1994 and before 1st May 2005 in accordance with the Technical Standards relevant in relation to that feature; or
- (b) it was provided in or in connection with the building on or after 1st May 2005 in accordance with the relevant functional standards and guidance in the Technical Handbook.

(3) A physical feature does not satisfy the relevant design standard where more than 10 years have elapsed since—

- (a) the day on which 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.

Buildings in England and Wales

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

- (a) “Approved Document M” means—
 - (i) the 1992 edition of the document of that title approved by the Secretary of State as practical guidance on meeting the requirements of Part M of Schedule 1 to the Building Regulations 1991(a), first published for the Department of the Environment by Her Majesty’s Stationery Office in 1991 (ISBN 011 752447 6); or
 - (ii) the 1999 edition of the document of that title approved by the Secretary of State as practical guidance on meeting the requirements of Part M of Schedule 1 to the Building Regulations 1991, first published for the Department of the Environment, Transport and the Regions by The Stationery Office under licence from the Controller of Her Majesty’s Stationery Office in 1998 (ISBN 011 753469 2); or
 - (iii) the 2004 edition of the document of that title approved by the Secretary of State as practical guidance on meeting the requirements of Part M of Schedule 1 to the Building Regulations 2000(b), first published for the Office of the Deputy Prime Minister by the Stationery Office under licence from the Controller of Her Majesty’s Stationery Office 2003 (ISBN 011 753901 5);
- (b) “the Building Regulations” means the Building Regulations 1991 or the Building Regulations 2000.

(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) Approved Document M is whichever edition is the practical guidance which was relevant in relation to meeting the requirements of the Building Regulations which applied to those building works.

(a) S.I. 1991/2768 (revoked by S.I. 2000/2531 as from 1st January 2001, except in relation to building work carried out or to be carried out in accordance with a building notice, an initial notice, an amendment notice or a public body’s notice given to, or full plans deposited with, a local authority, before that date).

(b) S.I. 2000/2531 (Part M substituted by S.I. 2003/2692).

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

(4) For the purposes 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 Approved Document M refers to a standard or specification (in whole or in part), that standard or specification shall be construed as referring to any equivalent standard or specification recognised for use in any EEA state.

Buildings in Scotland

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

- (a) “Technical standards” means the Technical Standards defined by regulation 2(1) of the Building Standards (Scotland) Regulations 1990^(a) in effect at the time when the physical feature was provided in or in connection with the building;
- (b) “Technical Handbook” means the following Technical Handbooks for non-domestic buildings issued by the Scottish Ministers as guidance meeting the requirements of the Building (Scotland) Regulations 2004^(b):
 - (i) the 2004 edition of the document of that title published by Astron (ISBN 09546292 3 X); or
 - (ii) the 2007 edition of the document of that title published by The Stationery Office (ISBN 9780114973384); or
 - (iii) the 2010 edition of the document of that title published by The Stationery Office (ISBN 9780114973568).

(2) For the purposes of paragraph 1(2) and sub-paragraph (1)(a), and subject to 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 was 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.

(3) In a case where the physical feature is provided as part of building works in relation to which an application for a warrant for the construction or conversion of the building has been made and granted, the works are deemed to have been commenced on the day upon which the application for the warrant was granted.

(4) Where in relation to the physical feature in question any provision of the Technical Standards or Technical Handbook refers to a standard or specification (in whole or in part), that standard or specification shall be construed as referring to any equivalent standard or specification recognised for use in any EEA state.

(a) S.I. 1990/2179 (s. 187) (as amended by S.S.I. 1999/173 and S.S.I. 2001/320).

(b) S.S.I. 2004/406.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations re-enact with amendments provisions which were previously made under the Disability Discrimination Act 1995 (c. 50) and which are revoked by regulation 15 of these Regulations.

Part 2 contains provisions which supplement those in the Act about when a person is disabled for the purposes of that Act.

Regulation 3 excludes from the scope of the definition of disability addictions (other than those medically caused).

Regulation 4 excludes certain conditions from being impairments for the purposes of the Act.

Regulation 5 provides that severe disfigurements consisting of tattoos and certain body piercings are not to be treated as having a substantial adverse effect on a person's ability to carry out normal day-to-day activities.

Regulation 6 contains provision for assessing the ability of a child under six years of age to carry out normal day-to-day activities.

Regulation 7 deems a person who is certified by a consultant ophthalmologist as blind, severely sight-impaired, sight-impaired or partially sighted to be a disabled person. The various terms used in this provision reflect the fact that the terminology used in the certificates by consultant ophthalmologists has changed over time.

In Part 3, regulation 8 sets out things which are to be treated as auxiliary aids or services for the purposes of paragraphs 2 to 4 of Schedule 4 to the Act.

Part 4 contains provisions about reasonable adjustments to physical features of premises.

Regulation 9 provides that it is not reasonable for a provider of services, a public authority carrying out its functions or an association to have to remove or alter a physical feature which was provided in or in connection with a building to assist with access to the building or to use facilities and satisfies the design standard. The Schedule to these Regulations provides details of how to determine whether the design standard is satisfied.

Regulation 10 sets out the circumstances in which a relevant landlord is taken to have withheld consent for the purposes of Schedule 21 to the Act.

Regulations 11 and 12 set out circumstances in which a relevant landlord is taken to have withheld consent for the purposes of Schedule 21 to the Act unreasonably and reasonably respectively.

Regulation 13 sets out circumstances in which a condition imposed by a landlord to consent to an alteration is reasonable for the purposes of Schedule 21 to the Act.

Regulation 14 provides modifications to Schedule 21 to the Act where the occupier occupies premises under a sub-tenancy.

A full impact assessment has not been produced for this instrument as it has a negligible impact on the private sector and civil society organisations.

The Schedule refers to "Approved Document M" (in the case of England and Wales) and "Technical Handbook" (in the case of Scotland). Copies of Approved Document M (2004 edition: ISBN 011 753901 5; 1999 edition: ISBN 011 753469 2; 1992 edition: ISBN 011 752447 6) are available from The Stationery Office Limited (mail, telephone, fax and e-mail orders only), PO Box 29, Norwich NR3 1GN (telephone orders 0870 600 5522, fax orders 0870 600 5533, e-mail bookorders@tso.so.uk, textphone 0870 240 3701, internet <http://www.tso.co.uk/bookshop>) and

from The Stationery Office Bookshops. Copies of the non-domestic Technical Handbook (2005 edition: ISBN 095462923 X; 2007 edition: ISBN 9780114973384; 2010 edition: ISBN 9780114973568) plus erratum and updates issued in 2006, 2008 and 2009 are available from <http://www.scotland.gov.uk/Topics/Built-Environment/Building/Building-standards/publications>. Alternatively, the Handbook is available in loose-leaf format from the Stationery Office Limited.

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STATUTORY INSTRUMENTS

2010 No. 2128

EQUALITY

DISABLED PERSONS

The Equality Act 2010 (Disability) Regulations 2010

£5.75

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