

**2004 No. 374**

**DISABLED PERSONS**

**The Disability Discrimination (Employment Field)  
(Leasehold Premises) Regulations (Northern Ireland) 2004**

*Made* - - - - - *2nd September 2004*

*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 5(6) and (7), 6(8) and (10), 12(3), 16(3) and 67(3) of, and paragraphs 3 and 4 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 (Employment Field) (Leasehold Premises) Regulations (Northern Ireland) 2004 and shall come into operation on 1st October 2004.

**Interpretation**

**2.—(1)** In these Regulations –

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

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

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

**Revocations**

**3.** The Disability Discrimination (Employment) Regulations (Northern Ireland) 1996(d) and the Disability Discrimination (Sub-leases and Sub-tenancies) Regulations (Northern Ireland) 1996(e) are hereby revoked.

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(a) 1995 c. 50; section 67(3) and paragraph 4 of Schedule 4 are modified in their application to Northern Ireland by paragraphs 46 and 51(2) of Schedule 8. *See also* S.R. 1999 No. 481, Article 4(a) and Schedule 2, Part I and Article 8(a) and Schedule 6, Part I for transfer of functions. With effect from 1st October 2004, sections 5, 6, and 12 are repealed by regulations 5 and 12 respectively of the Disability Discrimination Act 1995 (Amendment) Regulations (Northern Ireland) 2004 (S.R. 2004 No. 55). Section 16 is moved, renumbered as section 18A and amended by regulation 14. Schedule 4 is amended by regulation 28. For the meaning of “prescribed” and “regulations” *see* section 68(1) of the Act as modified by paragraph 47(1) of Schedule 8 (with effect from 1st October 2004, the definition of “regulations” is amended by regulation 27 of S.R. 2004 No. 55)

(b) The term “lease” is defined in section 18A(3) (ex section 16(3)) of the Act

(c) 1954 c. 33 (N.I.)

(d) S.R. 1996 No. 419

(e) S.R. 1996 No. 420

### **Lessor withholding consent**

4.—(1) For the purposes of section 18A 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(a) for consent to make the alteration and has failed to meet the requirements specified in paragraph (2).

(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)) 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) 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 –

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

### **Lessor withholding consent unreasonably**

5.—(1) For the purposes of section 18A of and Part I of Schedule 4 to the Act, a lessor is to be taken to have withheld his consent unreasonably where paragraph (2), (3) or (4) applies.

(2) This paragraph applies where –

- (a) the lease provides that consent shall or will be given to an alteration of the kind in question; and
- (b) the lessor withholds his consent to the alteration.

(3) This paragraph applies where –

- (a) the lease provides that consent shall or will be given to an alteration of the kind in question if it is sought in a particular way;
- (b) it is sought in that way; and
- (c) the lessor withholds his consent to the alteration.

(4) This paragraph applies where the lessor is taken to have withheld his consent by virtue of regulation 4.

### **Lessor withholding consent reasonably**

6.—(1) For the purposes of section 18A 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 18A 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 –

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(a) The term "occupier" is defined in section 18A(1) (ex section 16(1)) of the Act, as amended by S.R. 2004 No. 55, reg. 14(3)(a)

(b) The term "duty to make reasonable adjustments" is defined in section 18D(2) of the Act, inserted by S.R. 2004 No. 55, reg. 18

- (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**

7.—(1) For the purposes of section 18A 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 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 18A 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 to be reasonable.

**Definition of sub-lease and sub-tenancy**

8. For the purposes of section 18A of the Act –

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

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

**Modification of section 18A and Part I of Schedule 4**

9. In relation to any case where the occupier occupies premises under a sub-lease or sub-tenancy, the provisions of section 18A of and Part I of Schedule 4 to the Act shall have effect as if they contained the following modifications –

- (a) in section 18A, for “the lessor” substitute “his immediate landlord” where it occurs in subsection (2)(a) and (b), and “the immediate landlord” where it occurs in subsection (2)(c) and (d) and subsection (4);

- (b) after section 18A(2) insert –

“(2A) Except to the extent to which it expressly so provides, any superior lease under which the premises are held 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 have to make a written application to the lessor for consent to the alteration;
- (b) if such an application is made, for the lessor not to withhold his consent unreasonably; and
- (c) for the lessor to be entitled to make his consent subject to reasonable conditions.”;

- (c) in paragraph 2 of Schedule 4, at the end insert –

“(10) In this paragraph and paragraph 3, references to a lessor include any superior landlord.”.

Sealed with the Official Seal of the Office of the First Minister and deputy First Minister on 2nd September 2004.

(L.S.)

*Gerard Mulligan*

A senior officer of the Office of the First Minister and deputy First Minister

## EXPLANATORY NOTE

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

These Regulations revoke and replace (in part) the Disability Discrimination (Employment) Regulations (Northern Ireland) 1996 (S.R. 1996 No. 419) and (in full) the Disability Discrimination (Sub-leases and Sub-tenancies) Regulations (Northern Ireland) 1996 (S.R. 1996 No. 420) in consequence of changes made to the Disability Discrimination Act 1995 by the Disability Discrimination Act 1995 (Amendment) Regulations (Northern Ireland) 2004 (S.R. 2004 No. 55) (“the primary regulations”) which come into force on 1st October 2004. The primary regulations implement (in Northern Ireland) provisions of Council Directive 2000/78/EC (O.J. No. L303, 2.12.2000, p. 16) (“the Directive”) establishing a general framework for equal treatment in employment and occupation so far as it relates to disability discrimination.

These Regulations contain provisions applying where a person who has a duty to make reasonable adjustments under Part II of the 1995 Act needs to obtain consent from a lessor or superior lessor in order to make those changes, and the circumstances in which such consent may be given or withheld.

Regulation 3 revokes both S.R. 1996 No. 419 and S.R. 1996 No. 420.

Regulation 4 (which replaces S.R. 1996 No. 419, reg. 11) prescribes the circumstances in which a lessor of premises is taken to have withheld his consent to an application made by a person to whom a duty to make a reasonable adjustment applies to alter premises so that he can comply with any such duty.

Regulation 5 (which replaces S.R. 1996 No. 419, reg. 12) prescribes the circumstances in which a lessor is taken to have withheld his consent unreasonably.

Regulation 6 (which replaces S.R. 1996 No. 419, reg. 13) prescribes the circumstances in which a lessor is taken to have withheld his consent reasonably.

Regulation 7 (which replaces S.R. 1996 No. 419, reg. 14) prescribes when a condition, subject to which the lessor has given his consent, is taken to be reasonable.

Regulations 8 and 9 relate to the withholding of consent where the premises are occupied under a sub-lease or sub-tenancy. They replicate the provisions of S.R. 1996 No. 420 which are revoked by these Regulations.

(Regulations 3 to 10 and 15 of S.R. 1996 No. 419 are not replaced. Regulations 7, 9 and 10 have been replaced with modifications in the primary regulations: see new sections 4B(5), 18D(2) and 18B(3) and (4) inserted into the 1995 Act. Regulations 3 to 6, 8 and 15 are not replaced as their provisions are inconsistent with the Directive.)

These Regulations do not impose any new costs on businesses.

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