

2007 No. 473

DISABLED PERSONS

The Disability Discrimination (Service Providers and Public Authorities Carrying Out Functions) Regulations (Northern Ireland) 2007

Made - - - - *14th November 2007*

Coming into operation - *31st December 2007*

The Office of the First Minister and deputy First Minister, in exercise of the powers conferred by sections 20(7) and (8), 21(5)(a), (b) and (e), 21D(7)(a), 21E(8)(a) and (d), 27(3), 67(2) and (3), 68(1) of, and paragraphs 8(a) and (b) and 9 of Schedule 4 to the Disability Discrimination Act 1995(a), and now vested in it(b), makes the following Regulations:

PART I
INTRODUCTORY

Citation and commencement

1. These Regulations may be cited as the Disability Discrimination (Service Providers and Public Authorities Carrying Out Functions) Regulations (Northern Ireland) 2007 and shall come into operation on 31st December 2007.

Interpretation

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

(2) In these Regulations—

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

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

“incepted” refers to the time when the liability to risk of an insurer under a policy of insurance commenced;

“insurance business” means business which consists of effecting or carrying out contracts of insurance;

(a) 1995 c.50; sections 20(7), 67, 68(1) and paragraph 9 of Schedule 4 are modified in their application to Northern Ireland by paragraphs 10, 46, 47(1) and 51(5) respectively of Schedule 8. Section 67(3) was amended by the Disability Discrimination (Northern Ireland) Order 2006 (S.I. 2006 No. 312 (N.I.1)) (“the 2006 Order”), Schedule 1, paragraphs 1 and 25(1); section 68(1) is an interpretation provision and is cited for the definitions of “prescribed” and “regulations”; 21D(7) and 21E were inserted by Article 4 of the 2006 Order.

(b) See S.R. 1999 No. 481; Article 8(a) and Schedule 6, Part I and Article 4(a) and Schedule 2, Part I for transfer of functions

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

“insurer” means a person who may carry on insurance business without contravening the prohibition imposed by section 19 of the Financial Services and Markets Act 2000(a); and
“public authority carrying out its functions” means a public authority carrying out an activity to which section 21B of the 1995 Act applies.

- (3) The definition of “insurance business” in paragraph (1) must be read with—
- (a) section 22 of the Financial Services and Markets Act 2000;
 - (b) any relevant order under that section; and
 - (c) Schedule 2 to that Act.

PART II

JUSTIFICATION

Circumstances in which mental incapacity justification does not apply

3. The condition specified in sections 20(4)(b) and 21D(4)(b) of the 1995 Act shall not apply where another person is acting for a disabled person by virtue of—

- (a) an enduring power of attorney; or
- (b) functions conferred by or under Part VIII of the Mental Health (Northern Ireland) Order 1986(b).

Insurance services: circumstances in which less favourable treatment is justified

4.—(1) Where, for a reason which relates to the disabled person’s disability, a provider of services 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 20 of the 1995 Act in the circumstances specified in paragraph (2).

- (2) The circumstances referred to in paragraph (1) are that the less favourable treatment is—
- (a) in connection with insurance business carried on by the provider of services;
 - (b) based upon information (for example, actuarial or statistical data or a medical report) which is relevant to the assessment of the risk to be insured and is from a source on which it is reasonable to rely; and
 - (c) reasonable having regard to the information relied upon and any other relevant factors.

Insurance services: transitional provisions for existing policies

5.—(1) Subject to paragraph (2), and except where regulation 6 applies, where, for a reason which relates to the disabled person’s disability, a provider of services 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 20 of the 1995 Act if the treatment is in connection with insurance business carried on by the provider of services and relates to an existing policy.

(2) Subject to paragraph (4), where an existing policy is due to be renewed, or the terms of such a policy are due to be reviewed, on or after 31st December 2007, any less favourable treatment which occurs on or after the date that the review or renewal is due shall not be taken to be justified under paragraph (1).

(3) In this regulation “an existing policy” means a policy of insurance which incepted before 2nd December 1996 and which was not due to be renewed, or the terms of which policy were not due to be reviewed, before 31st December 2007.

(a) 2000 c.8
(b) S.I. 1986/595 (N.I.4)

(4) A review of an existing policy which is part of, or incidental to, a general reassessment by the provider of services of the pricing structure for a group of policies shall not be treated as a review for the purposes of paragraphs (2) and (3).

Insurance services: transitional provisions for cover documents and master policies

6.—(1) Subject to paragraphs (2) and (3), where, for a reason which relates to the disabled person's disability, a provider of services 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 20 of the 1995 Act if the treatment is in connection with insurance business carried on by the provider of services and relates to a cover document which inceptioned before 2nd December 1997 and which was not due to be renewed, or the terms of which document were not due to be reviewed, before 31st December 2007.

(2) Paragraph (1) does not apply in a case where—

- (a) the relevant master policy was entered into or renewed on or after 2nd December 1996; or
- (b) the terms of the relevant master policy were reviewed on or after 2nd December 1996,

and for this purpose "the relevant master policy" means the master policy under which the cover document was issued.

(3) Where a cover document is due to be renewed, or the terms of such a document are due to be reviewed, on or after 31st December 2007, any less favourable treatment which occurs on or after the date that the review or renewal is due shall not be taken to be justified under paragraph (1).

(4) In this regulation—

"cover document" means a certificate or policy issued under a master policy;

"master policy" means a contract between an insurer and another person under which that person is entitled to issue certificates or policies to individuals, and which details the terms on which that person may do so.

Provision of services and guarantees: circumstances in which less favourable treatment is justified

7.—(1) Where, for a reason which relates to the disabled person's disability, a provider of services 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 20 of the 1995 Act in the circumstances specified in paragraph (2).

(2) The circumstances referred to in paragraph (1) are that—

- (a) the provider of services provides a guarantee (whether or not legally binding) that—
 - (i) the purchase price of services that he has provided will be refunded if the services are not of satisfactory quality, or
 - (ii) services in the form of goods that he has provided will be replaced or repaired if those goods are not of satisfactory quality; and
- (b) the provider of services refuses to provide a replacement, repair or refund under the guarantee because damage has occurred for a reason which relates to the disabled person's disability, and the damage is above the level at which the provider of services would normally provide a replacement, repair or refund under the guarantee; and
- (c) it is reasonable in all the circumstances for the provider of services to refuse to provide a replacement, repair or refund under the guarantee.

(3) In this regulation "guarantee" includes any document having the effect referred to in paragraph (2)(a) whether or not that document is described as a guarantee by the provider of services.

Deposits in respect of the provision of goods and facilities: circumstances in which less favourable treatment is justified

8.—(1) Where, for a reason which relates to the disabled person's disability, a provider of services 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 20 of the 1995 Act in the circumstances specified in paragraph (2).

(2) The circumstances referred to in paragraph (1) are that—

- (a) when goods or facilities are provided, the disabled person is required to provide a deposit which is refundable if the goods or facilities are undamaged; and
- (b) the provider of services refuses to refund some or all of the deposit because damage has occurred to the goods or facilities for a reason which relates to the disabled person's disability, and the damage is above the level at which the provider of services would normally refund some or all of the deposit; and
- (c) it is reasonable in all the circumstances for the provider of services to refuse to refund some or all of the deposit.

PART III

REASONABLE ADJUSTMENTS TO PHYSICAL FEATURES

Physical features

9. For the purposes of sections 21(2) and 21E(3) of the 1995 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 occupied by the provider of services or by the public authority carrying out its functions;
- (b) any feature on the premises occupied by the provider of services or by the public authority carrying out its functions of any approach to, exit from or access to such a building;
- (c) any fixtures, fittings, furnishings, furniture, equipment or materials in or on the premises occupied by the provider of services or by the public authority carrying out its functions;
- (d) any fixtures, fittings, furnishings, furniture, equipment or materials brought by or on behalf of the provider of services or by or on behalf of the public authority carrying out its functions on to premises (other than the premises that they occupy)—
 - (i) in the course of providing services to the public or to a section of the public or in the course of carrying out its functions,
 - (ii) for the purpose of providing such services or carrying out such functions;
- (e) any other physical element or quality of any land comprised in the premises occupied by the provider of services or public authority carrying out its functions.

Reasonableness where consent of third party necessary for an adjustment to physical features of premises

10.—(1) This regulation prescribes particular circumstances, for the purposes of sections 21 and 21E of the 1995 Act, in which it is reasonable, and in which it is not reasonable, for a provider of services or a public authority carrying out its functions to have to take the steps specified in this regulation.

(2) Where—

- (a) under any binding obligation a provider of services or a public authority carrying out its functions is required to obtain the consent of any person to an alteration to premises which it occupies; and

- (b) that alteration is one which, but for that requirement, it would be reasonable for the provider of services or a public authority carrying out its functions to have to make in order to comply with a duty under section 21 or 21E of the 1995 Act,

it is reasonable for the provider of services or public authority carrying out its functions to have to request that consent; but it is not reasonable for it to have to make that alteration before that consent is obtained.

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

Reasonableness and design standards

11.—(1) This regulation prescribes particular circumstances, for the purposes of sections 21 and 21E of the 1995 Act, in which it is not reasonable for a provider of services or a public authority carrying out its functions to have to take the steps specified in this regulation.

(2) It is not reasonable for a provider of services or a public authority carrying out its functions 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 Schedule 1.

PART IV

MISCELLANEOUS PROVISIONS

Amendment of regulation 1 of the Disability Discrimination (Providers of Services) (Adjustment of Premises) (Northern Ireland) Regulations 2003

12.—(1) Regulation 1 of the Disability Discrimination (Providers of Services) (Adjustment of Premises) (Northern Ireland) Regulations 2003(a) is amended as follows.

(2) After paragraph (1) insert—

“(1A) These Regulations apply to a provider of services, a public authority carrying out its functions within the meaning given by section 21B of the Act or an association to which section 21F of the Act applies.”.

Revocations

13. The Regulations specified in column 1 of Schedule 2 shall be revoked to the extent specified in column 3 of that Schedule.

Sealed with the Official Seal of the Office of the First Minister and deputy First Minister on 14th November 2007.



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

(a) S.R. 2003 No. 109

REMOVAL OR ALTERATION OF PHYSICAL FEATURES: DESIGN STANDARDS

Definition of “relevant design standard”

1.—(1) Subject to sub-paragraph (2), a physical feature, in relation to a building situated in Northern Ireland, satisfied the relevant design standard for the purposes of regulation 11(2) where it accords with the relevant provisions set out in Technical Booklet R, Technical Booklet V: 2000 and Technical Booklet H: 2006.

(2) However, a physical feature does not satisfy the relevant design standard where more than 10 years have elapsed since—

- (a) the day on which the 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.

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

- (a) “Technical Booklet R” means—
 - (i) the booklet of that title prepared by the Department of the Environment for Northern Ireland which sets out provisions which, if followed, will satisfy the requirements of Part R of the Building Regulations, first published by Her Majesty’s Stationery Office in 1994 (ISBN 0 337 08328 2); or
 - (ii) the booklet of that title prepared by the Department of Finance and Personnel which sets out provisions which, if followed, will satisfy the requirements of Part R of the Building Regulations, first published by The Stationery Office Limited in 2001 (ISBN 0 337 23709 3); or
 - (iii) the booklet of that title prepared by the Department of Finance and Personnel which sets out provisions which, if followed, will satisfy the requirements of Part R of the Building Regulations, first published by The Stationery Office Limited in 2006 (ISBN 0 337 08826 8);
- (b) “Technical Booklet V: 2000” means the booklet of that title prepared by the Department of Finance and Personnel which sets out provisions which, if followed, will satisfy the requirements of Part V of the Building Regulations, first published by The Stationery Office Limited in 2001 (ISBN 0 337 23710 7) as amended by DFP Amendments Booklet AMD 3 – 2006 first published by The Stationery Office Limited in 2006 (ISBN 0 337 08828 4);
- (c) “Technical Booklet H: 2006” means the booklet of that title prepared by the Department of Finance and Personnel which sets out provisions which, if followed, will satisfy the requirements of Part H of the Building Regulations, first published by The Stationery Office Limited in 2006 (ISBN 0 337 08825 X);
- (d) “the Building Regulations” means the Building Regulations (Northern Ireland) 1994(a) or the Building Regulations (Northern Ireland) 2000(b).

(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) any reference to Technical Booklet R is a reference to whichever edition sets out the provisions which were relevant in relation to satisfying the requirements of the Building Regulations which applied to those building works.

(a) S.R. 1994 No. 243; revoked by S.R. 2000 No. 389

(b) S.R. 2000 No. 389; amended by S.R. 2006 No.355

(3) In any other case, for the purposes of paragraph 1(1) Technical Booklet R is whichever edition was the last edition published at the time when the physical feature was provided 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 Technical Booklet R, Technical Booklet V: 2000 or Technical Booklet H 2006 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 member state of the European Community or European Economic Area.

SCHEDULE 2

Regulation 13

REVOCATIONS

(1)	(2)	(3)
<i>Regulations revoked</i>	<i>References</i>	<i>Extent of Revocation</i>
Disability Discrimination (Services and Premises) Regulations (Northern Ireland) 1996	SR 1996 No. 557	Regulations 2 to 6 and 8
Disability Discrimination (Services and Premises) Regulations (Northern Ireland) 1999	SR 1999 No. 202	The whole Regulations
Disability Discrimination (Providers of Services) (Adjustment of Premises) Regulations (Northern Ireland) 2003	SR 2003 No. 109	Regulation 3 and the Schedule to the Regulations

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations revoke and replace (in part) the Disability Discrimination (Services and Premises) Regulations (Northern Ireland) 1996 (S.R. 1996 No. 557) and (in full) the Disability Discrimination (Services and Premises) Regulations (Northern Ireland) 1999 (S.R. 1999 No. 202). In addition, they amend the application of the Disability Discrimination (Providers of Services) (Adjustment of Premises) Regulations (Northern Ireland) 2003 (S.R. 2003 No. 109) and revoke and replace Regulation 3 of and the Schedule to those Regulations. These changes partially consolidate provisions in relation to providers of services. In addition, these Regulations make provision in relation to public authorities, which arises out of new duties on public authorities carrying out their functions, introduced into the Disability Discrimination Act 1995 (“the 1995 Act”) by the Disability Discrimination (Northern Ireland) Order 2006.

Regulation 3 (which replaces S.R. 1996 No. 557, Regulation 8) prescribes the circumstances where justification for discrimination on grounds of mental incapacity and inability to give informed consent in sections 20(4)(b) and 21D(4)(b) of the 1995 Act is not available. The Regulation applies to service providers and to public authorities carrying out functions.

Regulations 4 to 8 (which replace S.R. 1996 No. 557, Regulations 2 to 6) deal with justification for discrimination against disabled people by service providers, who provide insurance or guarantees for their services, or who request deposits in respect of goods and facilities they provide.

Regulation 9 (which replaces S.R. 1999 No. 202, Regulation 3) sets out a list of things that are to be treated as “physical features” in the context of the duty to make reasonable adjustments in sections 21(2) and 21E(3) and (4) of the 1995 Act which apply to service providers and to public authorities carrying out functions respectively.

Regulation 10 (which replaces S.R. 2003 No. 109, Regulation 3(2)) sets out, in the context of the duty to make reasonable adjustments in sections 21(2) and 21E(3) and (4) of the 1995 Act, what are and what are not reasonable steps for service providers or public authorities carrying out functions to take, where they require the consent of a third party before making an alteration to premises that they occupy.

Regulation 11 (which introduces Schedule 1 and together they replace S.R. 2003 No. 109, Regulation 3(3) and (4) and the Schedule to those Regulations) sets out, in the context of the duty to make reasonable adjustments in sections 21(2) and 21E(3) and (4) of the 1995 Act, what steps it is not reasonable for service providers or public authorities carrying out functions to take, where the premises that they occupy satisfy a relevant design standard. The meaning of “relevant design standard” is set out in detail in Schedule 1 to the Regulations.

Regulation 12 amends the Disability Discrimination (Providers of Services) (Adjustment of Premises) Regulations (Northern Ireland) 2003 (S.R. 2003 No. 109) (“the 2003 Regulations”) and inserts an application provision, which provides that the Regulations apply to service providers, public authorities carrying out functions within the meaning of section 21B of the 1995 Act and to associations to which section 21F of the 1995 Act applies. Regulation 3 of the 2003 Regulations is replaced by Regulations 10 and 11 of these Regulations and revoked. The 2003 Regulations, as amended, relate therefore solely to the withholding of consent where the premises are occupied under a lease, sub-lease or sub-tenancy.

An assessment of the impact of these Regulations on bodies exercising public functions was made as part of the regulatory impact assessment in relation to the Disability Discrimination (Northern Ireland) Order 2006. A copy may be obtained from: Equality, Rights and Social Need Division, Office of the First Minister and deputy First Minister, Room E3.19, Castle Buildings, Stormont, Belfast, BT4 3SR. A copy of the assessment for the Disability Discrimination (Northern Ireland) Order 2006 has been placed in the library of the Northern Ireland Assembly.

Schedule 1 refers to “Technical Booklet R”, “Technical Booklet V: 2000” and “Technical Booklet H: 2006”. Copies of “Technical Booklet R” (1994 version ISBN 0 337 08328 2, 2001 version ISBN 0 337 23709 3 and 2006 version ISBN 0 337 08826 8), “Technical Booklet V: 2000” (ISBN 0 337 08828 4) and “Technical Booklet H : 200” (ISBN 0 337 08825 X) are available from The Publications Centre (mail, telephone and fax orders only) PO Box 276, London SW8 5DT (Telephone orders 0171 873 9090); Fax orders 0171 873 8200 and from The Stationery Office Bookshop, 16 Arthur Street, Belfast BT1 4GD (Telephone 028 9023 8541; Fax 028 9023 5401). They are also available on the Department of Finance and Personnel’s website (www.dfpni.gov.uk/buildingregulations/techbooklets.htm).