

2004 No. 153

DISABLED PERSONS

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

Made - - - - - 26th January 2004

Laid before Parliament 2nd February 2004

Coming into force - - - 1st October 2004

The Secretary of State for Work and Pensions, in exercise of the powers conferred upon him 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 him in that behalf, hereby makes the following Regulations:—

Citation, commencement and extent

- 1.—(1) These Regulations may be cited as the Disability Discrimination (Employment Field) (Leasehold Premises) Regulations 2004 and shall come into force on 1st October 2004.
- (2) These Regulations shall not extend to Northern Ireland.

Interpretation

2. 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.

Revocations

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

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(e) for consent to make the alteration and has failed to meet the requirements specified in paragraph (2).

(a) 1995 c. 50. With effect from 1st October 2004, sections 5, 6 and 12 are repealed by regulation 5 of the Disability Discrimination Act 1995 (Amendment) Regulations 2003 (S.I. 2003/1673). Section 16 is moved, renumbered as section 18A and amended by regulation 14. Schedule 4 is amended by regulation 29. For the meaning of “prescribed” and “regulations” see section 68 of the Act.

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

(c) S.I. 1996/1456.

(d) S.I. 1996/1333.

(e) The term “occupier” is defined in section 18A(1) (ex section 16(1)) of the Act, as amended by S.I. 2003/1673, reg. 14(3)(a).

(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^(a), 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—

- (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.

^(a) The term "duty to make reasonable adjustments" is defined in section 18D(2) of the Act, inserted by S.I. 2003/1673, reg. 18.

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.”.

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

26th January 2004

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations revoke and replace (in part) the Disability Discrimination (Employment) Regulations 1996 (S.I. 1996/1456) and (in full) the Disability Discrimination (Sub-leases and Sub-tenancies) Regulations 1996 (S.I. 1996/1333) in consequence of changes made to the Disability Discrimination Act 1995 by the Disability Discrimination Act 1995 (Amendment) Regulations 2003 (S.I. 2003/1673) (“the primary regulations”) which come into force on 1st October 2004. The primary regulations implement (in Great Britain) provisions of Council Directive 2000/78/EC (OJ No. L 303, 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 2 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.I. 1996/1456 and S.I. 1996/1333.

Regulation 4 (which replaces S.I. 1996/1456, 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.I. 1996/1456, reg. 12) prescribes the circumstances in which a lessor is taken to have withheld his consent unreasonably. Regulation 6 (which replaces S.I. 1996/1456, reg. 13) prescribes the circumstances in which a lessor is taken to have withheld his consent reasonably.

Regulation 7 (which replaces S.I. 1996/1456, 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.I. 1996/1333 which are revoked by these Regulations.

(Regulations 3 to 10 and 15 of S.I. 1996/1456 are not replaced. Regulations 7, 9 and 10 have been replaced with modifications in the primary regulations: see new sections 4B(5), 18B(3) and 18D(2) 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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