



EQUALITY ACT 2017 (DISABILITY) REGULATIONS 2020

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Statutory Document No. 2020/0044

*Equality Act 2017*

EQUALITY ACT 2017 (DISABILITY) REGULATIONS 2020

Approved by Tynwald: 22 January 2020
Coming into Operation in accordance with regulation 2

The Council of Ministers makes the following Regulations under sections 3(2) and 23(2)(a) and (e) of, and paragraphs 1, 2(4), 3(2) and (3), 4 and 7(1) of Schedule 1 and paragraph 6 of Schedule 19 to, the Equality Act 2017, and in reliance upon section 167(3) of that Act.

PART 1 – INTRODUCTION

1 Title

These Regulations are the Equality Act 2017 (Disability) Regulations 2020.

2 Commencement

If approved by Tynwald, these Regulations come into operation on the day after they are approved by Tynwald¹.

3 Interpretation

In these Regulations —

“**the Act**” means the Equality Act 2017;

“**addiction**” includes a dependency;

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

“**consultant ophthalmologist**” means —

- (a) a health care professional who is a fully registered person and has a licence to practice as an ophthalmologist in accordance with the *Health Care Professionals Act 2014*; or

¹ Under section 168(1) of the Equality Act 2017 section 30 of the Legislation Act 2015 (Tynwald procedure — approval required) applies to these Regulations.

- (b) 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 (of Parliament)²;

“**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 (services and public functions: reasonable adjustments);
- (b) paragraph 2 of Schedule 8 (work — reasonable adjustments);
- (c) paragraph 3 of Schedule 14 (education — reasonable adjustments for further or higher education);
- (d) paragraph 2 of Schedule 15 (associations — reasonable adjustments).

PART 2 — DETERMINATION OF DISABILITY

4 **Addiction**

- (1) 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) But paragraph (1) does not apply to addiction which was originally the result of administration of medically prescribed drugs or other medical treatment.

5 **Other conditions not to be treated as impairments**

- (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) For the purposes of the Act, the condition known as seasonal allergic rhinitis is to be treated as not amounting to an impairment.
- (3) But paragraph (2) does not prevent that condition from being taken into account for the purposes of the Act if it aggravates the effect of any other condition.

² 2006 c. 41.

6 Tattoos and piercings

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.

7 Babies and young children: effect of impairment

For the purposes of the Act, if a child under 6 years of age has an impairment that 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 if 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.

8 Persons deemed to have a disability

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

PART 3 — AUXILIARY AIDS AND SERVICES

9 Auxiliary aids or services

- (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 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) But 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.

PART 4 – REASONABLE ADJUSTMENTS TO PHYSICAL FEATURES

10 Part 4: interpretation

In this Part “L” means a relevant landlord.

11 Reasonableness and design standards

- (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 is to be determined in accordance with the Schedule.

12 Landlord withholding consent

- (1) This regulation prescribes particular circumstances in which L is to be taken, for the purposes of Schedule 19 to the Act, to have withheld consent for alterations to premises.
- (2) L is to be taken to have withheld such consent if, 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) 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 fails to seek that consent.
- (3) L is not to be taken to have withheld consent for the purposes of paragraph (2) if —
 - (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 L receives the application, L replies requesting the applicant to submit such plans and specifications.
- (4) But if such plans and specifications are submitted to L in response to a request made in accordance with paragraph (3)(b), L is to be taken to have withheld consent to the alteration where, within the period of 42 days beginning with the date on which L receives those plans and specifications L—
 - (a) fails to reply consenting or refusing the alteration; or
 - (b) 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 fails to seek that consent.
- (5) L, who having sought the consent of the other person referred to in paragraph (2)(b) or (4)(b), receives that consent, is to be taken to have withheld consent to the alteration if, within the period of 14 days beginning with the day on which L 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 paragraph (2), (4) or (5) is to be taken to have withheld consent until such time as L so complies.
- (7) For the purposes of this regulation L is to be treated as not having sought another's consent unless L—
 - (a) has applied in writing to that person indicating that—
 - (i) the occupier has applied for consent to the alteration of the premises in order to comply with a second requirement duty; and
 - (ii) L has given consent conditionally upon obtaining the other person's consent; and
 - (b) submits to that other person any plans and specifications which have been submitted to L.
- (8) In this regulation “to reply” means to reply in writing.

13 Landlord withholding consent unreasonably

- (1) This regulation prescribes particular circumstances in which L is to be taken, for the purposes of Schedule 19 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 must give his or her consent to an alteration of the kind in question and L has withheld consent to that alteration.

14 Landlord withholding consent reasonably

- (1) Paragraphs (2) and (3) each prescribe particular circumstances in which L is to be taken, for the purposes of Schedule 19 to the Act, to have acted reasonably in withholding consent for alterations to premises.
- (2) The circumstances so prescribed by this paragraph are where—
 - (a) there is a binding obligation requiring the consent of any person to the alteration;
 - (b) L has taken steps to obtain that consent; and
 - (c) that consent has not been given, or has been given subject to a condition making it reasonable for L to withhold consent.
- (3) The circumstances prescribed by this paragraph are that 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.

15 Landlord's consent subject to conditions

- (1) This regulation prescribes particular circumstances in which a condition, subject to which L has given consent to alterations to premises, is to be taken, for the purposes of Schedule 19 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 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 L the costs reasonably incurred in connection with the giving of the consent.

16 Modification of Schedule 19

- (1) In relation to any case where the occupier occupies premises under a sub-tenancy, the provisions of Schedule 19 to the Act are to be treated as modified as follows.
- (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 or her 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 the tenant wishes to give consent to the alteration;
 - (c) if such an application is made, for the landlord not to withhold consent unreasonably; and
 - (d) for the landlord to be entitled to make consent subject to reasonable conditions.”.
- (4) After paragraph 4(2), insert the following sub-paragraph—
 - “(2A) If the tenant of any superior lease in relation to the premises has applied in writing to his or her landlord for consent to the alteration and—
 - (a) that consent has been refused; or
 - (b) the landlord has made his or her 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 the Tribunal.”.
- (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 as a party to the proceedings.”.

17 Revocation

The following are revoked—

- (a) the Disability Discrimination (Meaning of Disability) Regulations 2015³;
- (b) the Disability Discrimination (Services and Premises) Regulations 2016⁴; and
- (c) the Disability Discrimination (Services and Premises) Regulations 2017⁵.

MADE 16 JANUARY 2020

W GREENHOW
Chief Secretary

³ SD 2015/0365.

⁴ SD 2016/0130.

⁵ SD 2017/0284.

SCHEDULE

REMOVAL OR ALTERATION OF PHYSICAL FEATURES: DESIGN STANDARDS

[Regulation 11(3)]

1 Definition of “relevant design standard”

- (1) A physical feature, in relation to a building, satisfies the relevant design standard for the purposes of regulation 11(2) where it accords with the relevant objectives, design considerations and provisions in Approved Document M.
- (2) But 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 Buildings in the Island

- (1) For the purposes of this paragraph and paragraph 1(1) —
 - (a) “**Approved Document M**” means —
 - (i) the 2004 edition of the document of that title approved by the Department of Local Government and the Environment⁶ as practical guidance on meeting Part M of Schedule 1 to the Building Regulations 2007⁷ (ISBN 0-11-753901-5); or
 - (ii) the 2004 edition of the document of that title approved by the Department of Infrastructure⁸ as practical guidance on meeting Part M of Schedule 1 to the Building Regulations 2014⁹ (ISBN 0-11-753901-5); or
 - (iii) Volume 2 of the 2015 edition of the document of that title approved by the Department of Environment, Food

⁶ See the Building Control (Approved Documents) Order 2007 (SD 154/07), which came into operation on 1 July 2007.

⁷ SD 153/07. The Building Regulations 2007 were revoked by the Building Regulations 2014 subject to savings and transitional provisions.

⁸ See the Building Control (Approved Documents) Order 2014 (SD 2014/0301), which came into operation on 1 October 2014.

⁹ SD 2014/0165.

and Agriculture¹⁰ as practical guidance on meeting Part M of Schedule 1 to the Building Regulations 2014 (ISBN 978-1-85946-609-4);

- (b) “**the Building Regulations**” means the Building Regulations 2007 or the Building Regulations 2014 as in operation from time to time.
- (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.
- (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 in or in connection with the building.
- (4) For the purpose 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 a part of a larger building project, the day upon which the works in relation to that project were commenced.
- (5) If, 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 is to be construed as including reference to any equivalent standard or specification recognised for use in any EEA state.

¹⁰ See the Building Control (Approved Documents) (No. 2) Order 2019 (SD 2019/0448).

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 2006 and which are revoked by regulation 17 of these Regulations and make new provision in certain respects.

Part 2 contains provisions which supplement those in the Equality Act 2017 (“the Act”) about when a person is or is not disabled for the purposes of that Act.

Regulation 4 excludes addictions (other than those caused by medical treatment or by prescribed medicines) from being impairments for the purposes of the Act.

Regulation 5 excludes certain conditions from being impairments for the purposes of the Act in order to avoid providing protection for people, where the effect of their condition may involve anti-social or criminal behaviour towards others. It also excludes certain conditions because they are not conditions that are generally recognised as disabilities.

Regulation 6 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 7 contains provision for assessing the ability of a child under 6 years of age to carry out normal day-to-day activities.

Regulation 8 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 9 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 10 provides that “L” as it appears in Part 4 means a relevant landlord.

Regulation 11 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 12 sets out the circumstances in which a relevant landlord is taken to have withheld consent for the purposes of Schedule 19 to the Act.

Regulations 13 and 14 set out circumstances in which a relevant landlord is taken to have withheld consent for the purposes of Schedule 19 to the Act unreasonably and reasonably respectively.

Regulation 15 sets out circumstances in which a condition imposed by a landlord to consent to an alteration is reasonable for the purposes of Schedule 19 to the Act.

Regulation 16 provides modifications to Schedule 19 to the Act where the occupier occupies premises under a sub-tenancy.

Regulation 17 revokes existing provisions under the Disability Discrimination Act 2006 some of which are superseded by the present Regulations.

The Schedule refers to “*Approved Document M*”. “Approved Document M” means the edition of the document of that title approved by the relevant Department at the time as practical guidance on meeting Part M of Schedule 1 to the Building Regulations 2007 or the Building Regulations 2014.