Draft Regulations laid before Parliament under section 67(4A) of the Disability Discrimination Act 1995, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2007 No. 0000

DISABLED PERSONS

The Disability Discrimination Act 1995 (Amendment etc.) (General Qualifications Bodies) (Alteration of Premises and Enforcement) Regulations 2007

Made - - - -	*2007*
Coming into force - -	*1st September 2007*

In accordance with section 67(4A) of the Disability Discrimination Act 1995(**1**) a draft of these Regulations was laid before Parliament and approved by a resolution of each House of Parliament;

In accordance with section 31AF of that Act(**2**), the Secretary of State has consulted with the Welsh Ministers, the Scottish Ministers and such other persons as it appeared to him to be appropriate to consult;

The Secretary of State for Education and Skills makes the following Regulations in exercise of the powers conferred by section 31AE(1), (2), (5) and (6) of the Disability Discrimination Act 1995:

PART 1

Introductory

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Disability Discrimination Act 1995 (Amendment etc.) (General Qualifications Bodies) (Alteration of Premises and Enforcement) Regulations 2007.

(2) These Regulations shall come into force on 1st September 2007.

(3) In these Regulations "the 1995 Act" means the Disability Discrimination Act 1995.

(**1**) 1995 c.50. Section 67(4A) was substituted by the Disability Discrimination Act 2005 (c.13) ("the 2005 Act"), section 19(1), Schedule 1 Part 1, paragraphs 1, 33(1) and (5).

(**2**) Sections 31AE and 31AF were inserted by the 2005 Act, section 15. *See* S.I. 2007/…….. for the definition of "lease".

Amendments to the Disability Discrimination Act 1995 and to the Equality Act 2006

2.—(1) The 1995 Act is amended as provided in Part 2 of these Regulations.

(2) The Equality Act 2006(**3**) is amended as provided in Part 3 of these Regulations.

(3) Part 5 of these Regulations makes transitory modifications to the 1995 Act.

PART 2

Amendments to the Disability Discrimination Act 1995

Enforcement, remedies and procedures

3. After section 31AD of the 1995 Act (general qualifications bodies: duty to make adjustments)(**4**) insert—

"**31ADA Enforcement, remedies and procedures**

(1) A claim by a person—

(a) that a general qualifications body has discriminated against him, or subjected him to harassment, in a way which is unlawful under this Chapter,

(b) that a general qualifications body is by virtue of section 57 or 58 to be treated as having done so, or

(c) that a person is by virtue of section 57 to be treated as having done so,

may be made the subject of civil proceedings in the same way as any other claim in tort or (in Scotland) in reparation for breach of statutory duty.

(2) Where—

(a) a claim is brought under subsection (1), and

(b) the claimant (or pursuer, in Scotland) proves facts from which the court could, apart from this subsection, conclude in the absence of an adequate explanation that the defendant (or defender, in Scotland) has acted in a way which is unlawful under this Chapter,

the court shall uphold the claim unless the defendant (or defender, in Scotland) proves that he did not so act.

(3) Damages in respect of discrimination in a way which is unlawful under this Chapter may include compensation for injury to feelings whether or not they include compensation under any other head.

(4) Proceedings in England and Wales may be brought only in a county court.

(5) Proceedings in Scotland may be brought only in a sheriff court.

(6) The remedies available in such proceedings are those which are available in the High Court or (as the case may be) the Court of Session.

(7) Part 5 of Schedule 3 makes further provision about the enforcement of this Part and about procedure and evidence."

(**3**) 2006 (c.3).
(**4**) Section 31AD was inserted by the 2005 Act, section 15.

Further provision about enforcement etc.

4.—(1) Schedule 3 to the 1995 Act (enforcement and procedure) is amended as follows.

(2) In the side note, after "25(6)" insert ", 31ADA".

(3) After Part 4 insert—

"Part 5

Discrimination in General Qualifications Bodies

Restriction on proceedings for breach of Part 4, Chapter 2A

16.—(1) Except as provided by section 31ADA, no civil or criminal proceedings may be brought against any person in respect of an act merely because the act is unlawful under Chapter 2A of Part 4.

(2) Sub-paragraph (1) does not prevent the making of an application for judicial review.

Period within which proceedings must be brought

17.—(1) A county court or a sheriff court shall not consider a claim under section 31ADA unless proceedings in respect of the claim are instituted before the end of the period of six months beginning when the act complained of was done.

(2) If, in relation to proceedings or prospective proceedings under section 31ADA, the dispute concerned is referred to conciliation in pursuance of arrangements under section 27 of the Equality Act 2006 before the end of the period of six months mentioned in sub-paragraph (1), the period of six months allowed by that sub-paragraph shall be extended by three months.

(3) A court may consider any claim under section 31ADA which is out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so.

(4) For the purposes of sub-paragraph (1)—

(a) if an unlawful act is attributable to a term in a contract, that act is to be treated as extending throughout the duration of the contract;

(b) any act extending over a period shall be treated as done at the end of that period; and

(c) a deliberate omission shall be treated as done when the person in question decided upon it.

(5) In the absence of evidence establishing the contrary, a person shall be taken for the purposes of this paragraph to decide upon an omission—

(a) when he does an act inconsistent with doing the omitted act; or

(b) if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the omitted act if it was to be done.

Evidence

18.—(1) In any proceedings under section 31ADA, a certificate signed by or on behalf of a Minister of the Crown and certifying that any conditions or requirements specified in the certificate—

(a) were imposed by a Minister of the Crown, and

(b) were in operation at a time or throughout a time so specified,

is conclusive evidence of the matters certified.

(2) In any proceedings under section 31ADA, a certificate signed by or on behalf of the Scottish Ministers and certifying that any conditions or requirements specified in the certificate—

(a) were imposed by a member of the Scottish Executive, and

(b) were in operation at a time or throughout a time so specified,

is conclusive evidence of the matters certified.

(3) In any proceedings under section 31ADA, a certificate signed by or on behalf of the Welsh Ministers and certifying that any conditions or requirements specified in the certificate—

(a) were imposed by them, and

(b) were in operation at a time or throughout a time so specified,

is conclusive evidence of the matters certified.

(4) A document purporting to be such a certificate as is mentioned in sub-paragraph (1), (2) or (3) is to be—

(a) received in evidence; and

(b) deemed to be such a certificate unless the contrary is proved."

Alterations to premises occupied under leases

5. After section 31ADA of the 1995 Act (enforcement, remedies and procedures) (inserted by regulation 3) insert—

"**31ADB Alterations to premises occupied under leases**

(1) This section applies where—

(a) a general qualifications body occupies premises under a lease;

(b) but for this section, the general qualifications body would not be entitled to make a particular alteration to the premises; and

(c) the alteration is one which the general qualifications body proposes to make in order to comply with the duty imposed by section 31AD(3).

(2) Except to the extent to which it expressly so provides, the lease shall have effect by virtue of this subsection as if it provided—

(a) for the general qualifications body to be entitled to make the alteration with the written consent of the lessor;

(b) for the general qualifications body to have to make a written application to the lessor for consent if it wishes to make the alteration;

(c) if such an application is made, for the lessor not to withhold his consent unreasonably; and

(d) for the lessor to be entitled to make his consent subject to reasonable conditions.

(3) In this section and in Part 4 of Schedule 4—

"lease" includes a tenancy, sub-lease or sub-tenancy and an agreement for a lease, tenancy, sub-lease or sub-tenancy;

"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.

(4) For the purposes of subsection (1), the general qualifications body is to be treated as not being entitled to make the alteration, if the terms and conditions of the lease—

(a) impose conditions which are to apply if the general qualifications body alters the premises, or

(b) entitle the lessor to impose conditions when consenting to the general qualifications body's altering the premises.

(5) Part 4 of Schedule 4 supplements the provisions of this section."

Premises occupied under leases

6.—(1) Schedule 4 to the 1995 Act (premises occupied under leases) is amended as follows.

(2) In the side note, after "27(5)", insert "31ADB".

(3) After Part 3 insert—

"PART 4

Occupation by General Qualifications Bodies

Failure to obtain consent to alteration

15. If any question arises as to whether a general qualifications body has failed to comply with the duty imposed by section 31AD by failing to make a particular alteration to the premises, any constraint attributable to the fact that the body occupies the premises under a lease is to be ignored unless the body has applied to the lessor in writing for consent to the making of the alteration.

Reference to court

16.—(1) If the general qualifications body has applied in writing to the lessor for consent to the alteration and—

(a) that consent has been refused, or

(b) the lessor has made his consent subject to one or more conditions,

that general qualifications body or a disabled person who has an interest in the proposed alteration to the premises being made may refer the matter to a county court or, in Scotland, to the sheriff.

(2) On such a reference the court must determine whether the refusal was unreasonable or (as the case may be) whether the condition is, or any of the conditions are, unreasonable.

(3) If the court determines—

(a) that the refusal was unreasonable, or

(b) that the condition is, or any of the conditions are, unreasonable,

it may make such declaration as it considers appropriate or an order authorising the general qualifications body to make the alteration specified in the order.

(4) An order under sub-paragraph (3) may require the general qualifications body to comply with conditions specified in the order.