STATUTORY RULES OF NORTHERN IRELAND

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(**1**), and now vested in it(**2**), 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(**3**) 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;

(**1**) 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.

(**2**) *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

(**3**) 1954 c.33 (N.I.)

"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;

"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(**4**); 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(**5**).

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

(**4**) 2000 c.8
(**5**) S.I. 1986/595 (N.I.4)

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.

(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 incepted 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(**6**) is amended as follows.

(**6**) S.R. 2003 No. 109