STATUTORY RULES OF NORTHERN IRELAND

1996 No. 419

DISABLED PERSONS

The Disability Discrimination (Employment) Regulations (Northern Ireland) 1996

Made - - - - 12th September 1996

Coming into operation 2nd December 1996

In exercise of the powers conferred on the Department of Economic Development by sections 5(6) and (7), 6(8)(*a*), (*c*) to (*g*) and (10), 12(3) of and paragraph 3(*a*) and (*b*) of Schedule 4 to the Disability Discrimination Act 1995(**1**) the Department of Economic Development hereby makes the following Regulations:—

Citation and commencement

1. These Regulations may be cited as the Disability Discrimination (Employment) Regulations (Northern Ireland) 1996 and shall come into operation on 2nd December 1996.

Interpretation

2.—(1) In these Regulations—

"the Act" means the Disability Discrimination Act 1995;

"binding obligation" means a legally binding obligation (not contained in a lease) in relation to the premises whether arising from an agreement or otherwise;

"building" means an erection or structure of any kind;

"building regulations" has the meaning given by Article 3(1) of the Building Regulations (Northern Ireland) Order 1979(**2**);

"lease" has the meaning assigned by section 16(3) of the Act;

"pay" means remuneration of any kind including any benefit;

"performance" includes performance as assessed by reference to any measure, whether relative or absolute, of output, efficiency or effectiveness in an employment;

"section 6 duty" means any duty imposed by or under section 6 of the Act.

(**1**) 1995 c. 50 as it applies in Northern Ireland by virtue of section 70(6) and Schedule 8 thereof
(**2**) S.I.1979/1709 (N.I. 16)

(2) The Interpretation Act (Northern Ireland) 1954(**3**) shall apply to these Regulations as it applies to a Measure of the Northern Ireland Assembly.

Pay

3.—(1) For the purposes of section 5 of the Act, treatment is to be taken to be justified if it results from applying to the disabled person a term or practice—

(a) under which the amount of a person's pay is wholly or partly dependent on that person's performance; and

(b) which is applied to all of the employer's employees or to all of a class of his employees which includes the disabled person but which is not defined by reference to any disability.

(2) Arrangements consisting of the application to a disabled person of a term or practice of the kind referred to in paragraph (1) are not to be taken to place that disabled person at a substantial disadvantage of the kind mentioned in section 6(1) of the Act.

(3) Nothing in this regulation affects the operation of section 6 of the Act in relation to any arrangements or physical features of premises which, by placing a disabled person at a substantial disadvantage, cause reduced performance by him.

Occupational pension schemes

4.—(1) For the purposes of section 5(1) of the Act less favourable treatment of a disabled person is to be taken to be justified in the circumstances described in paragraph (2) if it results from applying the eligibility conditions set out for receiving any benefit referred to in paragraph (3) or from determining the amount of any such benefit.

(2) The circumstances are that by reason of the disabled person's disability (including any clinical prognosis flowing from the disability) the cost of providing any benefit referred to in paragraph (3) is likely to be substantially greater than it would be for a comparable person without that disability.

(3) The benefits are those provided under an occupational pension scheme in respect of any of the following:—

(a) termination of service;

(b) retirement, old age or death; or

(c) accident, injury, sickness or invalidity.

Uniform rates of contributions

5. For the purposes of section 5 of the Act, treatment is always to be taken to be justified if an employer requires from a disabled person the same rate of contribution to an occupational pension scheme as he requires from his other employees (or from any class of his employees which includes the disabled person but which is not defined by reference to any disability), notwithstanding that the disabled person is not eligible under that scheme, for a reason related to his disability, to receive a benefit or to receive a benefit at the same rate as a comparable person to whom that reason does not apply.

Agricultural wages

6. For the purposes of section 5 of the Act—

(a) treatment of a disabled person is to be taken to be justified to the extent that the treatment relates to a matter within the terms and conditions of a permit granted to that person

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

under article 6(1) of the Agricultural Wages (Regulation) (Northern Ireland) Order 1977(**4**) (permits to incapacitated persons) and accords with those terms and conditions; and

(b) failure to take a step otherwise required to comply with a section 6 duty is to be taken to be justified if that step would relate to a matter within the terms and conditions of the permit referred to in (*a*) but would exceed the requirements of those terms and conditions.

Contract Work

7.—(1) Paragraph (2) applies for the purposes of section 6 of the Act (and that section as applied by section 12(3) of the Act) where a contract worker is likely to be placed at a similar substantial disadvantage by arrangements made by or on behalf of, or premises occupied by, all of the principals to whom he is or might be supplied.

(2) It is reasonable for the employer to have to take such steps as are within his power as it would be reasonable for him to have to take if the arrangements were made by him or on his behalf or, as the case may be, the premises were occupied by him.

(3) For the purposes of section 6 of the Act (and that section as applied by section 12(3) of the Act) it is not reasonable for any principal to whom a contract worker is supplied to have to take any step which it is reasonable for the employer to have to take pursuant to paragraph (2) or otherwise.

Building Regulations

8.—(1) This regulation applies only to a physical characteristic included within building works which—

(a) was adopted with a view to meeting the requirements for the time being of Part R of the building regulations(**5**) with regard to access and facilities for disabled people, and

(b) met those requirements at the time the building works were carried out and continues substantially to meet those requirements which applied at the time the building works were carried out.

(2) For the purposes of section 6(1) of the Act it is never reasonable for an employer to have to take steps in relation to a disabled person to the extent that this would involve altering any physical characteristic to which this regulation applies.

Physical features

9. For the purposes of section 6(1) of the 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;

(b) any feature on the premises 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;

(d) any other physical element or quality of any land comprised in the premises.

Consent to an adjustment

10.—(1) For the purposes of section 6(1) of the Act where under any binding obligation the employer is required to obtain the consent of any person to any alteration of the premises occupied by him it is always reasonable for the employer to have to take steps to obtain that consent and it is never reasonable for the employer to have to make that alteration before that consent is obtained.

(**4**) S.I. 1977/2151 (N.I. 22)
(**5**) The Regulations currently in force are the Building Regulations (Northern Ireland) 1994 S.R. 1994 No. 243