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(**a**) 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(**b**), 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.

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(**c**) is amended as provided in Part 3 of these Regulations.

(**a**) 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).
(**b**) Sections 31AE and 31AF were inserted by the 2005 Act, section 15. *See* S.I. 2007/…….. for the definition of "lease".
(**c**) 2006 (c.3).

(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)(**a**) 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."

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—

(**a**) Section 31AD was inserted by the 2005 Act, section 15.

"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.

Joining lessors in proceedings under section 31ADA

17.—(1) In any proceedings on a claim under section 31ADA in which a question arises as to whether a general qualifications body has failed to comply with the duty imposed by section 31AD by failing to make an alteration to premises occupied by the general qualifications body under a lease—

(a) the claimant (or pursuer in Scotland), or

(b) the general qualifications body concerned,

may ask the court to direct that the lessor be joined (or sisted) as a party to the proceedings.

(2) The request shall be granted if it is made before the hearing of the claim begins.

(3) The court may refuse the request if it is made after the hearing of the claim begins.

(4) The request may not be granted if it is made after the court has determined the claim.

(5) Where a lessor has been so joined (or sisted) as a party to the proceedings, the court may determine—

(a) whether the lessor has—

(i) refused consent to the alteration, or

(ii) consented subject to one or more conditions, and

(b) if so, whether the refusal or any of the conditions was unreasonable.

(6) If, under sub-paragraph (5), the court determines that the refusal or any of the conditions was unreasonable, it may take one or more of the following steps—

(a) make such declaration as it considers appropriate;

(b) make an order authorising the general qualifications body to make the alteration specified in the order;

(c) order the lessor to pay compensation to the claimant or pursuer.

(7) An order under sub-paragraph (6)(b) may require the general qualifications body to comply with the conditions specified in the order.

(8) If the court orders the lessor to pay compensation it may not order the general qualifications body to do so."

PART 3

Amendment to the Equality Act 2006

7.—(1) In section 27(1) of the Equality Act 2006 (conciliation), in paragraph (c), after "28V" insert ", 31ADA".

PART 4

Leasehold Premises

Interpretation

8. In this Part a "binding obligation" means a legally binding obligation (not contained in a lease) whether arising from an agreement or otherwise.

Lessor withholding consent

9.—(1) For the purposes of section 31ADB of, and Part 4 of Schedule 4 to, the 1995 Act, a lessor is to be taken to have withheld his consent for alterations to premises, where he has received a written application by or on behalf of a general qualifications body for consent to make the alteration, in the circumstances set out in paragraph (2).

(2) Subject to paragraph (3), the circumstances referred to in paragraph (1) are that, within the period of 42 days beginning with the date on which the lessor receives the application for consent, he—

(a) fails to reply consenting to or refusing the alteration; or

(b) replies consenting to the alteration subject to his obtaining the consent of another person required under a superior lease or pursuant to a binding obligation, but fails to seek that consent.

(3) A lessor is not to be taken to have withheld his consent under paragraph (1) where—

(a) the applicant fails to submit with the application such plans and specifications as it is reasonable for him to require before consenting to the alteration, and

(b) within the period of 21 days beginning with the date on which he receives the application, he replies requesting the applicant to submit such plans and specifications.

(4) However, where such plans and specifications are submitted to a lessor in response to a request made in accordance with paragraph (3)(b), he shall be taken to have withheld his consent to the alteration where, within the period of 42 days beginning with the date on which he receives those plans and specifications, he—

(a) fails to reply consenting to or refusing the alteration; or

(b) replies consenting to the alteration subject to his obtaining the consent of another person required under a superior lease or pursuant to a binding obligation, but fails to seek that consent.

(5) A lessor, who having sought the consent of the other person referred to in paragraph (2)(b) or (4)(b), receives that consent, shall be taken to have withheld his consent to the alteration where, within the period of 14 days beginning with the day on which he receives the consent, he fails to inform the applicant in writing that he has received it.

(6) A lessor to whom, but for the requirements as to time, one of the circumstances set out in paragraph (2), (4) or (5) applies, shall be taken to have withheld his consent until such time as he rectifies the failure described in the paragraph applying to him.

(7) For the purposes of this regulation a lessor is to be treated as not having sought another person's consent unless—

(a) he has applied in writing to that person indicating that—

(i) the general qualifications body has applied for consent to the alteration of the premises in order to comply with a duty imposed on it by section 31AD; and

(ii) the lessor has given his consent conditionally upon obtaining the other person's consent; and

(b) he submits to that other person any plans and specifications which have been submitted to him.

(8) In this regulation, "to reply" means to reply in writing.

Lessor withholding consent unreasonably

10.—(1) For the purposes of section 31ADB of, and Part 4 of Schedule 4 to, the 1995 Act a lessor is to be taken to have acted unreasonably in withholding his consent for alterations to premises in the circumstances set out in paragraph (2).

(2) The circumstances referred to in paragraph (1) are that the lease provides that he shall give his consent to an alteration of the kind in question and he has withheld his consent to that alteration.

Lessor withholding consent reasonably

11.—(1) For the purposes of section 31ADB of, and Part 4 of Schedule 4 to, the 1995 Act a lessor is to be taken to have acted reasonably in withholding his consent for alterations to premises in the circumstances set out in paragraph (2).

(2) The circumstances referred to in paragraph (1) are where—

(a) there is a binding obligation which requires the lessor to obtain the consent of another person to the alteration, the lessor has taken steps to seek that consent, and that consent has not been given, or has been given subject to a condition making it reasonable for him to withhold his consent; or

(b) the lessor does not know, and could not reasonably be expected to know, that the alteration is one which the general qualifications body proposes to make in order to comply with a duty imposed on it by section 31AD.

Lessor's consent subject to conditions

12.—(1) For the purposes of section 31ADB of, and Part 4 of Schedule 4 to, the 1995 Act a condition, subject to which a lessor has given his consent to alterations to premises, is to be taken to be reasonable in the circumstances set out in paragraph (2).

(2) The circumstances referred to in paragraph (1) are where the condition is to the effect that—

(a) the general qualifications body 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 the lessor, such approval not to be unreasonably withheld;

(c) the lessor 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 pursuant to a binding obligation must be obtained; or

(e) the occupier must repay to the lessor the costs reasonably incurred in connection with the giving of his consent.

Modification of section 31ADB and paragraphs 15 to 17 of Schedule 4

13.—(1) This regulation applies where a general qualifications body occupies premises under a sub-lease or sub-tenancy (within the meaning of section 31ADB of the 1995 Act).

(2) Section 31ADB of the 1995 Act has effect as if—

(a) in paragraphs (a) and (b) of subsection (2), for "the lessor" there were substituted "its immediate landlord";

(b) in paragraphs (c) and (d) of that subsection, for "the lessor" there were substituted "the immediate landlord";

(c) after subsection (2) there were inserted—

"(2A) 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 lessor and lessee who are parties to that superior lease as if it provided—

(a) for the lessee to be entitled to give his consent to the alteration with the written consent of the lessor;

(b) for the lessee to have to make a written application to the lessor for consent if he wishes to give his consent to 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) Schedule 4 to the 1995 Act has effect as if—

(a) in paragraphs 15 and 16(1), for "the lessor" in each place where it occurs there were substituted "its immediate landlord";

(b) after paragraph 16(1) there were inserted—

"(1A) Where the lessee of any superior lease in relation to the premises has applied in writing to his 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,

the general qualifications body, the lessee 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."; and

(c) in paragraph 17(1), for "the lessor", there were substituted "any lessor (including any superior landlord)".

PART 5

Transitory Modifications to the Disability Discrimination Act 1995

14.—(1) This regulation applies if section 27 of the Equality Act 2006(**a**) does not come into force on or before 1st September 2007.

(**a**) 2006 (c.3).

(2) Until that section comes into force, paragraph 17(2) of Schedule 3 to the 1995 Act (inserted by regulation 4) is to have effect as if—

(a) for "section 27 of the Equality Act 2006" there were substituted "section 31B", and

(b) for "three months" there were substituted "two months".

Name
Minister of State
Department for Education and Skills

Date

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations do not extend to Northern Ireland.

These Regulations insert new provisions into Part 4 of the Disability Discrimination Act 1995 in relation to the enforcement of the duties placed on general qualifications bodies. General qualifications bodies are authorities or bodies which can confer relevant qualifications.

They provide for claims that a general qualifications body has discriminated against a person to be heard as a claim in tort (or in reparation for breach of statutory duty in Scotland) in the county court (or the sheriff court in Scotland).

Claims must be brought within 6 months of the act complained of, unless the matter is referred to conciliation, when the time allowed is extended by 3 months.

The Regulations also make provision for cases in which premises that are required to be altered are occupied by the general qualifications body under a lease, including joining the lessor as a party to any court proceedings, and in relation to consent from the lessor to alterations that the general qualifications body is required to make to the premises for the purposes of section 31AD.

A full regulatory impact assessment has not been produced for this instrument as any impact on general qualifications bodies will be negligible.

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

£3.00

© Crown copyright 2007

Printed and published in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.
E0949 7/2007 170949T 19585