

Reasonable access



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The close dovetailing of Part M of the Building Regulations to the Disability Discrimination Act 1995 (DDA) represents a clear shift in both access policy and legislation, writes Simon Loveday, Partner, Vizards Wyeth Solicitors

A revised Part M of the Building Regulations came into effect from May 1 2004. Previous versions of Part M set down certain minimum standards for disabled access for such items as steps and ramps, door widths and accessible toilets.

The requirements of Part M now reflect to a much greater extent the notion that people's abilities are not "one size fits all" and may change over time and with family and personal circumstances.

This signals a move away from the narrow aim of making buildings accessible to, and usable by, disabled people towards an aim to make buildings accessible to, and usable by, everyone, which of course includes people with disabilities. For example, parents of young children may find it difficult to manoeuvre a baby's pram into an entranceway and employees may have similar difficulties in moving tea trolleys or postal carts through a building. The emphasis is therefore on building design which accommodates the needs of all people in general.

The new requirements apply to:

- Access to and use of new buildings
- Access to extensions to buildings other than dwellings
- Sanitary conveniences in extensions to buildings other than dwellings
- Sanitary conveniences in dwellings.

The requirements apply regardless of any existing

disabled access policy, use of the building, and whether any employees are disabled or not. Exemptions do apply to active members of the emergency services and Armed Forces, although not their support staff. The regulations are also retrospective and apply to all existing (non-dwelling) buildings as well as any new ones.

There remains a close dovetailing with the aims of the Disability Discrimination Act 1995, including some amendments. In particular, the exemption for employers with less than 15 employees has ceased. There are now also good practice access design guides rather than the outdated minimum standards in old Part M.

Access Statements are of relevance for existing non-domestic buildings undergoing a change of use or extension (to which access must be enabled), for new buildings where there has been a departure from the guidance, and to balance the sometimes competing priorities of access and conservation.

Since August 10 2006, an Access Statement must be provided at the start of, and during, the Building Control process, and should accompany deposited plans (certain categories of building work are exempt).

This should help Building Control bodies to make judgment on whether building development proposals make 'reasonable provision' for access. It can be used to allow the applicant to identify the constraints imposed by

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the existing buildings, and should record where the applicant wishes to depart from the guidance in order to provide a better solution to meeting the overall requirements of Part M. 'Reasonableness' is a new aspect of Building Regulations, that runs parallel with the Code of Practice within the Disability Discrimination Act.

Non-compliance could be faced with legal action under the Disability Discrimination Act. The Disability Rights Commission, established in 2000, polices compliance and assists complainants in bringing legal action.

The Act makes no distinction between landlord and tenant and in each case the duty will fall upon the person providing the service. Damages awarded for discrimination under the Disability Discrimination Act are unlimited and can include compensation for injury to feelings. Size of the business may also be a factor. A small business with limited means may occupy an identical building – but it may face insolvency if required to carry out expensive alterations. It might well be unjust to force that business to close merely to enforce the purported objectives of the Act. Hence, the focus on 'reasonableness'.

