

To:

The Chief Executive
Unitary, Metropolitan, District and
London Borough Councils in England
County and County Borough Councils
in Wales

The Town Clerk, City of London
The Clerk, Council of the Isles of Scilly
The Sub-Treasurer, Inner Temple
The Under Treasurer, Middle Temple

The Head of Building Control
Unitary Metropolitan, District and
London Borough Councils in
England County and County
Borough Councils in Wales
City of London
Council of the Isles of Scilly

Approved Inspectors

cc: The Chief Executive:
County Councils in England
National Park Authorities in England &
Wales

The Chief Fire Officer: Fire Authorities in
England and Wales

09 December 2011

Dear Sir/Madam

Building Regulations 2010

I am writing to you to clarify the relationship between the Equality Act 2010 and Part M (Access to and use of buildings) of the Building Regulations 2010.

Part M sets out minimum requirements to ensure that a broad range of people are able to access and use facilities within buildings.

The Equality Act 2010 brings together and replaces existing equalities legislation including the Disability Discrimination Act 1995 (DDA). The Equality Act requires reasonable adjustments to be made in relation to accessibility. In practice, this means that due regard must be given to **any** specific needs of likely building users that might be reasonably met.

Compliance with the requirements of Part M does not therefore signify compliance with the much broader obligations and duties set out in the Equality Act. This is a source of frequent misunderstanding.

However, service providers, public authorities carrying out their functions, and associations will continue to benefit from a 10 year exemption, from the date of completion, from the need to make reasonable adjustments to those physical features which comply with the requirements of Part M, in certain circumstances, as described below.

This is not a blanket exemption from duties under the Equality Act, and relates only to those specific features built in accordance with AD M (ramps to facilitate access being one such example). As with all other types of building work, service providers will still need to consider the needs of disabled people which are outside the scope of AD M but which would be subject to specific duties under the Equality Act.

Further information including weblinks to the relevant legislation is below:

The Equality Act 2010 harmonised existing provisions into a single streamlined framework of equalities legislation. In consequence, the Disability Discrimination Act 1995, referred to on page 7 of the 2004 edition of Approved Document M (AD M – Access to and use of buildings) has been repealed. The text of the Equality Act 2010 is available at the link below;

<http://www.legislation.gov.uk/ukpga/2010/15/contents>

The duty to make reasonable adjustments in relation to accessibility is set out in paragraph 2 of both Schedule 2 (in relation to public authorities and service providers); Schedule 8 (in relation to employers) and Schedule 15 (in relation to associations) of the Equality Act.

10 Year exemption to this duty

An exemption from this duty to make reasonable adjustments is set out in regulation 9 of and the Schedule to the Equality Act 2010 (Disability) Regulations 2010 ('the Disability Regulations') which can be found at the following link:

<http://www.legislation.gov.uk/uksi/2010/2128/regulation/9/made>

The previous exemption for employers contained in regulation 8 of the Disability Discrimination (Employment) Regulations 1996, referenced in the 2004 edition of AD M, was revoked by the Disability Discrimination (Employment Field) (Leasehold Premises) Regulations 2004, and the same exemption has not been created in the Equality Act - instead, Part 3 of Schedule 8 sets out limitations on the duty to make reasonable adjustments, including no requirement to do so where the employer did not know - and could not reasonably be expected to know- that the person was affected by a disability.

The circumstances where the exemption now applies are set out in regulation 9 (Reasonableness and design standards) of the Disability Regulations, which states that it would not be reasonable for a provider of services, a public authority carrying

out its duties, or an association to have to remove or alter a physical feature which has been provided to assist access to the building or its facilities and which satisfies the relevant design standard.

To satisfy the relevant design standard, as defined in the Schedule to the Disability Regulations, means that a building or feature:

- accords with the relevant objectives, design considerations and provisions in AD M.
- in the case of a physical feature provided as part of the larger building then no more than 10 years must have elapsed from the day in which the works relating to the project were completed.
- in any other case then no more than 10 years must have elapsed since the day on which construction or installation of the feature was completed.

Reference to AD M as a design standard means the edition of the Approved Document applicable at the time the building work was carried out.

Approved Documents and Compliance Guides

We will be publishing an amendment slip for AD M (2004) where it references equalities legislation as part of the 2013 consultation, to reflect the legislative changes discussed in this Circular.

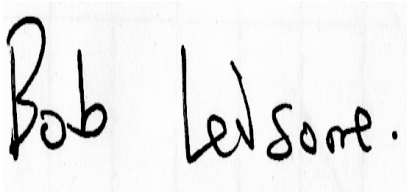
Enquiries

Any enquiries on this Circular Letter should be addressed as follows:

Email: enquiries.br@communities.gsi.gov.uk

All letters of enquiry to Building Regulations and Standards Division, DCLG, Eland House, Bressenden Place, London SW1E 5DU

Yours Faithfully,

A handwritten signature in black ink that reads "Bob Ledsome." The signature is written in a cursive style on a light-colored background.

Bob Ledsome

Head of Building Regulations and Standards Division