

EQUALITY ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: Services and Public Functions

Section 28: Application of this Part

Effect

104. This section provides that this Part of the Act, which prohibits discrimination, harassment and victimisation by people who supply services (which includes goods and facilities) or perform public functions, does not apply to discrimination or harassment of people in those circumstances because they are married or in a civil partnership or because of age if they are under 18.
105. It also states that, if an act of discrimination, harassment or victimisation is made unlawful by other Parts of the Act covering premises, work or education, then those provisions, rather than the provisions covering services and public functions, apply. Similarly, if the act in question results in a breach of an equality clause in a person's terms of work or a non-discrimination rule in an occupational pension scheme, this Part will not apply.

Background

106. This section generally reflects the position in previous legislation. However, since the prohibition on discrimination because of age in services and public functions will not be extended to the under 18s, this section explains that the provisions in this Part do not apply to under 18s in respect of the protected characteristic of age.

Section 29: Provision of services, etc.

Effect

107. This section makes it unlawful to discriminate against or harass a person because of a protected characteristic, or victimise someone when providing services (which includes goods and facilities). The person is protected both when requesting a service and during the course of being provided with a service.
108. It also makes it unlawful to discriminate against, harass or victimise a person when exercising a public function which does not involve the provision of a service. Examples of such public functions include law enforcement and revenue raising and collection. Public functions which involve the provision of a service, for example, medical treatment on the NHS, are covered by the provisions dealing with services.
109. It also imposes the duty to make reasonable adjustments set out in section 20 in relation to providing services and exercising public functions. A person is considered to have discriminated against a disabled person if he or she fails to comply with the duty to make reasonable adjustments.

110. However, the prohibition on harassment when providing services or exercising public functions does not cover sexual orientation or religion or belief.
111. The prohibitions in this section apply, in relation to race or religion or belief, to any actions taken in connection with the grant of entry clearance to enter the United Kingdom, even if the act in question takes place outside the United Kingdom.

Background

112. Previous legislation provided some protection from discrimination, harassment and victimisation in the provision of services and the exercise of public functions. However, the protection was not uniform for the different protected characteristics. For example, there was no protection from discrimination in the exercise of public functions because of pregnancy and maternity or because a person is intending to undergo, is undergoing or has undergone gender reassignment. Also there was no protection for discrimination because of age, either in the provision of services or in the exercise of public functions.
113. This section replaces the provisions in previous legislation and extends protection so that it is generally uniform across all the protected characteristics covered by this Part. However, as under previous law, there is no express protection for harassment related to religion or belief or sexual orientation in either the provision of services or the exercise of public functions. Conduct that would otherwise have fallen within the definition of harassment may still amount to direct discrimination, as section 212(5) makes clear.

Examples

- A man and two female friends plan a night out at a local night club. At the entrance the man is charged £10 entry; the two women are charged £5 each. The owner explains the night club is trying to attract more women and has decided to charge them half the entrance fee. This would be direct sex discrimination.
- A company which organises outdoor activity breaks requires protective headwear to be worn for certain activities, such as white water rafting and rock climbing. This requirement could be indirectly discriminatory against Sikhs unless it can be justified, for example on health and safety grounds.
- A man who suffers from long-standing and serious health problems, including partial paralysis and a severe sight impairment, is imprisoned. On his imprisonment, the man is not allocated an adapted cell, despite being assessed as requiring one within 24 hours of arriving at prison. Instead, he is allocated a standard cell. This would be discrimination resulting from a failure to make reasonable adjustments to take account of a person's disability.
- A black man goes into a bar to watch a football match. He is served a pint of beer and takes a seat at an empty table. Whilst watching the football match the bartender and a number of customers make racist remarks about some of the footballers on the pitch. When the man complains he is then called a number of derogatory names. This would be harassment because of race.

Section 30: Ships and hovercraft

Effect

114. This section provides that the services provisions will only apply to ships and hovercraft in the way set out in regulations made by a Minister of the Crown. The section also provides that in relation to the exercise of public functions that do not involve providing a service to the public, section 29(6) applies to ships and hovercraft in all cases except disability discrimination for which regulations will be needed.
115. As ships and hovercraft may be constantly moving between waters under the jurisdiction of different States or be outside the jurisdiction of any State, such regulations are needed to give certainty for people who provide or receive services

in relation to ships and hovercraft about whether the services and public functions provisions apply.

Background

116. Previous legislation specified the territorial application of the services provisions, dealing specifically with ships and hovercraft (for example, section 36 of the Sex Discrimination Act 1975 and section 27 of the Race Relations Act 1976). As the Act is silent on the territorial application of the services provisions, regulations made under this section will ensure that there is clarity about when and on which ships and hovercraft the services provisions apply.

Section 31: Interpretation and exceptions

Effect

117. This section explains what is meant by the terms “provision of a service” and “public function” in the Act. The definition of a “public function” is that which applies for the purposes of the Human Rights Act 1998. The public functions provisions apply only where what is being done does not fall within the definition of a “service”.
118. This section also explains that refusing to provide or not providing a service includes providing a person with a service of different quality, or in a different way (for example hostile or less courteous) or on less favourable terms than the service would normally be provided.
119. This section provides that where an employer arranges for another person to provide a service to a closed group of employees, then the members of that closed group are to be treated as a section of the public for the purposes of their relationship with the service-provider. This means that if the service-provider discriminates against members of that group, the prohibitions in this Part apply. However, the employer is not to be treated as a service-provider, despite facilitating access to the service. Instead, his or her conduct in respect of his or her employees is to be governed by the provisions in Part 5 (work).
120. Further details of how the reasonable adjustments duty applies in relation to providing services and exercising public functions are contained in Schedule 2.
121. The exceptions which apply to this Part of the Act are contained in Schedule 3.

Background

122. Much of what is contained in this section has its origins in previous legislation, but this is now brought together in an interpretation section rather than in the substantive provisions as was the case in the previous legislation. The subsection concerning employers arranging for provision of services to their employees by another person is new.

Examples

- Services include the provision of day care, the running of residential care homes and leisure centre facilities, whether provided by a private body or a local authority.
- Public functions not involving the provision of a service include licensing functions; Government and local authority public consultation exercises; the provision of public highways; planning permission decisions; and core functions of the prison service and the probation service.
- The definition of refusing to provide a service covers, for example, a bank which has a policy not to accept calls from customers through a third party. This could amount to indirect discrimination against a deaf person who uses a registered interpreter to call the bank.

*These notes refer to the Equality Act 2010 (c.15)
which received Royal Assent on 8 April 2010*

- An employer arranges for an insurer to provide a group health insurance scheme to his employees. The insurer refuses to provide cover on the same terms to one of the employees because she is transsexual. This would be treated as direct discrimination in the provision of services by the insurer against the employee in the same way as if the insurance was available to the general public. However, if it was the employer, rather than the insurer, who decided that the transsexual employee should not be able to access the group health insurance scheme, such discrimination in the employee's access to benefits in the workplace would be covered by the provisions of Part 5 (work).