

EQUALITY ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: Services and Public Functions

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.