

EQUALITY ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4: Premises

Section 32: Application of this Part

Effect

123. This section provides that this Part of the Act, which prohibits discrimination, harassment and victimisation in relation to the disposal, management and occupation of premises, does not make it unlawful to discriminate against or harass people in those circumstances because they are married or in a civil partnership or because of age.
124. It also states that, if an act of discrimination, harassment or victimisation is made unlawful by other Parts of the Act covering work or education, then those provisions, rather than the provisions covering premises, apply. Further, where accommodation is provided either as a short-term let or where it is provided as part of a service or public function, Part 3 (services and public functions) applies instead of this Part. 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 then these provisions will not apply.

Background

125. This provision broadly reflects the position in the previous legislation, which gave protection from discrimination in the disposal and management of premises across all the protected characteristics with the exception of age and marriage and civil partnership.

Section 33: Disposals, etc.

Effect

126. This section makes it unlawful for a person who has the authority to dispose of premises (for example, by selling, letting or subletting a property) to discriminate against or victimise someone else in a number of ways including by offering the premises to them on less favourable terms; by not letting or selling the premises to them or by treating them less favourably.
127. It also makes it unlawful for a person with authority to dispose of premises to harass someone who occupies or applies for them. The Act does not however make it unlawful to harass someone because of sexual orientation or religion or belief when disposing of premises.

Background

128. This section replaces similar provisions in previous legislation. 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 landlord refuses to let a property to a prospective tenant because of her race. This is direct discrimination when disposing of premises.
- A vendor offers her property to a prospective buyer who is disabled at a higher sale price than she would to a non-disabled person, because of the person's disability. This is direct discrimination when disposing of premises.

Section 34: Permission for disposal

Effect

129. This section makes it unlawful for a person whose permission is needed to dispose of premises (for example, to sell, let or sublet a property) to discriminate against or victimise someone else by withholding that permission. It also makes it unlawful for such a person to harass someone who seeks that permission, or someone to whom the property would be sold or let if the permission were given. The Act does not however make it unlawful to harass someone because of sexual orientation or religion or belief by withholding permission to dispose of premises.
130. This section does not apply where permission to dispose of premises is refused by a court in the context of legal proceedings.

Background

131. This section replaces similar provisions in previous legislation.

Example

- A disabled tenant seeks permission from his landlord to sublet a room within his flat to help him pay his rent. The landlord tells him that he cannot because he is disabled. This is direct discrimination in permission for disposing of premises.

Section 35: Management

Effect

132. This section makes it unlawful for a person who manages premises to discriminate against or victimise someone who occupies the property in the way he or she allows the person to use a benefit or facility associated with the property, by evicting the person or by otherwise treating the person unfavourably. It also makes it unlawful for a person who manages a property to harass a person who occupies or applies to occupy it. The Act does not however make it unlawful to harass someone because of sexual orientation or religion or belief in the management of premises.

Background

133. This section replaces similar provisions in previous legislation.

Examples

- A manager of a property restricts a tenant's use of a communal garden by setting fixed times when she can use the garden because she is undergoing gender reassignment, while

allowing other tenants unrestricted access to the garden. This would be direct discrimination in the management of premises.

- A manager of a property refuses to allow a lesbian tenant to use facilities which are available to other tenants, or deliberately neglects to inform her about facilities which are available for the use of other tenants, because she had previously made a claim of discrimination against the manager. This would be victimisation.
- A manager of a property responds to requests for maintenance issues more slowly or less favourably for one tenant than similar requests from other tenants, because the tenant has a learning disability. This would be direct discrimination in the management of premises.

Section 36: Leasehold and commonhold premises and common parts

Effect

134. This section imposes the reasonable adjustments duty on those who let premises, commonhold associations, and those who are responsible for the common parts of let or commonhold premises in England and Wales. This section also defines who is responsible for common parts, defines common parts and includes a power to prescribe premises to which the requirements do not apply.

Background

135. Part of this section replaces similar provisions in the Disability Discrimination Act 1995 relating to let premises and premises to let. The provisions relating to common parts are new.

Example

- An agency used by a landlord to let and manage leasehold premises is a controller of premises under this provision and therefore is under the duty to make reasonable adjustments for disabled people, such as making information about the property available in accessible formats.

Section 37: Adjustments to common parts in Scotland

Effect

136. This section confers a power on the Scottish Ministers to make regulations entitling disabled people to make disability-related alterations to the common parts of some residential property in Scotland.
137. This section also sets out what matters the regulations may provide for; provides that the Scottish Ministers must consult a Minister of the Crown before exercising the power; and defines “common parts” and “relevant adjustments”.

Background

138. This provision is new. It is intended to facilitate disability-related alterations to the common parts of residential premises in Scotland where the premises are the disabled person’s only or main home. Provision for disabled people in tenanted property in Scotland was made in the Housing (Scotland) Act 2006, but in relation to common parts those provisions cover only the consent required from the person’s landlord and not that required from other common owners. As the process for obtaining consent from common owners will need to fit into, and operate within, the Scottish devolved areas of property and housing, land registration and civil justice, it is considered appropriate to confer a power on the Scottish Ministers to permit them to make the necessary provision by means of secondary legislation.

Section 38: Interpretation and exceptions

Effect

139. This section explains what is meant by terms used in this Part. In particular it sets out the kinds of property transactions meant by “disposing of premises” in the case of premises which are subject to a tenancy, and defines what is meant by “tenancy”. It also makes it clear that the provisions apply to tenancies made before as well as after the Act.
140. The details of how the reasonable adjustments duty applies in relation to “let premises”, “premises to let”, “commonhold land” and “common parts” of let or commonhold premises are contained in Schedule 4.
141. The exceptions which apply to this part of the Act are contained in Schedule 5.

Background

142. This section replaces similar provisions in previous legislation.