

Equality Act 2010 - property implications

The Equality Act received Royal Assent on 8 April 2010 and the majority of the Act came into force on 1 October 2010. The Act covers all forms of discrimination (such as sex, race, religion, age and pregnancy as well as disability including learning disabilities). It consolidates, replaces and enhances the existing discrimination legislation. This is a very brief outline of some of the property-related implications of the Act. The main change required will be for landlords of residential property to allow appropriate and necessary alterations by tenants to enable them to live independently.

The provisions of particular interest to a landlord are...

- A duty on “service providers” and those exercising a public function to make reasonable adjustments.
- A duty not to discriminate against or victimise someone in selling or letting premises.
- A “reasonable adjustments” duty on “controllers of premises” (ie, landlords and management companies) in relation to let premises and common parts.

The duties on “service providers” are:

- to take reasonable steps to avoid a provision, criterion or practice which puts a disabled person at a substantial disadvantage;
- to avoid a physical feature which puts a disabled person at a substantial disadvantage; and
- to take reasonable steps to provide an auxiliary aid where a disabled person would, without it, be put at a substantial disadvantage.

With regard to taking steps to avoid a provision, criterion or practice or to provide an auxiliary aid, the emphasis is on how the information is provided. A reasonable step could be providing information in an accessible format.

With regard to physical features, taking steps to avoid the disadvantage will include removing, altering and providing a reasonable means for avoiding the physical feature, where it would be reasonable to do so.

The Act makes it clear that (except where it states otherwise eg, residential common parts) it would never be reasonable for a person bound by the duty to pass on the costs of complying with it to an individual disabled person.

The duty not to discriminate regarding disposal of premises will include:

- Offering premises to a person on less favourable terms because of their disability, race, sex, age or religion.
- Not letting or selling the premises to them or treating them less favourably eg, a seller 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.
- Not granting consent or permission to sell, let or sub-let premises because of the person's disability, sex, race, sexual orientation, religion or belief.

The “reasonable adjustments” duty on a “controller of premises”

Controllers can mean managing agents and commercial landlords. Their duty only applies if the request is made by or on behalf of the disabled person. This is the first time the obligation is on landlords/managers to consent to physical changes. However, for let premises, the physical feature requirement does not apply.

Although the duty to make reasonable adjustments expressly excludes an obligation to remove or alter a physical feature, it is clear that landlords should not assume they are shielded from all the expensive works. Instead of the normal wide ranging definition, “physical feature” here does not include signage, change to taps, handles, door entry systems or a change of furniture and equipment in the premises. A disabled person should be permitted to make the appropriate and necessary alterations to the let premises so they can live independently. Therefore, alterations covenants may need to be amended in leases to enable the tenant to make particular alterations.

For common parts, only the physical feature requirement applies. A process has to be followed, including consultation. The tenant can be required to pay for the cost of making the alterations. However, this is not for commercial premises - only for mixed use buildings (including those held on a commonhold basis) and residential buildings.



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