

# BRIEF UPDATE

FROM THE COMMERCIAL PROPERTY DIVISION

Commentary by Laura Hay

## EQUALITY ACT 2010 – THE EFFECT ON PROPERTY OWNERS AND OCCUPIERS

On 1 October 2010, the majority of the provisions of the Equality Act 2010 came into force in Scotland, England and Wales. The Act covers discrimination on the grounds of race, gender, religion, age and disability and consolidates existing discrimination legislation, including the Disability Discrimination Act 1995. Part 4 of the Act relates to property and all property owners, landlords, tenants, service providers and employers are required to comply with the Act. This Brief Update focuses on disability discrimination.. Much of provisions of the Act are not new and are a restatement of the duties set out in the 1995 Act. The main provisions are as follows:-

### Discrimination in relation to the disposal and management of property

- A person with the right to dispose of a property (whether by sale, letting, the assignation of an existing lease, sub-letting or the grant of a licence to occupy) must not discriminate against a disabled person in the terms of the disposal of the property, by not disposing of the property to them or in their treatment of that person in relation to the disposal.
- A person whose consent is required for the disposal of property must not discriminate against a disabled person by not granting consent to the disposal of the property.
- A person who manages property must not discriminate against a disabled person who occupies the property in the way that they allow them to make use of any facility or benefit or by preventing them from doing so, by evicting that person or taking steps to do so or by subjecting that person to unfavourable treatment.
- The harassment and victimisation of disabled people in the contexts referred to above is similarly prohibited.

### Duty to make reasonable adjustments to assist disabled people

#### Leased Premises

- Landlords and managers of leased premises may be required to make “reasonable adjustments” to the premises. The duty will only arise in response to a request received from a disabled person setting out the steps they require to be taken and where the disabled person is at a substantial disadvantage.



- There may be a requirement to change a provision, criterion or practice which puts a disabled person at a substantial disadvantage or provide an auxiliary aid.
- There is no requirement to change a physical feature of the property (other than certain specified fixtures) but the terms of the lease may require to be amended so that the tenant is permitted to make physical alterations which are necessary.
- Whether an adjustment is “reasonable” will vary in the circumstances but initial guidance indicates that the facts to be considered are (a) how effective the change will be; (b) whether the change can actually be made; (c) the cost and (d) the size and resources of the organisation making the change.

### Common Parts

- The Act introduces a new duty to make reasonable adjustments to common parts of buildings that contain residential units. This may involve physical alterations to the structure and exterior of the property and to any common facilities.
- For the above duty to arise a request must be received from a disabled person who is at a substantial disadvantage setting out the steps that the responsible person should take to reduce the disadvantage.
- The cost of making the adjustments cannot generally be passed on to the disabled person. There is an exception in the case of adjustments to common parts where the disabled person may be required to pay the cost of the work, costs arising from the work such as ongoing maintenance costs, and the cost of reinstatement.
- The provisions of the Act relating to common parts are not yet in force in Scotland and are under further consideration by the Scottish Government. It is expected that regulations will be made setting out in more detail the scope of the duty to make reasonable adjustments.

### **Reasonable Adjustments in the Provision of Services to the Public**

- Reasonable adjustments must be made by service providers where a disabled person is at a substantial disadvantage. This is more onerous than the obligation under the 1995 Act as more extensive adjustments may require to be made, including alterations to the physical features of the property.
- Service providers must anticipate the needs of disabled people and make the necessary adjustments, in contract to the duty on the landlord / manager in the case of leased properties which only arises if a request is made by a disabled person.
- A service provider may be able to discharge the duty by adopting an alternative method of providing the service rather than making adjustments, although this may not always be sufficient .

### **Consent to Reasonable Adjustments**

The consent of a superior landlord may be needed to make adjustments to a property to comply with the 2010 Act. If the consent is refused or subject to unreasonable conditions, then regardless of the actual wording of the lease the provision of the lease has effect as if the tenant could make the alteration with the written consent of the landlord.

The landlord is not entitled to unreasonably withhold consent, but if they do or if conditions are imposed the disabled person can refer the matter to a court. The court will determine whether the refusal of consent or the condition imposed is unreasonable.

### **Remedies**

A person who has been the victim of unlawful discrimination under the 2010 Act may apply to the court for damages, for implementation of the obligation in the Act, or for any other remedy that a court would award on judicial review.

### **Practical Advice**

Discrimination may be unintentional. Landlords and property managers therefore require to be aware of the obligations imposed on them by discrimination legislation. Although most of the provisions of the Equality Act 2010 are not new and have been carried over from previous legislation, the Equality Act 2010 provides a single reference point meaning that compliance with these obligations may be more easily assessed. We would recommend that landlords and property managers review the condition of their premises and their existing policies and procedures and leases to identify any risk of being found to be non-compliant with the legislation and to seek practical advice on compliance.

### **Further Advice**

For more information in relation to the above, please contact one of the partners in the Property Services Group.

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