

EQUALITY ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: Services and Public Functions

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.

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

- 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.
- 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).