

Number 16

The Disability Discrimination Act 1995

PROPERTY

Time is running out – Part III of the Disability Discrimination Act 1995 (“the Act”) comes into effect on 1st October 2004. If you are a landlord, tenant or purchaser of commercial property you may need to take steps now to comply with the Act.

1. To whom does the Act apply?

The Act applies to “Service Providers”. Landlords, tenants and owners of commercial property may be service providers. For example a landlord of a shopping centre will be a service provider in respect of the car parks and common parts, retail tenants, banks and building societies will be service providers and landlords will be service providers in respect of multi-let buildings. It makes no difference if the service is provided for free or for payment.

2. Duties of the Act

The Act imposes three main duties on Service Providers

- (a) not to treat disabled people less favourably for a reason related to their disability
- (b) to make “reasonable adjustments” to the service where it places disabled persons at a substantial disadvantage in comparison with persons who are not disabled
- (c) to make “reasonable adjustments” in relation to the physical features of premises to overcome physical barriers to access to the service.

Duties (a) and (b) are already in force. It is duty (c) which comes into effect on 1st October 2004 and which could have significant effects upon landlords, tenants and owners of commercial property.

3. How to comply with the Act

The Service Provider must take such steps as are reasonable in the circumstances of the individual case. It is up to the individual Service Provider to decide how to comply with the Act and it is the service that must be accessible, not the building itself.

A Code of Practice has been issued by the Disability Rights Commission and it suggests that the starting point should be to consider whether a physical feature which creates a barrier to disabled people can be removed or altered. However, compliance with the Act may not require physical adjustments at all.

“Reasonable adjustments” will include:-

- removing the barrier to access
- altering the barrier
- providing a reasonable means of avoiding the barrier
- providing an alternative means of making the service available.

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The Code of Practice provides for the following factors to be taken into account in considering whether adjustments are reasonable:-

- the extent of the Service Provider's financial and other resources. The greater the resources the more adjustments will be considered reasonable
- the practicality of making any changes
- financial and other costs involved
- extent of disruption likely to be caused
- the amount already spent on making adjustments
- whether the adjustments will be effective in overcoming the problem.

The duties under the Act are continuing obligations. Something which may be deemed too expensive to carry out in October 2004, may be affordable in October 2005 and the Service Provider would then be under a duty to reconsider such course of action.

4. Consequences for Commercial Leases

(a) Alterations

The Act will override any contrary provisions in a lease with regard to alterations to a property. There will be an implied term in all leases that the tenant may apply for consent for alterations required under the Act and the landlord will not unreasonably withhold consent to such application. This is subject to obtaining all other necessary consents such as planning permissions, listed building consents and mortgagee's consent.

(b) Tenant's covenants

If a lease contains a covenant to comply with all statutory obligations at the tenant's cost this will include compliance with the Act.

(c) Rent Review

The tenant will want to expressly disregard on rent review any increase in the value of the property due to necessary adjustments made under the Act. If there is a covenant in a lease that the tenant will comply with statute, the normal disregard of tenant's improvements may not apply to alterations carried out under the Act because they would be deemed to be carried out pursuant to an obligation to the landlord.

Landlords should also beware because non-compliant properties might be devalued and any rent review would reflect the cost to a hypothetical tenant of making the property compliant with the Act.

5 Action

Now is the time to consider what steps may be required to comply with the Act. Consider carrying out access audits, preparing access plans or strategies and / or consulting with disabled persons and disability organisations.

6 Non-compliance

Non-compliance with the Act may result in the following:-

- a claim in the county court or an employment tribunal. Damages are unlimited and may be substantial
- bad publicity
- consequences on rent review as detailed above

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Readers are advised to take specific advice before acting in reliance on the matters set out in this briefing.

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