

Inclusive options

Martin McConaghy looks at the Equality Act 2010 and how it affects the need to make reasonable adjustments to property for disabled people

The Equality Act 2010 was introduced to simplify and consolidate a plethora of existing discrimination legislation, including the Race Relations Act 1976, the Sex Discrimination Act 1976 and, most relevant to historic buildings, the Disability Discrimination Act 1995 (DDA). Most of the new Act is in force; however (at the time of writing) some elements, e.g. the Codes of Practice (COPs), are still in draft form.

Construction professionals may, however, take some comfort from the fact that the most relevant element to publicly accessible premises – the duty to make reasonable adjustments to physical features under the DDA – remains relatively unchanged.

As with the DDA, listed buildings are not exempt; however, section 13.14 of the draft *Code of Practice for Services, Public Functions and Associations* contains this statement:

“The non discrimination provisions of this Act may be overridden only where another law, or regulations or orders made under another law, require a difference of treatment because of a protected characteristic and a service provider, person exercising public functions or an association has no discretion or choice but to comply with the other law.”

Strict compliance

The key here is ‘no discretion or choice but to comply with the other law’ as illustrated in the example below, also taken from the draft COP.

“A man with arthritis wishes to visit an old country house that is open to the public. However, he cannot get into the building as there is a steep flight of steps at the entrance with no ramp or handrail. He asks the owner why these have not been installed. The owner replies that because the house is a listed building she is not required to make any changes to it. As the exception only applies when a service provider has no option but to act in a certain way, the owner’s refusal to seek consent to make the building more accessible is likely to amount to a failure to make a reasonable adjustment and hence unlawful under the Act.”

Perhaps the most welcome element for conservation professionals is the retention of ‘reasonable test’ guidance, which has not altered from the DDA. Importantly, however, the proposed COP for Services has also retained a number of sections which are often not considered when making reasonable adjustments, including:

- **Section 7.4 (extract):** *“The policy of the Act is not a minimalist policy of simply ensuring that some access is available to disabled people; it is, so far as is reasonably practicable, to approximate the*

access enjoyed by disabled people to that enjoyed by the rest of the public.”

- **Section 7.58 (extract):** *“Where there is a physical barrier, the service provider’s aim should be to make its services accessible to disabled people and, in particular, to provide access to a service as close as is reasonably possible to get to the standard normally offered to the public at large.”*

A number of high profile cases echo this approach in that the question is not ‘is the service provider’s response reasonable?’ as is often interpreted, but rather ‘are there other options which would have been better for disabled people which are also reasonable?’

Perhaps the most welcome element for conservation professionals is the retention of ‘reasonable test’ guidance, which has not altered from the DDA

Always a risk

In the historic environment, this subtle difference would be particularly relevant where (due to various conservation pressures) a secondary or alternative route/entrance has been used, or some aspect of the service remains inaccessible due to physical features. These sections make it clear that accepting a lower level of access than that normally provided to the general public should always be considered a risk.

A further word of caution: while large areas of the Act will be familiar to regular users of the DDA, there are some subtle changes which could easily be missed. For example, in some circumstances it may be acceptable for a service provider to deliver their services via an alternative means, as per the DDA – however, there appears to be no such option in an employment situation.

It would seem prudent to ‘watch this space’ for further details of when the final COPs are published and to ensure one is up to date with current case law.

Further information

The draft COPs can be found on the website of the Equality and Human Rights Commission, www.equalityhumanrights.com

Martin McConaghy is a Senior Access/Inclusive Design Consultant for Atkins and a member of the RICS Inclusive Environment Scheme
martin.mcconaghy@atkinsglobal.com



RICS Inclusive Environment Consultants conference, 16 May 2011, London, www.rics.org/iec2011



Related competencies include: T051