Equality Hub

Equality Hub

Improving disabled people’s access to let residential premises: reasonable adjustments to common parts, a new duty

Equality Hub

Equality Hub

Improving disabled people's access to let residential premises: reasonable adjustments to common parts, a new duty

June 2022

If you want to request an accessible format of this publication (such as Easy Read, large print, British Sign Language, Welsh or Braille), please email: s36consultationresponse@cabinetoffice.gov.uk with the subject line 'Accessible format request'.

Contents

Ministerial foreword

It has long been our aim to fully commence section 36 of the Equality Act 2010 and its associated schedule paragraphs, something that will make a real contribution to the government's wider disability and levelling up agendas and delivers on our manifesto commitment to improve opportunities and access for disabled people to housing.

We want to see disabled people of all ages and abilities get improved access to the labour market and play a fuller role in recreational and social activities, as well as accessing goods and services more easily. There are a number of ways the government can help with this – working with employers, improving the effectiveness of the benefits system and public transport for example, but arguably most important is ensuring that disabled people are able to access and leave their homes as easily and safely as possible, since without this, so many things become impossible.

People without disabilities can sometimes take such things for granted and it is a high priority of the government to level the playing field wherever possible, so that disabled people are not put at a substantial disadvantage compared with others. A Conservative government first introduced the reasonable adjustments duty in 1995, which required, among other things, service providers to make adjustments so that disabled

customers or people wishing to use their services could do so more easily. This duty has been a great success and led to other advances, including in the field of housing, where a duty was later placed on landlords to allow disabled tenants and occupants to make adjustments to their private dwellings where this was reasonable.

Yet it was recognised that the government could go even further and so in 2010 the (then newly-introduced) Equality Act included provisions to extend the duty to the common parts of residential leasehold properties – typically blocks of flats. There have been challenges to reaching the point where these provisions can be implemented in England and Wales, as the government has needed to take account of burdens, costs and other priorities, but I am delighted that we have now reached a point where implementation of the provisions can soon proceed. We want this to be a success and to work for all interested parties and that means ensuring that we get the details of implementation right and set these out in regulations where necessary.

This is where your contributions to this consultation will be key. Please do give us as much feedback as you can, to enable us to maximise the impact of implementation, whilst minimising its burdens.

Kemi Badenoch MP, Minister for Equalities and Levelling Up Communities

Introduction

Who this consultation is for

We are seeking the views of anyone in England and Wales who has an interest in our proposals. We are particularly interested in hearing from:

- disabled people who live in, or plan to live in rented, leasehold or commonhold accommodation
- landlords from all housing sectors
- managing and letting agents
- local authorities
- organisations representing any of the above groups
- experts in any of the topics covered, who feel that they can usefully contribute

An optional template (Annex A) is available for providing responses (see the main consultation page on GOV.UK). There are 18 questions, but you are not required to answer them all. However you respond, it would be helpful if you include the following, although they are optional:

- your name (or the organisation's name)
- which of the above groups you belong to
- an email address or phone number

You can submit your responses:

- by email to: s36consultationresponse@cabinetoffice.gov.uk
- by post to: Common Parts Consultation, Government Equalities Office, 3rd Floor, Piccadilly Gate, Store Street, Manchester, M1 2WD – write “Section 36” on the back of the envelope

How long the consultation will run for

The consultation will run for 10 weeks from the date it is published. See the main consultation page on GOV.UK for the opening and closing dates.

Terms used in this consultation

Landlord (responsible for the common parts) means either:

- the owner(s) of the freehold of the building
- the intermediate landlord – that is, the long leaseholder who has sublet
- a commonhold association, where ownership of the freehold is shared by the building’s occupants
- someone appointed to act on the owner’s behalf, such as a letting agency

Disabled person is a person who meets the definition of disability (see section on ‘definition of disability’), set out in the Equality Act 2010 (“The Act”) and is either:

- a tenant of the property (including a leaseholder)
- someone who has purchased a commonhold (unit) interest in the property
- entitled to live at the property as their only or main home (although not a tenant or unit-holder) – for example, a dependent of the tenant or a person to whom the tenant has lawfully sublet the premises

Summary of policy

We intend to commence (or 'switch on') legislation that was passed in 2010 which places a duty on landlords to make reasonable adjustments to the common parts of let residential premises. This duty will apply where a disabled person has identified the need for an adjustment and has made a request to the landlord either in person or through a representative (for example, if they are incapacitated or a child).

Our intention is to enable a disabled person to require a landlord to make reasonable physical changes to communal spaces outside the disabled person's home – including outside areas, entrances, hallways, landings and stairwells – so they can more easily use them. Our policy position – as reflected in the legislation – is that it is always reasonable for the landlord to insist that the disabled person pays for the alteration (including costs arising from the works and any restoration costs). We welcome any feedback on this point and on the practicalities of allocating costs. Disabled people

might be able to get financial assistance from their local authorities.

Commencement of the relevant provisions of the Act will be achieved through a commencement order, laid before Parliament. Subject to the findings of this consultation, we may also bring forward secondary legislation (regulations) to ensure that the new duty works as smoothly as possible for everyone involved.

Why we want to commence

This and previous Conservative governments have recognised for some time that switching on these provisions could bring clear benefits to disabled people. We announced our intention to do so in the 2018 Government response to the Women and Equalities Select Committee Inquiry on Disability and the Built Environment. We confirmed our intention to consult on the details of implementation in July 2021.

Currently, under the Act, landlords and managers of rented or ‘let’ residential premises in England and Wales must do all the following:

- not discriminate, harass or victimise a disabled tenant or occupier
- make or permit reasonable adjustments to the disabled person’s home (their private dwelling) – though not removing or altering a physical feature

- not unreasonably refuse permission for disability-related improvements to the disabled person's home to be carried out

The Act includes a similar requirement in section 36 and associated schedules, for disability-related alterations to the physical features of the *common parts* of let residential premises, such as outside areas, entrances, stairs and hallways, but this has not yet been 'switched on' in England and Wales[1]. While some disabled residents and their landlords may have agreed voluntary adjustments, the absence of this duty means that it is difficult for some disabled people to use the common parts of their dwellings, when a reasonable alteration, paid for by the eligible disabled person or (optionally) by others, could fix this.

Commencing the remainder of section 36 and paragraphs 5 to 7 of schedule 4 would avoid the need for some tenants (and those living with them) – including people acquiring a disability after moving into their home or if an existing condition worsens – having to go through the stress of moving. It may also improve fire safety and have wider benefits for disabled residents' wellbeing, enabling them to take part more fully in work and social activities.

1 A reasonable adjustments to common parts duty has been in place in Scotland since 21 February 2020. Commencement of this duty was a decision for the Scottish Government and Parliament.

Effect of commencement

If a physical feature of the common parts of the property puts the disabled person at a substantial disadvantage compared with non-disabled residents, the landlord will, on request, be under a duty to make an adjustment to the common parts, if this is considered to be a reasonable step to avoid or reduce the disadvantage.

The landlord must consult with anyone they think may be affected by the proposed steps, including any other tenants and leaseholders, before agreeing to any adjustment. Their views and circumstances are likely to be relevant to the decision as to whether the requested adjustment is reasonable.

The Act states that the landlord can require the disabled person – of their parent or guardian – to pay for the work, including any reasonable maintenance costs. Funding may be available to some disabled people, who will be responsible for asking their local authority. The Government will publish guidance to help people make these enquiries. We welcome further feedback on any potential costing arrangements, such as the possibility of sharing the costs of works among all tenants (see section on ‘costing and feasibility of the work and the interaction with leasehold law’).

We hope that most landlords will act responsibly, but a landlord who fails to agree to a reasonable adjustment imposes unreasonable conditions or ignores a request

may be liable to civil action by the disabled person at the County Court. If a landlord loses such a case, the Court may authorise the disabled person to make the adjustment, or order the payment of damages and costs.

Review

Once commenced, we will review how the duty is working to make sure it is working as intended and in a way that fairly balances the interests of disabled tenants and residents, landlords and other tenants affected by it.

Background

Giving disabled residents a new way to bring about alterations to the physical features of the common parts of their buildings will have a positive impact on their everyday lives. For example, people with mobility issues might find it easier to leave their homes for work, shopping and socialising if they had:

- an allocated parking space near the entrance to their building
- a stairlift
- a handrail or ramp

Poor lighting and a lack of guide rails in communal areas can present difficulties for blind and visually impaired residents. Alterations may also help disabled residents to evacuate a building in the case of an emergency.

The requirements of Part M of the Building Regulations[2] have ensured good standards of access in newer properties, but deficiencies in many older properties can remain a challenge for disabled tenants and people living with them. We recognise that some landlords have made efforts to improve common areas and our plans will ensure that further progress is made.

2 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/540330/BR_PDF_AD_M1_2015_with_2016_amendments_V3.pdf

The history of the common parts provisions goes back to 2005 when the then government set up the Review Group on Common Parts, during the passage of the Disability Discrimination Act 2005, to review the legal position on alterations to the common parts of let residential premises and commonholds and to make recommendations. This group recommended that provision should be made for this aspect in equalities legislation, which resulted in the inclusion of measures in what became the Equality Act 2010.

There have been a number of reasons why switching on the measures in section 36 of the Act in full has been deferred – for example, there are some potential costs involved for local authorities in England and Wales, and some interactions with existing leasehold practices that have needed careful consideration and assessment.

However, we have always been committed to ensuring that the legal framework for reasonable adjustments is as strong as possible.

Definition of disability

The Act defines ‘disability’ as a physical or mental impairment that has a ‘substantial’ and ‘long-term’ negative effect on a person’s ability to do normal daily activities.

‘Substantial’ is more than minor or trivial – for example, it takes much longer than it usually would to complete a daily task like getting dressed.

‘Long-term’ means that it has lasted for at least 12 months or is likely to last for at least 12 months or more, for example a breathing condition that develops as a result of a lung infection.

People with progressive conditions can be classed as disabled. There are also certain conditions that, from the day of diagnosis, automatically meet the disability definition under the Act. These are HIV infection, cancer or multiple sclerosis.

In the context of section 36 of the Act, this means that anyone entitled to live at a qualifying property and who meets the above definition of disability will be able to trigger the reasonable adjustments to common parts duty. This could be:

- the tenant named on a lease
- the leaseholder or unit-holder who has purchased a flat in the block
- a family member, friend or lodger who lives in the flat and is legally entitled to do so
- someone who is acting on behalf of the disabled person

Property within scope

Currently the proposal is to include all leasehold and commonhold properties, except those detailed in the next section which are already excluded from scope by the Act.

Exceptions to scope

Paragraph 4 of schedule 5 of the Act contains exceptions to the landlord's duty to make reasonable adjustments in certain circumstances. It states that the duty will not apply if:

- the premises in question are 'small premises'
- the landlord or manager of the property or a relative of that person resides in another part of the premises and intends to carry on living there
- the premises include parts (other than storage areas and means of access) shared with residents of the premises who are not members of the same household as the landlord (or a relative of the landlord) or manager of the property

'Small premises' are defined under paragraph 3 of schedule 5 to the Act as premises in which:

- the only other people occupying the accommodation are members of the same household
- the premises also include accommodation for at least one other household
- the accommodation for each of those other households is let, or available for letting, on a separate tenancy or similar agreement
- the premises are not normally sufficient to accommodate more than 2 other households.

Premises are also small if they are not normally sufficient to provide residential accommodation for more than 6 people (in addition to the landlord or any relative and members of the same household).

In addition, the duty to make common parts adjustments does not apply to:

- temporary short-term accommodation provided through a licence
- accommodation such as hostels and bed and breakfasts, where there is no lease agreement
- short-stay accommodation such as holiday lets, if the person staying at the property normally lives elsewhere
- accommodation for the purpose of exercising a public function or providing a service to the public (for example, a police station cell or hospital ward)

Regulation-making power

There is a power in the Act to exclude, through regulations, certain types of property that would otherwise be within scope, but we are currently not planning to do so. The following property categories are planned to be within scope:

- housing for rent, owned by local authorities
- housing for rent, owned by housing associations
- housing in the private rented sector, owned privately

- properties containing flats or apartments for purchase on a leasehold or commonhold basis, including shared ownership properties

This does not mean that the landlord or owner of every building falling into the above categories will be under a duty to make a common parts adjustment, on request. A 'reasonableness' test that must first be met (see section on 'effect of commencement'). For example, if the dwelling is listed, listed building consent may be required depending on the nature of the works requested. The extent to which the request is reasonable may depend on various factors, including advice received from the local planning authority and others.

The reasonable adjustment duty is subject to the statutory authority exception in paragraph 1 of schedule 22 of the Act. This means that if another law – such as health and safety legislation – prohibits or conflicts with the requested installation of an adjustment, there will be no duty on the landlord to make it. For this reason, it will be important for landlords to be aware of related legislation, or refer to it following a reasonable adjustment request.

Question 1

Do you think any types of property should be excluded from the proposed reasonable adjustments duty? (Yes / No) If yes, explain what types of property and why.

Requirement on a landlord in relation to common parts

The requirement will apply under section 36(1)(d) of the Act (read with the associated provisions). This is where a physical feature of the communal parts of the property puts a disabled person at a substantial disadvantage when seeking to enter, leave or move around the communal parts of the property, in comparison with residents who are not disabled. In such cases, the landlord must take reasonable steps to avoid the disadvantage, if asked to do so by the disabled person.

However, unlike the Act's general reasonable adjustments duty in the provision of services, the duty on landlords is reactive, not anticipatory. This means that there is no obligation on landlords to make changes to communal areas before receiving a request from a disabled person or their representative. It is always good practice for a landlord to voluntarily install a ramp at the entrance to a block of flats, or perhaps leave in place an existing adjustment if a disabled person vacates, if possible. But this is not mandatory in older buildings that were not subject to Part M of the Building Regulations during construction.

A request can only be made by or on behalf of someone entitled to reside at the property. This means that a tenancy agreement must have been signed or a leasehold purchase completed before a duty on the landlord may apply.

Guidance will advise the prospective tenant to look into any adjustment needs they or their family may have and to make enquiries with the landlord before entering into an agreement or exchanging contracts. It will also remind landlords that it is likely to amount to unlawful disability discrimination to refuse to rent or sell to a disabled person or their family because they have made preliminary enquiries about a common parts adjustment.

While the prior signing or existence of a tenancy agreement will be necessary for the duty to apply, actual occupation of the premises is not required, although in many cases this will be the situation, particularly given that some residents will acquire a disability after moving into the property. In all cases, the disabled person must intend to use the property as their only or main home.

If the person needing the common parts adjustment is not the actual tenant or owner of the leasehold, their ability to apply the duty will depend on whether they are legally entitled to occupy the premises. If a sublet has occurred in breach of the lease agreement, or if someone is only temporarily residing at the property, the reasonable adjustment duty would not apply to that person. But for people who live permanently at the property with the leaseholder – for example dependants – the duty will apply, should the dependent require an adjustment.

The making of a request by the disabled person

It is good practice for the disabled person to put their request in writing to the landlord, though there is no legal requirement to do so. Our guidance will recommend this approach but we recognise that a verbal request may sometimes be made first If the tenant is not the disabled person, our guidance will recommend that the request be made by the tenant on behalf of the disabled person. A written request will then trigger the process of the landlord considering whether the proposed adjustment is reasonable. Our guidance will recommend that in appropriate cases before approaching the landlord, the disabled person (perhaps with help from others) should make initial enquiries with builders or contractors on the likely cost of works, particularly if the adjustment is significant. This would give them an idea of the costs of the works before they approach the landlord.

It is important that landlords engage with such requests. Ignoring them may eventually be seen as a refusal to make the adjustment, providing the disabled person with the option of taking legal action.

Absentee landlords

If the disabled person has requested an adjustment in writing from the landlord or landlord’s agent, a failure to reply – whether due to physical absenteeism or any other reason – within a reasonable period of time will mean that

the disabled person may make a disability discrimination claim in the County Court on the grounds of a failure to make a reasonable adjustment. It will ultimately be for the court to determine the question of reasonableness.

Sublets

If the disabled person is a tenant in a property that is a sublet, they will need to make their reasonable adjustment request to the intermediate landlord – that is, the long leaseholder who has sublet the property. If the leaseholder does not have responsibility for the common parts, they will pass the request onto the owner of the freehold or their representative to make the decision.

Requirement to consult

Landlords will need to consult anyone who they think may be affected by the adjustment, within a reasonable time of the request being made. We think this would include other residents in the building and in some cases possibly the immediate neighbours of the building. In some cases, it might also be feasible or desirable for the disabled person or their representative to make enquiries of other residents about their planned request before this is made to the landlord, although this is not required by the legislation.

Consultation will be particularly important to avoid future tenant-landlord disputes relating to derogation from grant (that is, the withdrawal or modification of rights granted by a landlord under a lease). For example, if

the proposed adjustment would require the occupation of space previously available to tenants under the lease agreement (for example, a bike store), it will be important to establish that there are no significant objections to this. Concerns raised during the consultation process or risk of potential legal action would be part of the balancing exercise carried out by the landlord in deciding whether an adjustment is reasonable.

While we expect landlords to consult other residents, it will not be a requirement for the landlord to receive a response from all of them. The consultation must be concluded within a reasonable period of time, and a lack of a reply from any residents after this period should not be used to hold up further consideration of the request.

The landlord may disregard views against making the adjustment which they reasonably believe are expressed because of the disability of the person who made the request (or the person on whose behalf the request was made).

Question 2

Do you think that guidance should set out what a “reasonable period” should be for the landlord to complete the tenant consultation process following a reasonable adjustment request? (Yes / No)

Question 3

Do you have any views to add on how landlord-tenant consultation arrangements should work? (Yes / No) If “yes”, please state your views.

Factors a landlord may consider when assessing whether a common parts adjustment would be reasonable

The Act’s general approach on reasonable adjustments is to avoid prescription on the specific factors landlords must consider, because every case and its circumstances will be different. For example, there might be 2 identical requests regarding 2 different properties producing 2 very different but legitimate decisions, simply because of the different layout or nature of the properties.

However, we intend to list in guidance some considerations that may be relevant to landlords’ decisions, having considered consultation feedback. These currently include:

- health and safety – while the adjustment may benefit a disabled resident and be of benefit to their individual health and safety, would it jeopardise the health and safety of other tenants or conflict with health and safety law, including in an emergency situation?

- practicality – for example, would the installation of a chairlift leave enough space for others to use the stairs?
- effect on the building's value
- the degree of litigation risk arising from a derogation from grant claim
- the ability of the disabled person to pay for the installation and reasonable maintenance costs (see section on 'costing and feasibility of the work and the interaction with leasehold law')
- the type and length of the letting – this would indicate how long the disabled tenant intends to live at the property
- the ease and cost of removal of the adjustment when the disabled tenant moves out
- any objections raised in response to the consultation
- the extent of any disruption and effect on other occupants
- the need to obtain consents and specific considerations in relation to the type of building (for example, listed buildings)

Leases and other statutory requirements

If a term of the lease prevents a reasonable adjustment from being made, schedule 21 of the Act enables the adjustment to be made by deeming the tenancy to include certain provisions. For example, the tenancy could be read as permitting an alteration with the consent of the landlord (which cannot be unreasonably withheld). Such consent may still be subject to reasonable conditions from the landlord. Regulations 10 to 14 of the Equality Act 2010 (Disability) Regulations 2010 (SI 2010/2128), provide more detail on how the implied consent regime in schedule 21 works.

As already mentioned, the Act is very clear that compliance with the duty to make common parts adjustments does not override other mandatory statutory provisions. If agreeing to an adjustment request would result in a breach of other legislation, such as health and safety or leasehold law, the landlord would not be in breach of their commons parts duty if they complied with that other legislation and declined the adjustment. The tenant would not be able to pursue successful legal proceedings against the landlord.

Costing and feasibility of the work and the interaction with leasehold law

An adjustment request might range from something small – for example, an extra handrail in a hallway or higher wattage light bulbs – to something more significant like a chairlift. Larger landlord companies might undertake minor works themselves after first agreeing costs with the disabled person, and then perhaps invoice the person (remembering that the landlord can always require that the disabled person pays, but can choose to fund the work themselves).

With more significant work, we think that following the request, landlords will ask contractors about what is involved and the potential cost, assuming that the disabled person has not already made such enquiries. This should be part of the consideration process by the landlord, and will feed into their assessment of practicality and whether the disabled person can afford to fund and maintain the works. The legislation states that it is always reasonable for the landlord to insist that the disabled person pay for the cost of the works, costs arising from the works and any restoration costs. No specific provision is made in relation to any other costs, such as administration costs in arranging quotes and surveys. We welcome any feedback on this issue.

The legislation states that it is always reasonable for the landlord to require the disabled person to pay the installation, maintenance and eventual restoration costs.

Should the landlord and disabled person choose an alternative (such as the landlord covering all costs or splitting between all leaseholders if the lease allows it), the cost arrangements must be set out clearly in the agreement. The government's guidance will emphasise the need to consult other leaseholders on the proposed adjustment. Some leases may not allow costs to be passed to all leaseholders and this provision will not override that. The feedback from this consultation will help us establish how the process should work in practice.

If a landlord agrees to an adjustment but then presents the disabled person with an excessive or extortionate estimate for the work – or permission and other fees associated with it – this may amount to an imposition of an unreasonable condition (see section on 'dispute resolution process'). In this case, the disabled person or their representative may decline to sign the agreement and consider legal action (see section on 'the reasonable adjustment agreement'). We intend that our guidance will address this point.

We are aware that some leases will contain a provision permitting 'improvement' works to be carried out by the landlord and then separately a clause permitting recovery of improvement costs from a service charge fund. Such clauses are likely to already encompass reasonable adjustments to common parts, which raises legitimate questions about how these would interact

with the Act's provision that the landlord can require the disabled person to pay.

There are also other provisions or clauses in a lease which may apply, including the right for the landlord to do whatever is necessary in the interests of 'good estate management' and a separate provision that the landlord must 'comply with all legislative requirements'.

This means that while a landlord, in consultation with their tenants, may be able to interpret lease clauses in such a way as to distribute the cost of an adjustment among tenants, they may also choose to have the disabled person pay. It may be that the landlord's decision will depend on the nature of the adjustment, the terms of the lease and the extent to which it would benefit other residents (for example, a ramp).

Question 4

Do you foresee any issues for landlords in operating the new requirements alongside existing lease obligations? (Yes / No) If "yes", please describe those issues.

Question 5

Do you think further guidance is needed on the use of project management fees for section 36 works?

Question 6

Who should pay for the costs of adaptations to the communal parts where this is required and reasonable?

- the disabled person
- the landlord
- all tenants
- cost should be shared between the disabled person and their landlord
- cost should be shared between the landlord and all tenants
- difficult to say because it will depend on the particular circumstances

Question 7

Other than possible Disabled Facilities Grant support for the disabled person requesting the work, what provision should be made to protect leaseholders where they may all be made liable for the costs of the work?

Question 8

Other than possible Disabled Facilities Grant support, what provision should be made to protect the disabled person where other leaseholders cannot help to pay for the work?

Question 9

Do you anticipate any risks with landlords being able to decide how costs should be allocated? (Yes / No) If “yes”, how might we mitigate these?

Question 10

Do you foresee any risks, to any of the parties concerned, in cases where the landlord deems it appropriate under the lease to pass on the costs of the adjustment to all leaseholders? (Yes / No) If “yes”, please explain the nature of the risks and how, in your view, they might be mitigated.

Question 11

What factors should we consider when drafting guidance for the process to consult other tenants?

Applications for Disabled Facilities Grants

Some residents requiring adjustments could be eligible for a Disabled Facilities Grant (DFG) which can help with the cost of adaptations, subject to a means test and a needs assessment. Applications for grants are made directly to the local authority where the property is located, on behalf of or under the name of the disabled person, even if they are a child. Estimates for the work must be submitted as part of the application process. It is the applicant's responsibility to obtain these, although in some cases landlords or others may assist – for example, in finding reliable contractors. Local authorities must award grants for adaptations if the applicant meets the qualifying criteria, although funding is subject to an upper limit.

Applications for a DFG can already be made for the common parts of a building, and this will continue after the remaining provisions of section 36 have been switched on. The ability of the disabled person to pay (bearing in mind maintenance and possible future removal and restoration costs also) will be a consideration for landlords who are unwilling to cover any costs for the proposed works. We are aware that local authorities will want to avoid the administrative cost of processing a DFG application, only to find that ultimately the adjustment has been refused for other reasons.

It is likely that guidance will suggest that landlords could make their agreement to an adjustment conditional on a successful DFG application by the tenant, if the landlord knows this is planned. This approach means that local authorities' resources can be focused on processing DFG claims only in cases where the adjustment has the landlord's approval in principle. This approach should also avoid a situation where a local authority pays out a grant to a resident or a contractor and then has to recover it because the landlord's ultimate decision is a refusal.

Question 12

There is no power in the Equality Act to set out a mandatory form or template that residents and landlords must use to manage the process, from initial application for an adjustment through to landlord decision. However, the government could provide a template for voluntary use. Would you welcome a model form or template, which would be included in the guidance? (Yes / No)

Question 13

Are there any other considerations on reasonableness that you think the guidance should cover? (Yes / No) If "yes" please state.

Question 14

Is there any other support that landlords would find useful to help them make decisions on reasonableness? (Yes / No) If “yes” please state.

The landlord’s decision

There is no legal requirement about how and when the landlord must give their decision, other than it must be within a reasonable period. This is something that could be covered by guidance. We will strongly recommend that this be in writing to the disabled person, including in cases where the landlord agrees to the adjustment.

We think there will be 3 possible outcomes:

- the landlord agrees unconditionally to the adjustment
- the landlord agrees to the adjustment, subject to reasonable conditions
- the landlord refuses the adjustment

If the landlord agrees to the adjustment and the disabled person is happy to agree to any conditions, they must then draw up a written agreement. This must contain an agreement about their rights and responsibilities regarding the installation and maintenance costs of the work, and what should happen if the disabled person vacates the property later.

The reasonable adjustment agreement

Before any work starts or is paid for, the Act requires the signing of the agreement between the parties and sets out certain requirements on what form the agreement should take. This will be a legally binding document. It is important that both parties are content with funding arrangements and respective legal responsibilities, in particular.

The agreement must cover the basics of the arrangement and how costs are to be met. This should include installing, maintaining, removing and restoring the communal part to its original state later. There does not have to be a commitment to remove and restore – just that if those things happen, cost principles are agreed.

The Government's guidance will recommend that the agreement also covers arrangements for the safeguarding or protection of funds paid by the disabled person or their representative to finance the work, especially if the landlord is expected to retain these funds while the work is arranged and carried out (see section on 'monies held on trust'). It will also recommend that the agreement sets out what happens if the actual cost of the adjustment proves to be significantly higher than the estimate and how the excess might be paid.

The agreement must be in writing (meaning a printed copy must be signed by hand) and communicated to interested parties. Again, guidance will set this out and give advice if there is not a legal requirement to do something that we think would be helpful to achieve a workable agreement. As mentioned above, we will consider whether a template for the agreement – which might also include the original request and decision – would be useful to the parties, after feedback from this consultation.

Question 15

After a landlord has agreed to an adjustment, as well as setting out the requirements of a written agreement between the parties, the government could also issue a mandatory form for this purpose. Would you welcome this? (Yes / No)

Question 16

If you answered “no” to question 15, would you prefer us to suggest in guidance a format for use on a voluntary basis, leaving landlords and the disabled person some flexibility in how their agreement is arranged? (Yes / No)

Question 17

If you answered “yes”, to either question 15 or 16, what would you like to see covered in a mandatory or voluntary form?

Monies held on trust

Under section 42 of the Landlord and Tenant Act 1987 (applicable to the private rented sector), all service charge monies must be held on trust. The service charge monies must not be used for anything other than a service charge item of expenditure, or risk a breach of the trust and the lease.

If the tenant pays money on account of works, the landlord will hold the tenant’s money only for paying the costs of the adjustment. To increase transparency and protection for tenant funds, we are proposing to require in regulations that as part of the written agreement, the landlord provides information to the tenant on how the funds will be kept and protected. Another option would be for the disabled person to deal directly with the contractor for payment, although we are not clear whether this route would be any more secure for them.

If the adjustment is going to be made by a landlord without the use of a contractor, guidance will recommend that the landlord should only ask for a deposit before the work, with the balance to be paid by the disabled person on completion.

Under either scenario, the landlord and tenant could agree an instalment plan, perhaps beginning before the works and continuing for a period after they are completed. For Disabled Facilities Grant-assisted cases, up to 90% of the award can be paid in instalments.

Question 18

Do you agree that the landlord should be required to set out in the agreement how the disabled person's money will be held and paid over to the contractor? (Yes / No) If "no", please say why.

Dispute resolution process

If the landlord refuses the adjustment or imposes conditions that the disabled person considers unreasonable

If the landlord refuses the request (and for these purposes, persistently ignoring the initial request is also likely to be considered a refusal by a Court), the government's guidance will recommend that the disabled person first uses an informal means of disputing or appealing the decision. For example, a meeting could be arranged or the disabled person could make further representations in writing. This would also apply if the disabled person considers any conditions to be unreasonable.

People in this situation could also contact Citizens Advice or the Equality Advisory and Support Service (EASS), which provides free bespoke advice and in-depth support to people with any discrimination concerns. The EASS is able to intervene on someone's behalf with service providers – including landlords – to help resolve an issue. The EASS can also advise people who wish to take their complaint further on their options.

If a dispute remains unresolved, the disabled person can:

- accept the landlord's refusal or conditions and either remain at the property or look for alternative accommodation
- remain at the property and take the matter to the County Court
- leave the property and take the matter to the County Court, if they want to obtain a finding of disability discrimination for a failure to make reasonable adjustments, even if they no longer need the adjustment

The complainant will need to consider carefully whether their case is sufficiently strong to bring to court, as costs may be awarded against them if they lose. Tenants in social housing may also make a complaint about their landlord to the Housing Ombudsman – this is unaffected by the switch-on of section 36.

County Court cases

Cases that reach Court will follow the same procedure as other claims brought under the Act. A judge will consider written and oral evidence from both parties or their representatives and will then determine whether the landlord's refusal or any conditions placed on consent were reasonable.

If the judge finds in the landlord's favour, the case will be dismissed and costs may be awarded against the disabled person.

If the judge finds in favour of the disabled person, the landlord's failure to make a reasonable adjustment or imposition of unreasonable conditions will constitute disability discrimination. The judge may order the adjustment to be made, with or without modification, if the tenant still has a tenancy agreement or owns the leasehold, and may also award costs against the landlord and possibly award damages to the disabled person.

If a tenant (or a disabled person living with them) no longer has a tenancy agreement or is no longer living in the property, costs and compensation could still be ordered, even though the adjustment will no longer need to be made.

A County Court decision may be appealed, where leave is granted.

Victimisation protection

In common with all adjustment requests and complaints made under the Act, it will be unlawful for a landlord to retaliate or subject a disabled person to a detriment because they requested a common parts adjustment or complained if the landlord has not agreed to one. The outcome of the request or any enforcement action is irrelevant – protection still applies, even if a landlord wins the substantive case in court, for example.

Annex B – Privacy Notice

Your data

This notice sets out how we will use your personal data, and your rights. It is made under Articles 13 and/or 14 of the General Data Protection Regulation (GDPR).

Purpose

The purpose for which we are processing your personal data is to obtain the opinions of members of the public, parliamentarians and representatives of organisations and companies about departmental policies, proposals, or generally to obtain public opinion data on an issue of public interest.

The data

We will process the following personal data (where given): name, address, email address, job title, and employer, as well as opinions.

We will also process additional biographical information about respondents or third parties where it is volunteered.

Legal basis of processing

The legal basis for processing your personal data is that it is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the data controller. In this case that is

consulting on policies or proposals, or obtaining opinion data, in order to develop good effective policies.

Sensitive personal data is personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation.

The legal basis for processing your sensitive personal data, or data about criminal convictions (where you volunteer it), is that it is necessary for reasons of substantial public interest for the exercise of a function of the Crown, a Minister of the Crown, or a government department. The function is consulting on policies or proposals, or obtaining opinion data, in order to develop good effective policies.

Recipients

Where individuals submit responses, we may publish their responses, but we will not publicly identify them. We will endeavour to remove any information that may lead to individuals being identified.

Responses submitted by organisations or representatives of organisations may be published in full.

Where information about responses is not published, it may be shared with officials within other public bodies in order to help develop policy.

As your personal data will be stored on our IT infrastructure it will also be shared with our data processors who provide email, and document management and storage services.

We may share your personal data where required to be law, for example in relation to a request made under the Freedom of Information Act 2000.

Retention

Published information will generally be retained indefinitely on the basis that the information is of historic value. This would include, for example, personal data about representatives of organisations. Responses from individuals will be retained in identifiable form for 3 calendar years after the consultation has concluded.

Where personal data have not been obtained from you

Your personal data were obtained by us from a respondent to a consultation.

Your rights

You have the right to request information about how your personal data are processed, and to request a copy of that personal data.

You have the right to request that any inaccuracies in your personal data are rectified without delay.

You have the right to request that any incomplete personal data are completed, including by means of a supplementary statement.

You have the right to request that your personal data are erased if there is no longer a justification for them to be processed.

You have the right in certain circumstances (for example, where accuracy is contested) to request that the processing of your personal data is restricted.

You have the right to object to the processing of your personal data where it is processed for direct marketing purposes.

You have the right to object to the processing of your personal data.

International transfers

As your personal data is stored on our IT infrastructure, and shared with our data processors, it may be transferred and stored securely outside the European Union. Where that is the case it will be subject to equivalent legal protection through the use of Model Contract Clauses.

Contact details

The data controller for your personal data is the Cabinet Office. The contact details for the data controller are: Cabinet Office, 70 Whitehall, London, SW1A 2AS, or 0207 276 1234, or publiccorrespondence@cabinetoffice.gov.uk.

The contact details for the data controller's Data Protection Officer are: Data Protection Officer, Cabinet Office, 70 Whitehall, London, SW1A 2AS, or dpo@cabinetoffice.gov.uk.

The Data Protection Officer provides independent advice and monitoring of Cabinet Office's use of personal information.

Complaints

If you consider that your personal data has been misused or mishandled, you may make a complaint to the Information Commissioner, who is an independent regulator. The Information Commissioner can be contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF, or 0303 123 1113, or casework@ico.org.uk. Any complaint to the Information Commissioner is without prejudice to your right to seek redress through the courts.