

Draft Regulations laid before the Scottish Parliament under section 210(6) of the Equality Act 2010, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2020 No.

**EQUALITY
HOUSING**

**The Relevant Adjustments to Common Parts
(Disabled Persons) (Scotland) Regulations 2020**

Made - - - - 2020

Coming into force in accordance with regulation 1

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 37(1) and 207(4)(b) of the Equality Act 2010⁽¹⁾ and all other powers enabling them to do so. In accordance with section 37(3) of that Act, the Scottish Ministers have consulted with a Minister of the Crown.

In accordance with section 210(6) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation and commencement

1. These Regulations may be cited as the Relevant Adjustments to Common Parts (Disabled Persons) (Scotland) Regulations 2020 and come into force on the day after the day on which they are made.

Interpretation

2.—(1) In these Regulations—

“application” means an application for consent to make relevant adjustments⁽²⁾ under regulation 5(1),

“majority” means a majority of one,

“premises” means any building which is, or which is capable of being, occupied (separately or otherwise) as a private dwelling, but that does not prevent the use of part of the premises as

(1) 2010 c.15. Section 207 was relevantly amended by the Enterprise and Regulatory Reform Act 2013 (c.24), Part 6, section 98(3).

(2) “Relevant adjustments” are defined in section 37(5) of the Equality Act 2010.

a shop or office or for business, trade or professional purposes and a reference to “premises” is to be taken as a reference to the whole or part of the premises, and

“reinstatement” means to restore the common parts⁽³⁾ to the condition they were in before the relevant adjustments were carried out where such reinstatement is in accordance with regulations made under section 1 of the Building (Scotland) Act 2003⁽⁴⁾.

(2) A reference to an owner of the common parts affected by the proposed works is a reference to an owner of a share of the common parts whose share of the common parts would be affected by the proposed works in an application under these Regulations.

Right to make relevant adjustments

3.—(1) Subject to paragraphs (3) and (4), a disabled person⁽⁵⁾ is entitled to make relevant adjustments to common parts in relation to premises in Scotland in which the disabled person has an interest.

(2) A disabled person has an interest in premises for the purpose of paragraph (1) if the disabled person—

- (a) is a tenant of,
- (b) is an owner of, or
- (c) has permission from the tenant or (as the case may be) owner of the premises, and the tenant or owner is entitled to give such permission, to occupy,

the premises and uses or intends to use the premises as the person’s only or main home.

(3) A disabled person may not exercise the entitlement set out in paragraph (1) without—

- (a) the consent of a majority of the owners of the common parts affected by the proposed works, which consent must not be unreasonably withheld, or
- (b) the authorisation of the sheriff.

(4) A disabled person may not exercise the entitlement set out in paragraph (1) until—

- (a) the deadline set by regulation 10(1) has passed without an appeal having been made under that regulation, or
- (b) where an appeal has been made under that regulation, the appeal has been determined.

(5) Subject to regulation 6(3), the terms of any tenancy or occupancy agreement, title to land, any rights given by virtue of any title condition or any agreement between the disabled person and the owners of the common parts affected by the proposed works are of no effect in so far as they purport to negate or modify the effect of any provision in these Regulations.

Alterations and additions that are deemed to be relevant adjustments

4. Relevant adjustments include an alteration or addition—

- (a) to any common parts which affords a means of access to the premises tenanted, owned or occupied by a disabled person, or
- (b) to make the premises suitable for the accommodation or welfare of a disabled person.

(3) “Common parts” are defined in section 37(5) of the Equality Act 2010.

(4) 2003 asp 8. Section 1 was amended by the Public Services Reform (Scotland) Act 2010 (asp 8), section 6(2)(a).

(5) “Disabled person” is referred to in section 37(2) of the Equality Act 2010.

Application for consent to relevant adjustments

5.—(1) A disabled person who intends to exercise the entitlement set out in regulation 3(1) must send an application for consent to carry out relevant adjustments to all the owners of the common parts affected by the proposed works.

(2) An application under paragraph (1) must be in the form prescribed in Part 1 of the schedule.

(3) On receiving an application, the owner may—

- (a) consent to the application,
- (b) consent subject to reasonable conditions, or
- (c) withhold consent, provided that it is not unreasonably withheld.

(4) The owner must, within one month of receipt of an application, send the disabled person a notice of the owner's decision, in the form prescribed in Part 2 of the schedule.

(5) Where the owner fails to comply with the requirement in paragraph (4) the owner is to be taken to have withheld consent.

(6) If a share in the common parts affected by the proposed works is owned by 2 or more persons, the decision as to whether to consent to the proposed works (and whether to impose conditions on any consent so granted) can be made by either (or any) of those persons, but if they disagree as to the decision, they shall be taken to have withheld consent unless—

- (a) where one of those persons owns more than one half of the share in the common parts, the decision is made by that person, or
- (b) in any other case, the decision is the agreed decision of those who together own more than one half of the share in the common parts.

Matters relevant to an application under regulation 5

6.—(1) In considering an application in terms of regulation 5(1), the owner is entitled to have regard to—

- (a) the health, safety, welfare and convenience of those occupying any part of the premises and other persons using the common parts,
- (b) the costs which the owner is likely to incur, directly or indirectly, as a result of the proposed works,
- (c) whether the proposed works are likely—
 - (i) to reduce the value of their property, the common parts or of any other part of the premises, or
 - (ii) to make their property, the common parts or any other part of such premises less suitable for letting or sale,
- (d) whether, if the proposed works were to be carried out, the common parts could be reinstated,
- (e) any code of practice issued by the Equality and Human Rights Commission⁽⁶⁾ in relation to the Equality Act 2010 which relates to reasonable adjustments made to premises for disabled persons.

(2) A condition imposed under regulation 5(3)(b) may—

- (a) specify the standard to which the proposed works must be carried out, having regard to the age, condition and appearance of the premises, and the likely cost of complying with this condition,

(6) The Equality and Human Rights Commission was established under section 1 of the Equality Act 2006 (c.3).

(b) require the disabled person to—

- (i) reinstate the common parts, when the disabled person is no longer the tenant, owner, or otherwise entitled to occupy the premises, to the condition they were in before the work was carried out,
- (ii) provide a plan for the maintenance of the adjustments once made.

(3) Subject to paragraph (4), it is reasonable for an owner of the common parts affected by the proposed works to withhold consent to an application, or to impose conditions on such consent, if making the relevant adjustments or, as the case may be, failure to comply with that condition would make the owner liable under any enactment or rule of law to any sanction or other remedy.

(4) Paragraph (3) applies only where the owner has taken all reasonable steps for the purposes of acquiring the right to give consent or, as the case may be, not to impose the condition without making the owner so susceptible.

(5) The owner may recover from the disabled person any expenses directly incurred by the owner in taking such steps (regardless of the owner's decision on the disabled person's application).

Notification of the majority decision

7.—(1) The disabled person must send a notice in the form set out in Part 3 of the schedule, recording the majority decision, to all owners of the common parts affected by the proposed works.

(2) Where a notice under paragraph (1) has been sent, the disabled person must send an updated copy of the notice to the same recipients where the outcome is different from that stated in the notice as a result of an appeal determined under regulation 10.

Consent subject to conditions

8.—(1) Where an owner has consented to the application subject to conditions, the disabled person may—

- (a) accept, or
- (b) reject,

the consent with conditions.

(2) Where a consent with conditions is rejected under paragraph (1)(b), it is to be treated as if the owner withheld consent.

Liability for costs

9.—(1) Unless the disabled person has entered into an agreement with the other owners of the common parts in relation to sharing the costs of the relevant adjustments, the disabled person will be solely liable for the costs.

(2) The costs of the relevant adjustments include the costs of maintenance and reinstatement.

Appeals

10.—(1) The disabled person or an owner of the common parts affected by the proposed works may appeal to the sheriff against—

- (a) the decision of a majority of the owners to consent, or to withhold consent, taken under regulation 5(3), or
- (b) a condition imposed on consent given to the proposed works under regulation 5(3)(b).

(2) The appellant must give notice of the appeal to—

- (a) all owners of the common parts affected by the proposed works, and
 - (b) where the appellant is not the disabled person, the disabled person.
- (3) The sheriff may determine the appeal by—
- (a) authorising the disabled person to carry out the proposed works,
 - (b) authorising the disabled person to carry out the proposed works, subject to conditions, or
 - (c) quashing the decision of the majority of the owners to consent to the proposed works and directing that the disabled person may not carry out the proposed works.

Amendment of section 52 of the Housing (Scotland) Act 2006

11.—(1) Section 52 of the Housing (Scotland) Act 2006(7) (right to adapt rented houses) is amended in accordance with paragraphs (2) and (3).

(2) After subsection (2) insert—

“(2A) The work that may be carried out in pursuance of subsection (2)(a) does not include work to common parts within the meaning of section 37(5) of the Equality Act 2010.”.

(3) In subsection (3), the word “But” is repealed.

St Andrew’s House,
Edinburgh
Date

Name
Authorised to sign by the Scottish Ministers

SCHEDULE

Regulation 5(2)

PART 1

Form of application for consent to relevant adjustments

APPLICATION FOR CONSENT TO RELEVANT ADJUSTMENTS

This application for consent is given by a disabled owner, tenant or occupier who is or will be living in the premises and who proposes to alter or add to common parts of the premises for the purpose of avoiding a substantial disadvantage which would otherwise arise in using the common parts. The costs of the alteration or addition are to be met by the applicant.

Alteration or addition being proposed:

(see note for completion 1)

To the owner(s) of the other properties with a share in the common parts of the premises affected by the proposed works:

(see note for completion 2)

Name and address of the owner, tenant or occupier making the application:

(see note for completion 3)

Property to which the application relates (if different from the above):

(see note for completion 4)

The timetable for carrying out the work, including the proposed dates of commencement and completion:

(see note for completion 5)

Consent or any objections or other representations relating to the relevant adjustments must be sent using the prescribed form by not later than one month after this application is received by an owner of a share of the common parts to:

(see note for completion 6)

Date:

(see note for completion 7)

Notes for completion

(These notes are not part of the application)

1. Provide as much information as possible concerning the nature of the alteration or addition.

2. This application must be sent to each owner of the other properties with a share in the common parts of the premises whose share of the common parts will be affected by the proposed works. You must insert the full name and address of the owner, if known.
3. You must insert your full name and address.
4. This is only applicable if you do not currently reside at the above address e.g. you may be the guardian of a disabled person requiring the proposed alteration or addition. Otherwise put “not applicable”.
5. Provide a proposed timetable for the duration of the work.
6. Specify the address to which any objections or other representations are to be sent. The deadline for such objections or representations is not later than one month after this application is received by an owner of a share of the common parts.
7. Provide the date on which you are posting the application; or if you are transmitting it by electronic means, the date of transmission.

Regulation 5(4)

PART 2

NOTICE OF DECISION OF OWNER OF A PROPERTY WITH A SHARE IN THE COMMON PARTS OF THE PREMISES

Alteration or addition being proposed:

(see note for completion 1)

To the owner, tenant or occupier making the application:

(see note for completion 2)

From the owner of a property with a share in the common parts of the premises:

(see note for completion 3)

Address of owner if different from above:

(see note for completion 4)

Consent, consent subject to conditions, or withhold consent:

(see note for completion 5)

Reason for withholding consent:

(see note for completion 6)

Description of conditions to which consent is subject:

(see note for completion 7)

Date:

(see note for completion 8)

The majority decision may be appealed by the disabled person by way of summary application in the sheriff court.

Notes for completion

(These notes are not part of the notice)

1. Repeat the description of the alteration or addition as detailed on the Application for Consent to Relevant Adjustments.
2. Insert the full name and address of the owner, tenant or occupier applying for consent for relevant adjustments.
3. Insert your full name and address.
4. This only applies if you do not reside at the address above e.g. you may be the landlord of the property. Otherwise put "not applicable".
5. State whether you consent, consent subject to conditions, or withhold consent to the application.

6. Provide the reasons for why you are withholding consent, giving as much detail as possible. Consent cannot be unreasonably withheld. If you have not withheld consent, put “not applicable”.
7. Detail the nature of the condition(s) to be applied and the reasons why you consider them necessary. If you do not request conditions to be applied, put “not applicable”.
8. Provide the date on which you are posting your decision, or if you are replying by electronic means, the date of transmission.

Regulation 7(1)

PART 3

NOTICE OF MAJORITY DECISION

Total number of responses received:

(see note for completion 1)

Total number of respondents consenting to the proposal:

(see note for completion 2)

Total number of respondents withholding consent:

(see note for completion 3)

Total number of respondents consenting with conditions:

(see note for completion 4)

Statement of outcome:

(see note for completion 5)

Reasons given for withholding consent:

(see note for completion 6)

Details of conditions to be applied:

(see note for completion 7)

The majority decision may be appealed by the owner by way of summary application in the sheriff court.

Notes for completion

(These notes are not part of the notice)

1. Include in the total number of responses received the owners who have not sent a notice of their decision.
2. Include only those consenting without conditions.
3. Include those who have failed to respond by the deadline in the total number of respondents withholding consent.
4. Include only those consenting with conditions.

5. Insert a statement of the majority decision.
6. Insert any reasons given for why consent is being withheld.
7. Provide details of the conditions to be applied to the decision.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations set out the process by which a disabled person may carry out relevant adjustments to common parts of premises if the disabled person uses or intends to use the premises as their only or main home. These Regulations are made under section 37(1) and 207(4)(b) of the Equality Act 2010 (“the Act”).

Regulation 3 provides for the entitlement to make relevant adjustments as long as a majority of the owners of the common parts consent. Regulation 4 describes some types of alterations and additions.

Regulation 5 provides for the application for consent and regulation 6 sets out the matters an owner of the common parts affected by the proposed works may have regard to when deciding to grant consent. Regulation 7 provides that the disabled person must notify the owners of the majority decision and regulation 8 provides that the disabled person may accept or reject consent which is granted subject to conditions.

Regulation 9 provides for liability for costs and regulation 10 sets out the process for appeals.

Regulation 11 amends section 52 of the Housing (Scotland) Act 2006 to provide that work carried out under that section does not include works to common parts carried out under these Regulations.

No business and regulatory impact assessment has been prepared for these Regulations as no significant impact is foreseen on business, charities or voluntary bodies.