
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2020 No.

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

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⁽¹⁾ 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 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⁽²⁾ 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⁽³⁾.

(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⁽⁴⁾ 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.

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

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

(3) 2003 asp 8. Section 1 was amended by the Public Services Reform (Scotland) Act 2010 (asp 8), section 6(2)(a).

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

- (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.

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⁽⁵⁾ 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,
 - (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

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

(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(6) (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