



**Scottish Government Consultation:
The Right to Adapt
Common Parts in Scotland**



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PURPOSE

The Scottish Government is consulting on regulations which will give disabled people the right to make adaptations to common parts of the building they live in. Common parts are those parts of a building that are not owned by any one person, like the stairs or the front door in a block of flats. At the moment, disabled people can only have adaptations made to common parts if everybody who owns a share of the common parts gives permission. The Scottish Government is proposing that other owners will not be able to withhold their permission unreasonably. This should make it easier for disabled people to get adaptations made to common parts of their building.

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RESPONDING TO THIS CONSULTATION PAPER

Consultation on Right to Adapt Common Parts in Scotland

We are inviting written responses to this consultation paper by 1 April 2011.

Please send your response with the completed Respondent Information Form (see "Handling your Response" below) to:

simon.roberts@scotland.gsi.gov.uk

or

Simon Roberts
House Condition Team
Highlander House
58 Waterloo Street
Glasgow G2 7DA

If you have any queries please contact Simon Roberts on 0141 271 3786.

We would be grateful if you would use the consultation questionnaire provided or could clearly indicate in your response which questions or parts of the consultation paper you are responding to as this will aid our analysis of the responses received.

This consultation, and all other Scottish Government consultation exercises, can be viewed online on the consultation web pages of the Scottish Government website at <http://www.scotland.gov.uk/consultations>.

The Scottish Government has an email alert system for consultations, <http://register.scotland.gov.uk>. This system allows stakeholder individuals and organisations to register and receive a weekly email containing details of all new consultations (including web links). It complements, but in no way replaces Scottish Government distribution lists, and is designed to allow stakeholders to keep up to date with all Scottish Government consultation activity, and therefore be alerted at the earliest opportunity to those of most interest. We would encourage you to register.

Handling your response

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please complete and return the **Respondent Information Form** which forms part of the consultation questionnaire enclosed with this consultation paper as this will ensure that we treat your response appropriately. If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly.



All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Next steps in the process

Where respondents have given permission for their response to be made public and after we have checked that they contain no potentially defamatory material, responses will be made available to the public in the Scottish Government Library, and on the Scottish Government consultation web pages. You can make arrangements to view responses by contacting the Scottish Government Library on 0131 244 4552. Responses can be copied and sent to you, but a charge may be made for this service.

What happens next?

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us reach a decision on the regulations. We aim to issue a report on this consultation process by 27 May 2011, and to introduce regulations to the Scottish Parliament after the election in May 2011.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to Simon Roberts at the contact details above.

chapter one: introduction





1.1 Background

There are an estimated 2,200 homes in Scotland where a disabled person needs an adaptation to make full use of spaces which are jointly owned (“common parts”) – see page 20. But if other owners do not agree to the work, the disabled person is prevented from making changes that they need to access their own home.

1.2 The Equality Act 2010

The Equality Act 2010 is an Act of the UK Parliament which brings together separate legislation, simplifying and strengthening the law to help tackle discrimination and inequality. It includes powers to improve the rights of disabled people to improve access to their own homes throughout Great Britain.

The Scottish Government intends to introduce regulations under the Equality Act 2010 to provide a right to adapt common parts of shared property to meet the needs of disabled people in Scotland. Housing legislation is devolved to the Scottish Parliament, but equality legislation is reserved to the UK Government in Westminster. Consequently, it was necessary to include a regulation making power for Scottish Ministers in an Act of the UK Parliament.

The Equality Act uses the expression “relevant adjustments” rather than the more familiar “adaptations”. This is defined in the Act as “alterations or additions which are likely to avoid a substantial disadvantage to which the disabled person is put in using the common parts in comparison with persons who are not disabled.”

An absolute right to adapt would conflict with owners’ right to the use of their property. We propose that regulations will require a disabled person to seek the consent of owners of common parts, but will also provide that owners cannot unreasonably refuse to consent.

1.3 Common parts

Common parts include the structure, exterior and any common facilities of a building which are not solely owned. This might include, for example, a shared stairway, an entrance, or a car park.

In England and Wales, the Commonhold owner or freeholder will have responsibility for common parts but in Scotland the owners of different homes in the same building have joint responsibility for common parts.



1.4 Current rights to adapt

The following table summarises the current rights in Scotland.

	Adaptations to own home (other than common parts)	Adaptations to common parts
Home Owners	Home owners can adapt their own homes, subject to planning and building rules	Home owners require 100% consent of other owners to adapt common parts
Private Rented Tenants	Private rented tenants can adapt their own homes subject to their landlord's consent (see section 52 of the Housing (Scotland) Act 2006)	The landlord cannot consent to adapt common parts without the agreement of any other owners
Social Rented Tenants	Social rented tenants can carry out work on their own homes subject to their landlord's consent (see section 28 and Schedule 5 of the Housing (Scotland) Act 2001)	The landlord cannot consent to work on common parts without the agreement of any other owners

We propose to use the current right of private rented tenants to adapt their homes as a general model for regulations providing a new right to adapt common parts.

1.5 The current right to adapt private rented property

Private tenants have a right to adapt their property to meet the needs of a disabled person, and landlords cannot unreasonably refuse consent to the work.

This legislation also says that –

- Owners can make consent subject to reasonable conditions (for example, that an adaptation should be removed at the end of a tenancy),
- Landlords can take account of specific factors when deciding whether consent is reasonable,
- If a landlord fails to respond to a written request within 1 month they will be treated as refusing to consent,
- There is a right of appeal to the Sheriff.

The right to adapt rented property extends to common parts, but a landlord must seek the consent of other owners and they could refuse to agree to the work.



The disabled tenant is responsible for the cost of carrying out the work. They may be able to claim a grant to help with some or all of this cost.

1.6 Guidance on current rights

Chapter 19 of the Equality and Human Rights Commission's Code of Practice on Rights of Access gives guidance on the right to adapt rented property. See **Rights of Access: services to the public, public authority functions, private clubs and premises** (www.equalityhumanrights.com/advice-and-guidance/your-rights/disability/access-to-services/).

The Code of Practice on Rights of Access describes what the current provisions mean in practice –

“The tenant must apply for consent to carry out work on his home. His application must detail the work to be carried out. The landlord must reply to that application within one month. If the landlord fails to reply to the tenant's request to carry out work within one month, he will be taken to have refused consent. The tenant therefore cannot proceed with the work without applying to a court for permission”

The right to adapt is not automatic and while consent cannot be refused unreasonably, there are circumstances in which refusal of consent is considered reasonable. Also, some premises may not be suitable for adaptation.



chapter two: proposal for regulations

2.1 Proposed regulations for the right to adapt common parts

We propose to use section 52 of the Housing (Scotland) Act 2006 as a general model for regulations under section 37 of the Equality Act 2010. The 2006 Act already provides a right to adapt private rented property. The regulations would provide a new right for owners and tenants to adapt common parts.

The relevant parts of the 2006 and 2010 Acts are set out in Annex A.

2.2 Differences between the two kinds of right to adapt

The right to adapt rented property in the 2006 Act could provide a general framework for a right to adapt common parts but respondents should note that the wording of the legislation is different.

Adaptations to rented property in section 52 of the 2006 Act

The kind of work that is covered by the current right to adapt private rented property is any work which a tenant considers necessary for the purpose of making their home suitable for –

- accommodation,
- welfare or
- employment

of any disabled person who lives there or who is planning to live there.

Adaptations to common parts in section 37 of the 2010 Act

The kind of work that is covered by the new right to adapt common parts is any alteration or addition which is likely to avoid a substantial disadvantage in a disabled person's use of common parts compared to someone who is not disabled.

Regulations to provide a right to adapt common parts will have to follow the scope of section 37 and, to that extent, will be different from the right to adapt rented property.



**Question 1****Do you agree with the proposal to use the current right to adapt rented property as a general model for a right to adapt common parts?**

(There is a form for responses at the end of this consultation. We also invite any general comments on issues raised by questions. See page 32 below).

2.3 Applications

We propose that the disabled person, or someone acting on their behalf, will be responsible for arranging adaptations to common parts of their home. This means that they will consult the owners, get quotations from suppliers, organise the work and apply for grants. This is the current position for other kinds of work on homes in Scotland. Local authorities and other organisations can assist disabled people who need help with this process.

This is a significant difference to the position for England and Wales, where responsibility for arranging an adaptation will fall on the person who lets premises, or the Commonhold association, but they will be able to insist that the disabled person pays the cost of the adaptation. Under Scottish property law, common parts are jointly owned, so it is unlikely that there will be a single person or legal entity who could be made responsible.

There is more detail about the differences between the new rights in Scotland and in England and Wales in section 2.10 on page 17 below.

**Question 2****Do you think that there are any alternatives to placing responsibility on the disabled person which should be considered in Scotland?**

We propose that regulations will provide rules to clarify the disabled person's responsibilities. For example, these rules could set out the circumstances in which a disabled person should be treated as having sought consent. This would be useful when an owner is away and has left no forwarding address.

The Scottish Government recognises that it can be difficult in practice for disabled people to access support services and that action will be needed to make sure that they have the maximum opportunity in practice to ensure that their rights are met.

Local authorities have a statutory duty to provide assistance in connection with work to adapt a house to meet the needs of a disabled person. People who need help in making an application and dealing with the process may also be able to get help from organisations such as Citizens Advice Bureau, Care and Repair Services, and local initiatives.

**Question 3**

What rules should be included in the regulations to ensure that disabled people are able to exercise their right to adapt common parts?

Question 4

What additional practical measures should the Scottish Government put in place to ensure that disabled people are able to exercise their right to adapt common parts?

2.4 What can be taken into account?

We propose that owners' consent will be required to adapt common parts. We also propose that owners cannot unreasonably withhold consent.

We propose that the regulations will specify some of the factors that owners can take into account when deciding whether it is reasonable to consent. We think that this should include -

- The disabled person's disability
- Whether the work proposed is necessary to meet the disabled person's needs
- The safety of the people who live in the building
- Any cost to the owner
- Whether the adaptation would reduce the value of the owner's property
- Whether the adaptation would make it harder to rent or sell the owner's property
- Whether the building can be reinstated to its previous condition
- Whether consent would make the owner liable under any other rule or remedy
- Any Code of Practice issued by the Commission for Equality and Human Rights.

For the existing right to adapt private rented property, the Code of Practice on Rights of Access says that the following additional issues should be given due weight. These might be set out in guidance rather than legislation, but we would expect similar factors to be relevant to common parts.



- The nature of an individual's disability
- The effect upon them of that disability
- The relationship between the work which the tenant has applied to carry out and the disability
- The disabled occupant's needs
- The effect upon the wellbeing of the disabled person of carrying out or not carrying out the work
- The impact upon the disabled person of any refusal of consent
- The ability of the tenant to pay for the work
- The scale of the proposed adaptations
- The feasibility of the works
- The length of the term remaining under the letting
- The type and length of the tenancy
- The type, design, age and quality of the premises
- The extent of any disruption and the effect on other occupiers of adjoining premises
- The effect of, and compliance with, planning and Building Regulations requirements.



Question 5

Are there any other factors that an owner might want to take into account before agreeing to work to adapt common parts?

We also propose that an owner should be able to make consent subject to reasonable conditions. These might be set out in guidance rather than legislation.

For the existing right to adapt private rented property, the Code of Practice on Rights of Access says that it is likely to be reasonable for a landlord to insist on the following conditions.

- That a tenant obtains any necessary planning permission and other statutory consents
- That work is carried out in accordance with the plans and specifications approved by the landlord
- That the landlord is allowed a reasonable opportunity to inspect the work
- That the tenant is responsible for paying for and arranging ongoing maintenance.

**Question 6**

Are there any other conditions that an owner might want to make before agreeing to work to adapt common parts?

In addition to specifying factors that an owner can take into account, the regulations may specify factors that should be disregarded in relation to consent to adapt common parts.

**Question 7**

Do you think that there are any specific factors which an owner should not take into account?

2.5 Appeals

We propose to provide a right of appeal against refusal of consent to adapt common parts. There would also be a right of appeal if a disabled person objected to any conditions attached to an owner's consent.

This appeal would be made to the Sheriff by summary application. The Sheriff would either refuse the appeal or allow the disabled person to make the adaptation. A Sheriff could impose conditions if they allow an adaptation to go ahead.

We propose that the disabled person should be able to make one appeal to deal with any question of consent or conditions from different owners.

**Question 8**

Do you agree with the proposed approach to appeals?

We also propose that owners should be treated as refusing to consent if they do not respond to a written request within one month.

**Question 9**

Do you agree with the proposal to treat non-response as refusal?

2.6 Maintaining an adaptation

In some cases, an adaptation may be for the benefit of different disabled people with access to the same common parts, who may need joint use of an adaptation and may be jointly responsible for maintenance. Other kinds of adaptation might be useful to occupiers generally, and all the owners would share responsibility for maintenance. Because circumstances will vary, arrangements for maintenance will differ in different cases.

We propose that a disabled person should be able to make a written agreement with owners about the ongoing maintenance of an adaptation. We propose that an owner should be able to insist on a written agreement about ongoing maintenance as a condition of their consent to adapt common parts.

**Question 10**

Do you agree with the proposed approach to the maintenance of adaptations?

We think that there should be a default rule which comes into effect if there is no written agreement. We propose that if there is no written agreement owners should be jointly responsible for maintenance costs, subject to any other arrangement set out in their title deeds.

**Question 11**

Do you agree that owners should be jointly responsible for maintaining an adaptation if there is no written agreement in place?

2.7 Removing an adaptation

Consent to an adaptation may include a condition on the removal of an adaptation which is no longer needed. A written agreement could provide that the disabled person is responsible for removing an adaptation which is no longer needed and any necessary reinstatement of property. A written agreement on the use of an adaptation might also allow a disabled person to remove an adaptation and take it with them if they move to a new home.

We think that there should be a default rule which comes into effect if there is no written agreement. We propose that if there is no written agreement owners should be jointly responsible for removing an adaptation.



Question 12

Do you agree with the proposed approach to removing adaptations?

2.8 Registration of an adaptation

Where a disabled person's home has been adapted, there should be some protection for their continued use of it. We do not think that there should be a need to renew consent when a new owner buys a home in which common parts are adapted. We propose that regulations should include provisions to make sure that adaptations are recorded in a land register so that subsequent owners are aware of any consent to adapt common parts.

There would be a fee for registering information and documents giving notice of an adaptation in the relevant property register. The fee for a registration of this type would be £60 per title sheet in the Land Register of Scotland, or £60 per document recorded in the Register of Sasines.



Question 13

Do you agree with that future owners should be bound by agreements about adaptations to common parts?

**Question 14**

If future owners are bound by such agreements, do you agree that a record in the relevant property register is needed to give them notice of their obligations?

2.9 Costs

We propose that the disabled person should be responsible for the cost of work to adapt common parts. We also propose that grants for adaptations to common parts should be provided in the same way as for other kinds of adaptations to meet the needs of disabled people.

Grants and other kinds of assistance are provided by local authorities to help home owners and private tenants adapt houses to meet the needs of disabled people.

Most adaptations attract a grant of 80% of the cost of the work if they are essential to a disabled person's needs. The rate of grant is 100% for someone who receives an income-related social security benefit. There is no limit to the cost of the work which will attract grant funding.

Statutory grants are not provided for work to create additional living accommodation (for example, a home extension) and would not cover adaptations to common parts which are used in connection with a building but are not part of a house (for example, a car park). When a statutory grant is not available or does not cover the whole cost of work, local authorities have discretion to offer additional finance or other kinds of assistance.

The rules on statutory grants for adaptations say that the local authority should record a grant in a land register and that conditions should be attached. Typical conditions include how an adapted house is used and a duty to keep it in good repair. These conditions apply to the current owner of the house.

**Question 15**

Do you agree with the proposed approach for dealing with the costs of adaptations to common parts?

2.10 Differences between Scotland and England and Wales

The Equality Act 2010 provides for a right to adapt common parts in Scotland and in England and Wales. But there are some differences in the way the right to adapt will work. The following table summarises these differences.

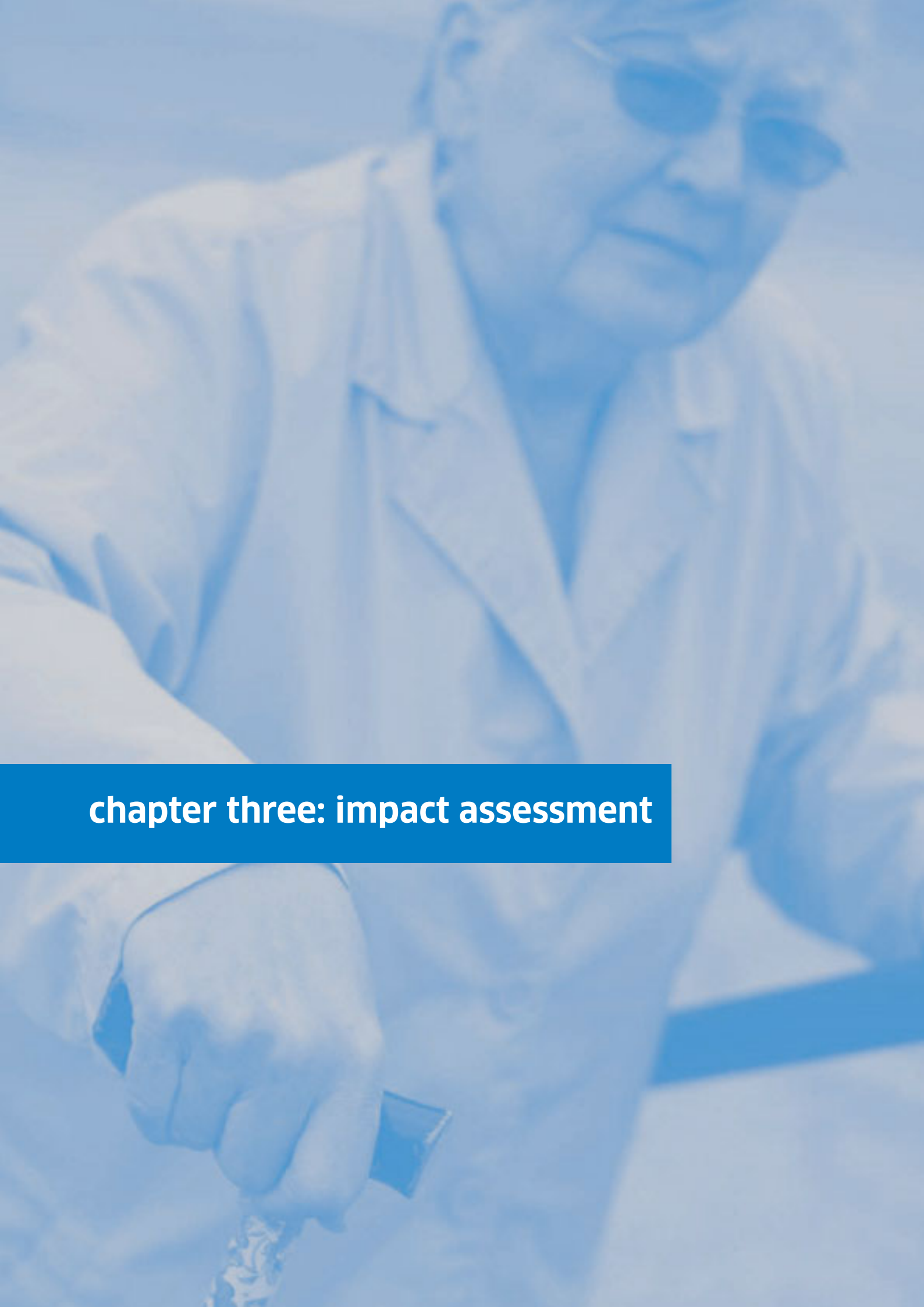
England and Wales	Scotland
1. Duty to adapt common parts comes into effect directly from the Act	1. The right to adapt common parts may be introduced by Regulations
2. There is an identifiable individual ("Person A") who is responsible for the common parts of premises, this will be the person who lets premises, or the Commonhold association	2. Common parts may be jointly owned by several people
3. Person A has a duty to consult all people who would be affected by the alteration	3. The disabled person will be responsible for seeking the consent of all the owners
4. There is an exception to the duty to adapt common parts for "small premises" (see Schedule 5, para 4, of the Equality Act)	4. The exemption for small premises will not apply in Scotland
5. The disabled person and Person A must agree in writing their respective responsibilities for the adaptation (see Schedule 4, para 7, of the Equality Act)	5. The Act does not require a written agreement, but regulations can make provision about agreements
6. Person A is responsible for adapting the premises, although they can delegate this responsibility to the disabled person and they can insist that the disabled person covers the cost of the work	6. The disabled person, or someone acting on their behalf, would control and be responsible for the organisation and funding of adaptations
7. The Equality Act does not set a specific time limit for Person A to make a decision on an adaptation.	7. Scottish Regulations modelled on the current right to adapt rented property would treat anybody who does not respond to a written request within one month as if they had refused consent.

Our intention is to make sure that Scottish regulations provide effective rights for disabled people in Scotland to make reasonable adaptations to common parts of their homes. Despite the differences, the legislation should have a comparable effect in all parts of Great Britain.



Question 16

Are any other provisions needed to ensure that disabled people have a comparable right to adapt common parts in Scotland?



chapter three: impact assessment

Note: In estimating the impact in Scotland, Costs have been rounded to the nearest £100,000.

3.1 UK Government's assessment of the impact of common parts provisions in the Equality Act

The Equality Act 2010 is UK legislation made by the Westminster Government. As part of the Parliamentary process of the Act, the Government Equalities Office prepared an Impact Assessment. Overall the Act is considered to have a positive economic impact – it is estimated that over 10 years, the Act could produce a net benefit of £39 million to £674 million.

Creating a right to adapt common parts will benefit disabled people because it will help to remove barriers to fuller participation in society and independent living and reduce the risks of accidents. It will also help landlords and co-owners to deal with issues affecting common parts, which can lead to acrimonious and long running disputes.

It is estimated that there are 57,000 disabled people in England and Wales who face difficulties because of inaccessible common parts.

The UK Impact Assessment estimated that additional grants to cover the costs of adjustments would cost local authorities in England and Wales up to £27 million in the first year of the right to adapt common parts. However, in the same year these local authorities would be expected to save up to £15 million from the reduced need for home care and £40 million from the reduced need for residential care.

On this basis the UK Government estimated an annual saving of £13 million from the right to adapt common parts, benefiting local authorities in England and Wales. It is also likely that this measure will benefit carers, local communities and the housing market. It is not considered that it will adversely affect other tenants or lessees.

3.2 Impact on disabled people in Scotland

The 2008 Scottish House Condition Survey found that 36% of the 2.3 million households in Scotland reported at least one member with a disability or long-term illness. These households are less likely to belong to the private or private rented sectors. 59% of these households are owner-occupiers or privately rented, compared to 73% of all households.

- Analysis of the Scottish House Condition Survey shows that there are around 80,000 private sector households in Scotland where a long-term sick or disabled person lives in a flat in a tenement, tower block or converted house in which the common circulation space is not barrier-free.



- The Scottish Household Survey suggests that of those people who consider they have a health problem or disability that limits daily activities or work, 16% consider that they need an adaptation to their houses. Of that group, 12% consider they need a stairlift and 5% one or more ramps, being the more significant works in terms of adaptations to common parts. These needs can overlap, and there can be double counting for some households.

Taking these two sets of statistics together suggests that around 2,200 households consider that they need a significant adaptation to the common parts of residential premises ($80,000 \times 16\% \times 17\%$).

23% of Scottish homes are tenements (535,000 households). The tradition of tenement living is well established in Scotland and this involves owners seeking consent from neighbours before carrying out any work. The experience of local authorities suggests that there are relatively few cases where a person has been prevented from carrying out adaptation works to common parts by an unreasonable refusal of consent by a neighbour. The Department for Work and Pensions undertook research into attitudes, as part of the impact assessment of the Equality Act, which suggests that non-disabled people are positive about the adaptation of premises to help disabled people.

A disabled person is usually responsible for the cost of adaptations to their own home, whether as an owner or tenant. Statutory grants are paid by local authorities for most kinds of adaptation, excluding house extensions, to cover 80% of the cost of the work. This is increased to 100% if the applicant receives a prescribed income-related social security benefit. An award of grant is usually recorded in the land register and attached to conditions, including the maintenance of the adaptation, and the applicant has to pay the local authority's expenses for making this record.

There would also be a cost for registering information or documents about an adaptation to common parts, as proposed in section 2.8 above.

Returns made by Scottish local authorities to the Scottish Government show that 5,949 grants were approved in the financial year 2009-10 for adaptations to private property to meet the needs of disabled people, and that the total value of these grants was £22.6 million. The average value of these grants was £3,800.

3.3 Impact on other groups

(1) Age

Population projections show that Scotland's population is ageing. This trend is reflected in the household projections, with the largest increases shown in households headed by people aged 60 and over.



As we expect an increase in the size and proportion of older people in the population, we also expect an increase in those who will need support because of a life-limiting illness or disability. As an indication of the expected increase in future need for adaptations, eligibility for attendance allowance is projected to rise from 168,000 in 2008 to 271,000 in 2033.

(2) Gender

Although there are differences in home tenure by gender in Scotland, we do not think that this affects adaptations for disabled people.

(3) Lesbian, Gay, Bisexual & Transgender (LGBT)

Although there is limited information on housing tenure for LGBT groups one survey on housing for older LGBT people listed respondents as 64% owner occupiers, 24% social rented tenants and 8% as private rented tenants. Recent analysis shows that 1.6% of people in Scotland identify themselves as gay or lesbian. Research suggests that older LGBT people have particular concerns about access to housing services and their ability to stay in a supportive community.

(4) Ethnic minorities

In the 2001 Census 2.01% of population of Scotland (i.e. over 100,000 people) identified themselves as members of an ethnic minority group. Ethnic minority groups are about 2½ times more likely than the population as a whole to live in private rented homes.

Roma are particularly vulnerable to the combined impact of being an ethnic minority and migrant workers. The majority of migrant EU nationals in Scotland live in private housing and problems include landlords refusing to give tenancy agreements, holding onto deposits, illegal evictions, over-priced rents, serious overcrowding, and uninhabitable living conditions.

(5) Overall impact on other groups

We do not expect any adverse impact on other groups.

3.4 Impact on government

Scottish Government

We do not expect any additional cost to the Scottish Government arising from the right to adapt common parts.



Local authorities

(1) Disability Adaptation Grants

The model used in the UK Government Impact assessment is that half of the people entitled to adapt common parts of property will seek to do so in the first year that the right to adapt is in force and that 60% of these will apply for grant assistance. This is based on evidence of awareness of legislation among disabled people and data from the Local Government Association. On this assumption, we expect 2,200 households to make 1,100 adaptations and apply for 660 grants.

On this basis we estimate that, in the first year that the right to adapt is in force, the cost of additional grants paid by local authorities under the regulations will be £2.5 million.

(2) Building Warrant Fees

There would be an extra cost to authorities in such cases arising from the fact that adaptations for disabled people are exempt from building warrant fees, and the authority therefore covers the administration cost of providing the warrant with no corresponding income. The fee to cover the costs of a warrant is £100. Therefore local authorities would have an extra cost of £100,000 each year.

(3) Personal Care

The Scottish Government estimate that around 20% of disabled people need personal care assistance funded by local authorities. The average yearly cost of free personal care in their own homes is £5,750.

If the average saving for those disabled people who adapt common parts of property under the regulations is 50% of the cost of funding their personal care, as in the UK Government's impact assessment, there is an annual saving of £600,000.

(4) Residential Care

In Scotland there are 42,874 residential care home places, 37,829 of which provide care for older people (age 65+). The average cost of a residential care home place in Scotland is £23,000 a year.

The UK Government estimates that 15% of people who enter residential care each year do so because their home is no longer suitable. In Scotland this is equal to 8,550 annual admissions.

If 1% of those disabled people in Scotland who would have been admitted to residential care were able to stay in their own home because of a right to adapt common parts the annual saving to residential care costs would be around £2 million.

(5) Overall Cost to Local Authorities

On these assumptions the regulations will be cost neutral to Scottish local authorities across housing and care services.

However, there may be an extra cost if local authorities have an active role in providing support to disabled people because of the differences between Scotland and England noted in section 2.12.

Scottish Courts Service

We expect a small increase in the number of summary applications to Court. The cost of the summary application is covered by court fees. On the assumption that the numbers are relatively low and standard rules apply, we do not anticipate a significant impact or cost to the Scottish Courts Service.

3.5 Impact on private sector

Landlords

These changes support current good practices and should reduce impact of disputes.

Other owners/tenants

We do not expect any additional costs to other owners or tenants. The disabled person will be responsible for the costs of adapting the common parts. Responsibility for maintenance and eventual removal can be covered by conditions of consent and written agreements.

3.6 Conclusion

Legislation to improve equality will give disabled people greater opportunity to take part in society and contribute to the economy. It will also reduce a barrier to use of private sector housing by disabled people. Extra costs to local authorities by way of grants and building warrants should be balanced by lower costs for personal and residential care. No adverse impact on any other group has been identified.



Question 17

Are there any other groups likely to be affected by the proposed regulations?



Question 18

Do you have any views on the expected impact of the regulations?



Annex A: extracts from legislation

A1. Section 37 of the Equality Act 2010

Adjustments to common parts in Scotland

- 37.** – (1) The Scottish Ministers may by regulations provide that a disabled person is entitled to make relevant adjustments to common parts in relation to premises in Scotland.
- (2) The reference in subsection (1) to a disabled person is a reference to a disabled person who–
- (a) is a tenant of the premises,
 - (b) is an owner of the premises, or
 - (c) is otherwise entitled to occupy the premises,
- and uses or intends to use the premises as the person’s only or main home.
- (3) Before making regulations under subsection (1), the Scottish Ministers must consult a Minister of the Crown.
- (4) Regulations under subsection (1) may, in particular–
- (a) prescribe things which are, or which are not, to be treated as relevant adjustments;
 - (b) prescribe circumstances in which the consent of an owner of the common parts is required before a disabled person may make an adjustment;
 - (c) provide that the consent to adjustments is not to be withheld unreasonably;
 - (d) prescribe matters to be taken into account, or to be disregarded, in deciding whether it is reasonable to consent to adjustments;
 - (e) prescribe circumstances in which consent to adjustments is to be taken to be withheld;
 - (f) make provision about the imposition of conditions on consent to adjustments;
 - (g) make provision as to circumstances in which the sheriff may make an order authorising a disabled person to carry out adjustments;
 - (h) make provision about the responsibility for costs arising (directly or indirectly) from an adjustment;
 - (i) make provision about the reinstatement of the common parts to the condition they were in before an adjustment was made;
 - (j) make provision about the giving of notice to the owners of the common parts and other persons;
 - (k) make provision about agreements between a disabled person and an owner of the common parts;
 - (l) make provision about the registration of information in the Land Register of Scotland or the recording of documents in the Register of Sasines relating to an entitlement of a disabled person or an obligation on an owner of the common parts;
 - (m) make provision about the effect of such registration or recording;
 - (n) make provision about who is to be treated as being, or as not being, a person entitled to occupy premises otherwise than as tenant or owner.
- (5) In this section–
- “common parts” means, in relation to premises, the structure and exterior of, and any common facilities within or used in connection with, the building or part of a building which includes the premises but only in so far as the structure, exterior and common facilities are not solely owned by the owner of the premises;
- “relevant adjustments” means, in relation to a disabled person, alterations or additions which are likely to avoid a substantial disadvantage to which the disabled person is put in using the common parts in comparison with persons who are not disabled.



A2. Private Tenants' Right to Adapt under the Housing (Scotland) Act 2006

Chapter 7: Right to adapt rented houses

Right to adapt rented houses

- 52.** – (1) This section applies to any tenancy of a house let for human habitation (other than a Scottish secure tenancy or a short Scottish secure tenancy).
- (2) The tenant in a tenancy to which this section applies may carry out any work in the house–
- (a) which the tenant considers necessary for the purpose of making the house suitable for the accommodation, welfare or employment of any disabled person who occupies, or intends to occupy, the house as a sole or main residence, or
 - (b) ...
- (3) But a tenant is not entitled to exercise the right set out in subsection (2) without the consent of the landlord, which must not be unreasonably withheld.
- (4) An application for consent to carry out work in pursuance of subsection (2) must specify the work which the tenant proposes to carry out.
- (5) The landlord may, on receipt of such an application–
- (a) consent,
 - (b) consent subject to such reasonable conditions as the landlord may impose, or
 - (c) refuse consent, provided that it is not refused unreasonably.
- (6) The landlord must, within one month of receipt of such an application, serve notice of the landlord's decision on the applicant.
- (7) That notice must–
- (a) where the landlord gives consent subject to conditions, set out those conditions and the reasons for imposing them,
 - (b) where the landlord refuses consent, set out the reason for refusal, and
 - (c) in either of those cases, explain the procedure for appealing the decision to impose conditions or, as the case may be, refuse consent.
- (8) Where a landlord fails to comply with subsection (6)–
- (a) the landlord is to be treated as having decided to refuse consent, and
 - (b) notice of such refusal is to be treated as having been served on the applicant on the last day of the period mentioned in that subsection.
- (9) The terms of a tenancy, and of any other agreement between the landlord and the tenant in any tenancy, are of no effect in so far as they purport to negate or modify the effect of this section.
- (10) Nothing in this section entitles a tenant to carry out work for which the consent or other approval of any person is required under any other enactment unless that consent or approval has been given.
- (11) Where it is for the landlord to obtain any such consent or approval, the landlord must, if requested to do so by the tenant, take reasonable steps for the purposes of doing so (and may recover any expenses incurred in doing so from the tenant).
- (12) But the need for any such consent or approval by any person other than the landlord is not, of itself, a reasonable ground on which the landlord may impose any condition under subsection (5)(b) or, as the case may be, refuse consent under subsection (5)(c).

Matters relevant to application to carry out work under section 52

- 53.** – (1) The landlord may, in considering whether it is reasonable to consent to an application to carry out work in pursuance of section 52(2)(a) (or whether it is reasonable to impose a condition on such a consent), have regard to–
- (a) the disabled person’s disability,
 - (b) whether the work proposed is necessary for the purpose set out in section 52(2)(a),
 - (c) the safety of the occupiers of the house or of any other premises,
 - (d) any costs which the landlord is likely to incur, directly or indirectly, as a result of the proposed work,
 - (e) whether the proposed work is likely–
 - (i) to reduce the value of the house or of any other part of any premises of which the house forms part, or
 - (ii) to make the house or any other part of such premises less suitable for letting or for sale,
 - (f) whether, if the proposed work was to be carried out, the house could be reinstated to the condition it was in before it was carried out,
 - (g) any code of practice issued by the Commission for Equality and Human Rights which relates to this section or section 52.
- (2) ...
- (3) A condition imposed under section 52(5)(b) may–
- (a) specify the standard to which the work consented to must be carried out,
 - (b) require the tenant to reinstate the house at the end of the tenancy to the condition it was in before that work was carried out.
- (4) The landlord must, in considering whether to impose a condition under section 52(5)(b) as to the standard to which the proposed work must be carried out, have regard to–
- (a) the age and condition of the house, and
 - (b) the likely cost of complying with the condition.
- (5) It is reasonable for a landlord to refuse to consent to an application to carry out work in pursuance of section 52(2), or to impose any condition on such a consent, if the carrying out of the proposed work or, as the case may be, failure to comply with that condition, would make the landlord susceptible under any enactment or rule of law to any sanction or other remedy.
- (6) Subsection (5) applies only where the landlord has taken 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 landlord so susceptible.
- (7) The landlord may recover from the tenant any expenses incurred by the landlord in taking any such reasonable steps (regardless of the landlord’s decision on the tenant’s application).



Chapter 8: Supplemental provisions, including appeals

Appeals

Part 1 Appeals

- 64.** – (1) ...
- (6) A tenant aggrieved by a decision by a landlord–
- (a) to impose any condition on a consent to carry out work in pursuance of section 52(2), or
 - (b) to refuse to consent to the carrying out of any such work, may appeal to the sheriff within 6 months of being notified of that decision.
- (7) The sheriff may, on cause shown, hear an appeal after the deadline set by subsection (1), (4), (5) or, as the case may be, (6).

Part 1 appeals: determination

- 65.** – (1) ...
- (3) The sheriff must, unless the sheriff considers the condition or, as the case may be, refusal appealed against to be reasonable, determine an appeal under section 64(6) by quashing the decision and directing the landlord to withdraw the condition (or to vary it in such manner as the sheriff may specify) or, as the case may be, to consent to the application (with or without such conditions as the sheriff may specify).
- (4) In determining whether a condition or refusal appealed against under section 64(6) is reasonable, the sheriff must, where the appeal relates to an application made for the purposes of section 52(2)(a), have regard to any code of practice issued by the Commission for Equality and Human Rights which relates to section 52 or 53.
- (5) The sheriff's determination on an appeal under section 64 is final ...

Part 1 appeals: procedure etc.

- 66.** – (1) An appeal under section 64 is to be made by summary application.
- (2)
- (4) The sheriff may make such order about the expenses of an appeal under section 64 as the sheriff thinks fit (and the sheriff principal may make such an order in relation to any subsequent appeal).

A photograph of a person's lower legs and feet walking on a paved surface. The person is wearing dark trousers and white sneakers. A white cane with a blue grip is visible on the right side of the frame. The entire image is overlaid with a semi-transparent blue filter. At the top, there is a solid blue horizontal bar containing white text.

Annex B: the scottish government consultation process



Consultation is an essential and important aspect of Scottish Government working methods. Given the wide-ranging areas of work of the Scottish Government, there are many varied types of consultation. However, in general, Scottish Government consultation exercises aim to provide opportunities for all those who wish to express their opinions on a proposed area of work to do so in ways which will inform and enhance that work.

The Scottish Government encourages consultation that is thorough, effective and appropriate to the issue under consideration and the nature of the target audience. Consultation exercises take account of a wide range of factors, and no two exercises are likely to be the same.

Typically Scottish Government consultations involve a written paper inviting answers to specific questions or more general views about the material presented. Written papers are distributed to organisations and individuals with an interest in the issue, and they are also placed on the Scottish Government web site enabling a wider audience to access the paper and submit their responses. Consultation exercises may also involve seeking views in a number of different ways, such as through public meetings, focus groups or questionnaire exercises. Copies of all the written responses received to a consultation exercise (except those where the individual or organisation requested confidentiality) are placed in the Scottish Government library at Saughton House, Edinburgh (K Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD, telephone 0131 244 4565).

All Scottish Government consultation papers and related publications (e.g., analysis of response reports) can be accessed at: Scottish Government consultations (<http://www.scotland.gov.uk/consultations>)

The views and suggestions detailed in consultation responses are analysed and used as part of the decision making process, along with a range of other available information and evidence. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

Final decisions on the issues under consideration will also take account of a range of other factors, including other available information and research evidence.

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.



Right to Adapt Common Parts in Scotland

RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

Title Mr Ms Mrs Miss Dr *Please tick as appropriate*

Surname

Forename

2. Postal Address

<input type="text"/>		
<input type="text"/>		
<input type="text"/>		
<input type="text"/>		
Postcode	Phone	Email

3. Permissions - I am responding as...

Individual / **Group/Organisation**
Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate Yes No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate Yes No

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate Yes No



RIGHT TO ADAPT COMMON PARTS: CONSULTATION QUESTIONS

1. Do you agree with the proposal to use the current right to adapt rented property as a general model for a right to adapt common parts? (see page 10)

Yes No

Comments

2. Do you think that there are any alternatives to placing responsibility on the disabled person which should be considered in Scotland? (see page 10)

Yes No

Comments

3. What rules should be included in the regulations to ensure that disabled people are able to exercise their right to adapt common parts? (see page 11)

Comments

4. What additional practical measures should the Scottish Government put in place to ensure that disabled people are able to exercise their right to adapt common parts? (see page 11)

Comments

5. Are there any other factors that an owner might want to take into account before agreeing to work to adapt common parts? (see page 12)

Yes No

Comments

6. Are there any other conditions that an owner might want to make before agreeing to work to adapt common parts? (see page 13)

Yes No

Comments



7. Do you think that there are any specific factors which an owner should not take into account? (see page 13)

Yes No

Comments

8. Do you agree with the proposed approach to appeals? (see page 13)

Yes No

Comments

9. Do you agree with the proposal to treat non-response as refusal? (see page 14)

Yes No

Comments

10. Do you agree with the proposed approach to the maintenance of adaptations? (see page 14)

Yes No

Comments

11. Do you agree that owners should be jointly responsible for maintaining an adaptation if there is no written agreement in place? (see page 14)

Yes No

Comments

12. Do you agree with the proposed approach to removing adaptations? (see page 15)

Yes No

Comments

13. Do you agree with that future owners should be bound by agreements about adaptations to common parts? (see page 15)

Yes No

Comments



14. If future owners are bound by such agreements, do you agree that a record in the relevant property register is needed to give them notice of their obligations? (see page 16)

Yes No

Comments

15. Do you agree with the proposed approach for dealing with the costs of adaptations to common parts? (see page 16)

Yes No

Comments

16. Are any other provisions needed to ensure that disabled people have a comparable right to adapt common parts in Scotland? (see page 17)

Yes No

Comments

17. Are there any other groups likely to be affected by the proposed regulations? (see page 23)

Yes No

Comments

18. Do you have any views on the expected impact of the regulations? (see page 23)

Yes No

Comments



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Government**

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