

Factsheet 1

- 1.5** The factsheets address, in general terms, some of the issues to do with making alterations to common parts to overcome access difficulties experienced by disabled people in England and Wales.

They set out:

- 1. Common parts: What is the issue?** – a brief look at what common parts are and who may be affected by access difficulties
- 2. Good practice and factors for consideration** – ideas intended to help those who might need to overcome access barriers in common parts
- 3. What does the law say?** – a brief overview of the relevant housing, landlord and tenant and disability discrimination law
- 4. Commonhold and the Disability Discrimination Act 1995** – a brief overview of commonhold and how changes to common parts should be handled
- 5. Signposts to other sources of help** – a list of organisations and grants that may be available to help.

- 1.6** These factsheets are intended to apply to all residential premises that have been let, and contain common parts, irrespective of whether this is under a tenancy agreement or a lease, the length of the letting or whether the landlord is in the private sector or the public sector (for example, a Local Authority or Housing Association or a university, in relation to halls of residence). The term 'let' used in the factsheets refers to all such premises. The factsheets explore the situation where, as in many cases, the terms of a tenancy agreement or lease do not make it clear how alterations to common parts should be dealt with.
- 1.7** For ease of reading, the factsheets generally refer only to 'tenancies', 'tenancy agreements' and to 'tenants', but they should be read to include leases and leaseholders, including long leaseholders.
- 1.8** The factsheets may also be of help to commonhold associations and to unit-holders of commonhold developments, but the way issues are dealt with in such premises will be different.

Common parts

What is the issue?



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What are common parts?

- 1.9** In a residential building such as a block of flats where more than one person has a separate home there are common areas (for example hallways, corridors, gardens etc) which the tenants have a right to use but which do not actually form part of the premises let exclusively to each tenant. These areas of a building are normally kept within the landlord's possession and control. These communal areas are normally referred to as 'common parts'.

Who is affected by access difficulties?

- 1.10** Everyone can be affected: both disabled people and those who are not disabled.
- 1.11** Being able to get in and out of your home and being able to use communal facilities is an important part of having an active and fulfilling life. Yet many tenants find that they cannot easily use the common parts of the property in which they live. For example, they might find that steps up to the front door of the building or the stairs within it are too hard to use. Anyone with an injury such as a broken leg, or a parent with a pushchair, might find that they are unable to use the steps or stairs for a time. However, for some disabled tenants and occupiers, (for example, someone who has a long-term mobility impairment such as a severe heart condition or who needs to use a wheelchair or crutches) being unable to use the steps or stairs is likely to be a continuing problem.
- 1.12** Other people who live in the building will also have an interest in alterations to the common parts. They could, for example, be affected by alterations to improve access, and there could be conflicts about whether any effort at all should be made to overcome access barriers, or about the most appropriate way of doing so.
- 1.13** For ease of use, set out below is a brief summary of issues that a landlord would need to consider when a tenant requests a disability-related alteration to the common parts. Brief answers are provided to some of the questions raised drawing on information from the other factsheets in this series. More detail can be found in factsheets 2 to 5.



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Where should a landlord start?

1.14 The most important first step for a landlord who has been approached by a tenant requesting a disability-related alteration to the common parts, is to consider the tenancy agreement. They will need to take account of anything it says about the common parts, any rights the landlord and tenant may have to make changes to those common parts and what options there might be to pay for any extra costs involved. (See Factsheet 2 'Good practice and factors for consideration in England and Wales').

What sort of issues does a landlord need to take account of?

1.15 Before making an alteration or allowing one to be made, a landlord will need to consider a range of issues: for example, how the alteration might affect any health and safety risks for common parts, how it will affect other tenants' rights to quiet enjoyment² of their let premises, the scale of the proposed alteration, the effect of and compliance with statutory requirements such as Building Regulations and planning rules, and the impact the alteration might have on the value of the building. (See Factsheet 2 'Good practice and factors for consideration in England and Wales').

Should landlords consider other tenants' opinions?

1.16 People sometimes hold strong opinions about the making of disability-related alterations to common parts. These may develop into disputes between landlords, tenants and their neighbours. It would be advisable to discuss any proposed alterations with the other tenants of the premises as soon as practicable. The sort of things that might be discussed with neighbours include why the disabled person needs the alteration and what it will mean for the premises. If the tenant's neighbours have a better understanding of why the alteration is needed and how it will affect them, there is a better chance of an amicable agreement being reached between all the parties. (See Factsheet 2 'Good practice and factors for consideration in England and Wales').

² Tenancy agreements usually contain conditions that protect tenants from unwarranted interference by the landlord or other tenants. These are known as covenants of 'quiet enjoyment'.

- 1.17** Rather than allow differences over an alteration to lead to legal action, landlords and tenants should consider whether alternative dispute resolution could be used to resolve the issues amicably. (See Factsheet 2 'Good practice and factors for consideration in England and Wales').

What issues need to be resolved before the alteration can be made?

- 1.18** Before a landlord makes an alteration or agrees to one being made, they should make sure each party is aware of their responsibilities, for example, who will pay for the alteration, maintenance of the alteration and any reinstatement costs; who will be responsible for obtaining any planning or Building Regulation consent; and who will be responsible for making sure that any problems with the alteration are rectified. It would be advisable for the parties to take independent advice and to record any agreement on these issues in writing. (See Factsheet 2 'Good practice and factors for consideration in England and Wales').

How does the law affect making alterations to the common parts?

- 1.19** There is only limited provision in landlord and tenant, and housing, legislation about alterations to common parts. Similarly, the Disability Discrimination Act 1995 (DDA), as amended, has limited application to alterations to the common parts. The law can be complex to interpret and apply in particular cases. It may be advisable to obtain independent advice before rejecting or accepting a request for a disability-related alteration outright. (See Factsheet 3 'What does the law say?').

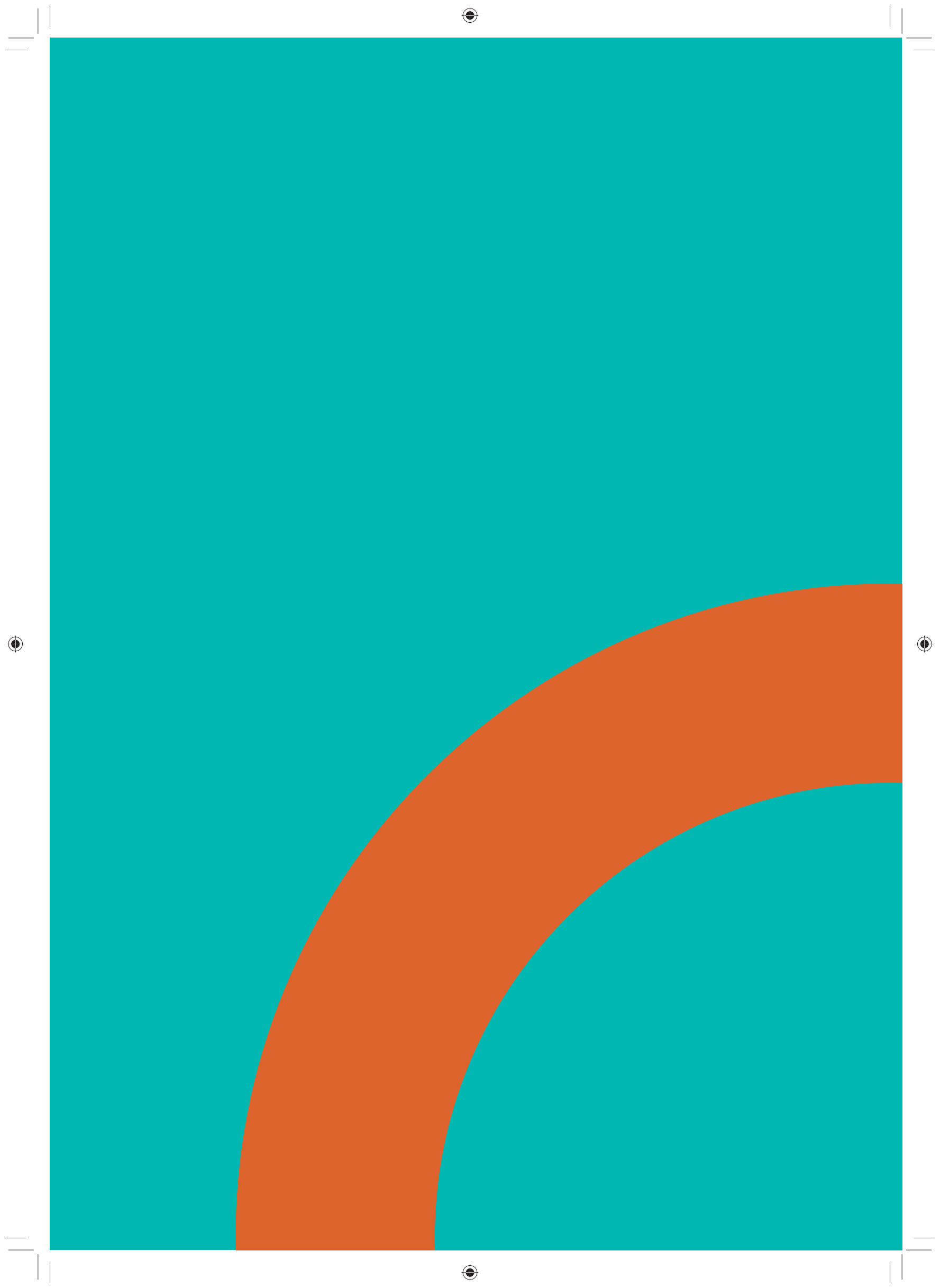
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What other advice is available?

1.20 There are various organisations that can give advice on a wide range of issues connected with disability-related alterations to the common parts of let residential premises; for example, information on alternative dispute resolution, Disabled Facilities Grants, occupational therapists' assessments, Home Improvement Agencies, and access consultants. (See Factsheet 5 'Signposts to other sources of help').

The Equality and Human Rights Commission (EHRC) has replaced the Disability Rights Commission (DRC). The EHRC will have ongoing responsibility for codes of practice previously issued by the DRC.

For details of services provided by the EHRC see their website at:
www.equalityhumanrights.com



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