

Factsheet 3

What does the law say?



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This factsheet is intended to provide a general overview of the law in England and Wales to assist landlords and tenants. It does not provide a full and authoritative interpretation of the law. Where a dispute arises about disability-related alterations to common parts it may be advisable to obtain independent advice.

- 3.1** In simple terms, a tenancy agreement grants the tenant the right to exclusive possession of particular premises (for example, a particular flat in a block of flats) for the period of the tenancy. This might be for a short period (for example, six months under an assured shorthold tenancy) or a long period (for example, 999 years under a long lease). In effect, under a tenancy agreement the landlord agrees to let the tenant and their household live in those premises for an agreed period subject to various conditions, such as paying the rent on time, contributing to the upkeep of the property through the payment of service charges, and not interfering with other occupiers' enjoyment of their premises. The tenancy agreement will also give the tenant various rights.
- 3.2** In particular, it will provide the tenant, other occupiers and visitors with the right to use the common parts of a building, such as the stairs, where that is necessary to get in and out of the premises. This right is usually known as 'an easement'. The common parts usually remain in the possession of the landlord who is generally responsible for their upkeep and repair. The tenancy agreement is unlikely to require a landlord to make any alterations to the common parts, but may give them the power to do so if they choose. It is unlikely that a tenancy agreement would give a tenant the right to improve or alter the common parts (for example, in order to install a stair lift), although it might allow a tenant to do something small, such as to repair a handrail.

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Improvements and the law

Implied terms in a tenancy agreement

- 3.3** The law also provides a tenant with various statutory rights. The detail of those rights may depend on the type of tenancy held or the landlord involved. For example the Housing Acts 1980 (sections 81 to 85) and 1985 (sections 97 to 99) apply to protected, statutory or secure tenants (mainly former 'Rent Act' and local authority tenants). In such cases, the landlord may not unreasonably refuse consent for a tenant to make alterations (known as 'improvements') to the premises.
- 3.4** In the case of any other type of residential tenancy agreement where the tenant has a right under the tenancy to make alterations, the Disability Discrimination Act 1995 (section 49G) means that the landlord cannot refuse consent unreasonably if the tenant seeks permission to make a disability-related alteration.
- 3.5** Under any of these statutory provisions, the landlord can attach reasonable conditions when giving their consent: for example, that the tenant pays for the improvement/alteration or that the premises are reinstated to their original condition if the tenant vacates the premises. However, it is not clear how far any of these statutory provisions might be used to require the landlord to consent to improvements/alterations to common parts, for example the installation and maintenance of a stair lift. Ultimately this is a matter for the courts, but in the first instance legal advice should be sought on the extent of the provisions.

Discrimination

Disability Discrimination Act (DDA) 1995

- 3.6** There are two relevant forms of discrimination in relation to premises in the DDA 1995, as amended by the DDA 2005 – less favourable treatment and failure to make a reasonable adjustment. These are described below. (A more extensive description of the premises provisions of the DDA 1995 can be found in the Disability Rights Commission's statutory Code of Practice (see Factsheet 5 'Signposts to other sources of help')). These DDA duties are applicable to a range of issues concerning common parts. The extent to which these duties might be used to require the making of disability-related alterations to common parts is a matter of legal interpretation.

Less favourable treatment (DDA 1995 sections 22 to 24)

3.7 Subject to there being no other legislative restrictions³ the DDA makes it unlawful for a person (such as a landlord) who has power to dispose⁴ of (including selling or letting) any premises to discriminate against a disabled person in the terms on which they dispose of the premises or by refusing to dispose of them to the disabled person. It is also unlawful for a person managing any premises to discriminate against a disabled occupier of the premises in the way they permit the disabled occupier to make use of any benefit or facility (or by refusing to allow them to make use of it), or by evicting them or subjecting them to any other detriment because of their disability.

3.8 Discrimination means treating a disabled person less favourably than others for a disability-related reason unless that treatment can be justified. An example of less favourable treatment in relation to common parts may be where the landlord does not allow a tenant to make use of a benefit or facility, such as a communal garden, because the landlord thinks other tenants would not want to use the garden when the disabled person was there. It may also amount to a breach of the terms of the tenancy or lease by the landlord.

3.9 There are limited grounds on which less favourable treatment can be justified, and not all of them apply in every situation. The relevant grounds are where it is reasonably believed that the treatment is necessary:

- to protect someone's health or safety including that of the disabled person
- because the disabled person is incapable of entering into an enforceable agreement or of giving informed consent
- for the disabled person or occupiers of other premises forming part of the building to make use of any benefits or facilities; or

3 Section 59 of the DDA provides that the Act does not override duties imposed by other legislation. There may be certain legislative restrictions in the disposal of premises. For example, Schedule 5 to the Housing Act 1985, explicitly excludes from the 'Right to Buy' certain kinds of properties that are suitable for occupation by disabled people.

4 Dispose is defined in the DDA premises provision as granting a right to occupy premises, assigning the tenancy and sub-letting or parting with the premises or any part of the premises.

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- where the property is rented and a landlord refuses to refund some or all of the tenant's deposit because the property occupied by the disabled person has been damaged beyond the level at which a deposit would normally be refunded, the reason for the damage is related to the person's disability, and it is reasonable in all the circumstances of the case to withhold some or all of the deposit. Regard may need to be given to the Tenancy Deposit Protection scheme requirements which came into effect on 6 April 2007. (See Factsheet 5 'Signpost to other sources of help').

3.10 In addition, less favourable treatment can be justified where a disabled person is subjected to a detriment (other than eviction) in order to recover costs incurred in connection with the disposal or management of the premises as a result of the disabled person having a disability, for example, damage to other parts of the premises not covered by the tenancy. This might include damage to the hallways skirting boards caused by parking a mobility scooter. However this justification does not apply where the extra cost results from complying with the duty to make 'reasonable adjustments'.

3.11 Commonhold Associations are under similar duties in respect of disabled unit-holders and occupiers. (See Factsheet 4 'Commonhold and the disability Discrimination Act 1995').

Reasonable adjustment (DDA 1995 sections 24A to 24L)

3.12 In certain circumstances and when requested by a tenant to do so, a landlord or manager of let residential premises might have to make what are known as 'reasonable adjustments'. These adjustments can only be required in cases where, if they were not made, it would be impossible or unreasonably difficult for the disabled person to make use of the premises or of something that they were entitled to use as part of the tenancy agreement, such as the garden or other common parts. Making a reasonable adjustment might mean that the landlord or manager would have to change a policy, practice or procedure, (that is altering the way things are normally done, like waiving a policy about not drying clothes on balconies where a disabled person cannot access the premises' drying area) or a term of the letting (for example, changing the allocation of a parking space for someone with mobility problems) or having to provide an auxiliary aid or service (such as providing documents about the tenancy in large print). Where a change involves changing the terms of a tenancy or lease advice should be obtained.



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3.13 When considering whether an adjustment is reasonable the landlord or manager should refer to the Disability Rights Commission's Code of Practice, which sets out some factors that a landlord or manager of premises might take into account. Such factors include considerations such as: the nature of the letting, the financial costs of making the adjustment, the extent of disruption and effect on other tenants. (See Factsheet 5 – paragraph 4.2 'Signposts to other sources of help').

3.14 Reasonable adjustments might involve making some changes in respect of the common parts (for example, putting up improved signage, or painting a door frame in a contrasting colour so that someone who is partially-sighted can more easily distinguish the door, or possibly installing a portable ramp across some steps). However, the duty of reasonable adjustment does not require a landlord or manager of let premises to have to take steps consisting of altering or removing any physical feature. So a landlord could not be required by the legislation to have to widen a doorway or install a permanent ramp. The premises regulations⁵ define physical features as:

- any feature arising from the design and construction of the premises
- any feature or approach to, exit from, or access from the premises
- any fixture in or on the premises
- any other physical element or quality of any land comprised of the premises.

3.15 However, physical features do not include any furniture, furnishings, materials, equipment or other chattels in or on the premises.

3.16 Failure to make a reasonable adjustment can be justified only on the following grounds:

- to protect someone's health or safety including that of the disabled person

⁵ The Disability Discrimination (Premises) Regulations 2006 (S.I.2006/887)

- because the disabled person is incapable of entering into an enforceable agreement or of giving informed consent, (however, it should be noted that regulation 2 of the premises regulations provides that this justification will not apply if another person is acting for the disabled unit-holder by virtue of a power of attorney, or being a deputy appointed by the Court of Protection).

3.17 Commonhold Associations are also under the same duty to make reasonable adjustments for disabled unit-holders and occupiers.

Exemptions

3.18 None of these discrimination duties, however, applies to certain 'small dwellings'. Broadly speaking, a small dwelling is one where the landlord or manager shares living accommodation with those not of their household, and either:

- lets out accommodation in the premises to not more than two other households
- there is not normally residential accommodation on the premises for more than six persons in addition to the landlord or manager and members of his household.

3.19 In addition, the reasonable adjustment duties do not apply to premises which are, or have been, the principal or only home of the person letting them, provided that the services of a professional person (for example, an estate agent) have not been used in the management of the premises or in arranging the letting of the premises.

Disputes

3.20 Legal enforcement action regarding complaints about unreasonable refusal of consent to make an improvement, or about disability discrimination, is through the county courts. The Equality and Human Rights Commission provides access to a conciliation service for complaints about refusal of consent for a disability-related improvement and about disability discrimination. This conciliation service, which is a form of 'alternative dispute resolution', is free of charge. Other forms of alternative dispute resolution are also available: not all are free. (See Factsheet 5 – paragraphs 5.7 and 5.8 'Signposts to other sources of help').

