

Review Group on Common Parts

To

**The Minister for Disabled People and
The Minister for Housing and Planning**

**A review of the current position in relation to
adjustments to the common parts of let
residential premises, and recommendations for
change**

23 December 2005

Executive Summary

The Review Group on Common Parts was set up to review the legal position in relation to alterations to the common parts of let residential premises and commonhold properties, and to make recommendations to the Minister for Disabled People and the Minister for Housing and Planning to improve access for disabled people.

The Review Group was made up of a broad spectrum of housing and disability experts, representatives of relevant Government Departments and was chaired by a senior civil servant from the Department for Work and Pensions. We involved a range of other organisations in our work.

Legislation provides some assistance to tenants and lessees who seek their landlord's consent to the making of disability-related adjustments to their home, but does not make express provision in respect of adjustments to any common parts of the building (such as the entrance and stairs). This means, for example, that some disabled people who need adjustments made to the common parts, so that they can get from their home to the street, can be confined to their home.

We considered a range of evidence including: a review of landlord and tenant and housing legislation, information on the experience of disabled people, research concerning the attitude of tenants, lessees and landlords to adjustments to common parts and a range of surveys and statistical reports.

There is evidence of good practice by some landlords, but there is also evidence of unmet need for adjustments to common parts. We concluded that a problem does exist, but that the problem does not affect just disabled people - landlords and other lessees do not know what they do, or do not, have to do to accommodate the access needs of disabled people. This can lead to acrimonious and long-running disputes, which there is no established equitable format for resolving because the current law does not provide a clear framework.

Having considered all the evidence, we have made two main recommendations, which should be taken forward together:

- Non-legislative - the Government should provide guidance, extra finance and access to conciliation services and other forms of dispute resolution
- Legislative - the Government should establish, through consultation, whether new primary legislation is required and seek views on our specific proposals for England and Wales. These would, for example, require the landlord where reasonable to make an adjustment to physical features of the common parts of residential let premises to improve access for a disabled tenant, lessee or occupier when requested to do so by the tenant or lessee and at their expense (unless the landlord chooses to pay). Similar provisions should be developed for commonhold premises.

Because of the different legal system in Scotland, the Scottish Executive will need to consider whether and how to apply the concepts of our recommendations to the position in Scotland with a view to ensuring broad equivalence across Great Britain.

List of abbreviations and commonly used terms

ADR	Alternative Dispute Resolution
CEHR	Commission for Equality and Human Rights
Commonhold	This is a new system of freehold ownership in England and Wales which is applicable to, for example, blocks of flats. A commonhold development consists of interdependent freehold properties, referred to as “commonhold units”, and common parts (such as entrance halls). Each unit is owned by the unit-holder; the common parts are owned and managed by the commonhold association, which is a limited company of which only the unit-holders are members.
Common parts	This does not have a strict legal definition, so for purposes of this report ‘common parts’ are treated as being: all those parts of a property and any associated land which the lessee or occupier has a right to use in common with others. At the most basic level, this may include only the main entrance to the property and any steps leading up to that entrance, and the hallway and any staircase that could be used to gain access to the leased premises. However, it may also extend to gardens, paths, garaging, storage areas, communal washing and or drying areas, swimming pools and gyms or other shared facilities.
DDA	Disability Discrimination Act
DFG	Disabled Facilities Grants
DoH	Department of Health
DRC	Disability Rights Commission
DRTF	Disability Rights Task Force
DWP	Department for Work and Pensions
HB	Housing Benefit
He and his	These have been used generically and should be taken to include ‘she’ and ‘her’.
HRA	Housing Revenue Accounts

ICES	Integrated Community Equipment Services
LA	Local Authority
Landlord	This is used in the report in a generic sense and should be taken to include all those with the powers / responsibilities commonly associated with those of a landlord, such as a management company. It is also used, for ease of reading, to cover a commonhold association in respect of a commonhold premises.
Let premises	This is used in the report in a generic sense and includes all forms of let premises including, for example, premises held under an assured shorthold tenancy and premises that are owned under a long lease etc. Similarly, references to a “lease” also include a tenancy where this fits the context. It is also used, for ease of reading, to cover commonhold units.
Lessee	This is used in the report in a generic sense i.e. it should be taken to include all those who rent or lease residential premises including, for example, assured shorthold tenants and long leaseholders. It is also used, for ease of reading, to cover commonhold unit-holders.
LVT	Leasehold Valuation Tribunal
NHS	National Health Service
ODPM	Office of the Deputy Prime Minister
RGCP	Review Group on Common Parts

Recommendations

Recommendation 1: That the Government should significantly increase Disabled Facilities Grant funding.

Recommendation 2: That the Government should provide guidance on the making of adjustments to physical features of common parts

Recommendation 3: That the Government should investigate whether it can stimulate the use of Alternative Dispute Resolution in common parts disputes.

Recommendation 4: That through public consultation the Government should establish whether new primary legislation is required and seek views on our specific proposals.

Recommendation 5: That the Government should develop (and consult on) legislation for England and Wales which would ensure that when requested by a lessee to make a disability-related adjustment to the common parts of let residential premises, the landlord would be under a duty to make the adjustment where that is reasonable.

Recommendation 6: That when it consults on the proposed new duty the Government should, in particular, seek views on whether the proposal achieves the right balance and provides suitable protection for the landlord, the disabled person and any other affected lessees or other persons with an interest (for example a superior landlord, where the landlord is himself a lessee).

Recommendation 7: That when it consults on our proposed new duty, the Government should seek views on whether any sectors or tenures need to be treated differently.

Recommendation 8: That the Government should consider what rights of redress for the new duty would be suitable, and which would be the most appropriate forum for hearing disputes.

Recommendation 9: That the Disability Rights Commission's powers to provide a conciliation service should be extended to include disputes about the new duty; and that the Government should consider whether the remit of any of the existing statutory Alternative Dispute Resolution mechanisms (e.g. the Independent Housing Ombudsman) should be extended.

Recommendation 10: That the Scottish Executive should be invited to apply the concepts of our proposed new duty to the position in Scotland with a view to considering any legislative changes that might be necessary to ensure broad equivalence across Great Britain.

Recommendation 11: That the Government should consider when developing our proposal whether any resulting legislation should also require

the making of access improvements to the common parts when refurbishments are undertaken.

Recommendation 12: That when the Code for Sustainable Buildings is revised (following consultation), the Government should ensure that suitable references are made to improving the accessibility of common parts of premises in new builds and when undertaking refurbishments.

Recommendation 13: That the Government should investigate whether guidance or instructions on improving the accessibility of common parts in new builds could be given on a regional basis e.g. by the Regional Housing Boards.

Recommendation 14: That the Government should consider whether there should be an exemption from the proposed duty for small premises and seek views on it when consulting on the new duty.

Recommendation 15: That the Government should consult on the principles which should apply to determining the ownership of any disability-related adjustments to the common parts.

Recommendation 16: That the costs of maintenance for an adjustment should fall on the landlord and so be capable of being passed by the landlord to all lessees. But that where maintenance costs are high, the landlord should be able to pass on to the lessee who requested the adjustment all the maintenance costs.

Recommendation 17: That the Government should develop a model contract which would record the terms of any agreement between the landlord and lessee.

Chapter one: Introduction

1.1 The Review Group on Common Parts (RGCP) was appointed in February 2005 to review the legal position in England and Wales in relation to alterations to the common parts of let¹ residential premises and to make recommendations for change to the Minister for Disabled People and the Minister for Housing and Planning to improve access for disabled people; and to address the implications for the position in Scotland.

1.2 In England and Wales, a *lessee*² should in most cases be able to make disability-related adjustments to their home with the *landlord's*³ consent: either under the terms of his lease or by virtue of specific provisions in landlord and tenant, housing or disability discrimination law, or a combination of these. These might for example, enable a lessee with mobility problems to install grab rails in the flat *he*⁴ lives in.

1.3 However, a lessee would not have the same rights in relation to the *common parts*⁵ of a block of flats, and he would not necessarily or usually be able to install grab rails. So although he might be able to make his home more accessible, he might well be unable to make the hallway or the entrance to the block of flats more accessible. This could mean that he was unable to leave his flat if grab rails were needed to get from his front door to the street.

1.4 This gap in the law is, in effect, why the RGCP was set up. Having satisfied ourselves that problems did exist, we saw our task as finding an equitable way of making it easier for lessees to obtain access improvements to the common parts of let residential premises.

¹ See list of abbreviations and commonly used terms.

² See list of abbreviations and commonly used terms.

³ See list of abbreviations and commonly used terms.

⁴ See list of abbreviations and commonly used terms.

⁵ See list of abbreviations and commonly used terms.

Chapter Two – Background

2.1 When the Disability Discrimination Act (DDA) 1995 was enacted, there was, in contrast to the provisions relating to goods and services, no duty to make reasonable adjustments in relation to the disposal of premises (i.e. the sale, rental and management of premises).

2.2 The Disability Rights Task Force (DRTF) was set up in December 1997 to consider how best to secure comprehensive, enforceable civil rights for disabled people. In its final report ('From Exclusion to Inclusion' 1999), the DRTF considered that the omission of a duty to make reasonable adjustments in relation to the disposal of premises should be remedied and made three recommendations⁶ concerning housing. It recommended that those subject to the DDA 1995's premises provisions relating to non-discrimination should be placed under a duty to make reasonable adjustments to their policies, practices, and procedures, to provide auxiliary aids and services, and that they should not be able to withhold consent unreasonably if a disabled person wished to make a change to the physical features of let premises. No mention was made of any common parts of premises.

2.3 From December 2006, amendments to the DDA1995 made by the DDA 2005 will address the gap in protection identified by the DRTF. An outline of the premises provision in the DDA1995, as amended, can be found at Annex 2.

2.4 During Parliamentary Pre-legislative Scrutiny of the Bill that led to the 2005 Act, concerns were expressed by disability organisations that disabled people should be able to make adjustments to common parts. The Scrutiny Committee agreed with this and included it in their recommendations⁷. The Government did not accept this⁸.

⁶ **DRTF recommendation (6:25):** "In civil rights legislation, those covered by the Disability Discrimination Act premises provisions should be under a duty to make reasonable adjustments to their policies, practices and procedures, in the same way as service providers."

DRTF recommendation (6:26): "In civil rights legislation, those disposing of premises to the public should continue to be covered by the duty under the Disability Discrimination Act access to service provisions to provide auxiliary aids and services in the selling and letting of premises. This duty should extend to any communication between those disposing of premises and the lessee once the premises had been let."

DRTF recommendation (6:27): "There should be no duty on those disposing of premises to make adjustments to physical features of the premises. However, in civil rights legislation, they should not be allowed to withhold consent unreasonably for a disabled person making changes to physical features of the premises. There should be a wide consultation on the factors in determining when it would be reasonable and unreasonable for a landlord to withhold consent, with the aim of achieving the right balance between the rights of the owner of the premises and the disabled person."

⁷ **Committee recommendation 57:** "The full Bill [should] include a specific provision prohibiting controllers of premises from unreasonably withholding consent to the making of reasonable adjustments to communal areas".

⁸ **Government response to recommendation 57:** "We are not convinced that tenants should be able to make adjustments to common parts over which they have only limited rights or that a controller of premises should be required to allow a tenant to make changes to common parts. We believe that seeking to cover common or communal parts of premises in this way

2.5 Amendments aimed at giving disabled people the right to make adjustments to common parts were tabled during the passage of both the Housing Act 2004 and the DDA 2005. Peers, in particular, were concerned that some disabled people could become prisoners in their homes if the common parts of the premises could not be adapted to meet their needs.

2.6 These amendments failed but, in the light of the concerns expressed, the Government agreed that the position should be looked at in more detail and set up the RGCP to do this. We were asked to report by the end of 2005. Our formal terms of reference are at Annex 3.

Existing Support

2.7 The Government and local authorities (LAs) already provide practical support for the making of adjustments to the common parts of residential premises through a series of grants, monies and schemes that are available to people who have access needs. These include Disabled Facilities Grants (DFG), Integrated Community Equipment Services (ICES) and Discretionary Housing Powers.

Disabled Facilities Grants

2.8 DFGs are a mandatory grant entitlement which can provide help: with access to a dwelling; to make the dwelling safe for a disabled occupant; or to provide access to facilities within the building, for example, a bedroom, a lounge, bathing facilities, or heating.

2.9 Grants are available to owner-occupiers, landlords and all lessees. They are means tested and limited to £25,000 maximum. Grants are administered by the LA which must assess the access needs of the disabled person and decide if the works are reasonable. Grants should normally be paid within six months of the application. Grants are specifically available in respect of common parts but are only payable on condition that the applicant has the power to carry out the relevant work.

2.10 In 2005, there was a ring-fenced budget of £110⁹ million to cover 60% of LAs' expenditure, this will rise to £120 million in 2006/07. There were over 37,000¹⁰ DFGs undertaken in 2003/04, with on average 200 grants approved per local authority depending on the type size and density of the authority.

would pose quite severe problems on which we have not consulted and which involve complex interactions between a range of people with legal responsibilities and rights in connection with common parts.”

⁹ The ring fenced budget may be used in all tenures but not council housing.

¹⁰ ODPM: Housing Investment Programme Returns (annual)

2.11 The number of applications for adjustments to common parts is negligible. On average, authorities only receive 1 or 2 such applications for DFGs per year¹¹.

Integrated Community Equipment Services

2.12 Community equipment refers to items prescribed by occupational therapists, physiotherapists, district nurses and others to help disabled people and those with health problems to return to, or remain in, their homes. ICES play an important part in helping people to develop their full potential and to maintain their health and independence. A wide range of equipment and adjustments can now be provided from 138 services in England.

2.13 For example, Social Services departments are under a duty to provide minor adjustments free of charge up to a maximum of £1,000 subject to an assessed need. They are also required under the Chronically Sick and Disabled Persons Act 1970 to arrange for other adjustments which are assessed as needed and not provided for within the scope of DFGs. Social Services are able to charge for these.

Discretionary Housing Powers

2.14 Local housing authorities are able to provide assistance of any form to improve the living conditions in their area under the Regulatory Reform (Housing Assistance) (England and Wales) Order 2002. For example, we understand that an authority could provide financial assistance to help with adjustments to a property or, instead of adapting a person's accommodation, the authority could buy new accommodation for that person (provided that the new accommodation would provide similar benefits to their existing accommodation had work been carried out on it to improve accessibility).

Home Improvement Agencies

2.15 Home Improvement Agencies are organisations that assist vulnerable people to repair or adapt their home, both in the private and public sector, so that they can continue to live there. HIAs tend to be small organisations with around 8 members of staff and are normally run by LAs or Registered Social Landlords. There are around 240 HIAs in England, working in over 90% of districts and unitary authorities. Their main activities are to specify what work is needed, apply finance to pay for the work, supervise building works and complete all the necessary paperwork.

Handyperson service

2.16 Handyperson services are normally run by HIAs. Handypersons tend to deal with small repairs, adjustments and other jobs that can be dealt with quickly and cheaply. For example, changing light bulbs and fitting grab rails.

¹¹ From an informal survey of some Local Authorities undertaken for us by the Local Government Association.

Chapter Three – Evidence of need for change

Who is affected?

3.1 Arguments over disability-related adjustments to the common parts of leased residential premises are not simply a disability issue. They can affect not only the relationship between the landlord or manager of the premises and the lessee who requested the adjustments, but also everyone else that lives and works in the premises – see Annex 4 for a map of stakeholders by tenure.

3.2 However, the issue of adjustments to the common parts of premises is particularly important for disabled people. Adjustments can determine whether disabled people are able to get in and out of their homes. Although there is evidence of good practice and positive attitudes which benefit some disabled occupiers, there is also evidence of failure to find an equitable solution where disputes have arisen and of resulting hardship (see examples at Annex 5).

3.3 Statistics about the relationship between disability and common parts are not collected. However, inferences as to the potential numbers of people affected by inaccessible common parts can be made from the statistics that are available – see cost benefit analysis in Chapter 7.

3.4 In England and Wales, disabled people are twice as likely as non-disabled people to be social housing tenants¹². They are also less likely to be able to access social housing that meets their specific needs¹³ and their choices are more restricted than non-disabled people.

3.5 A survey by John Grooms¹⁴ found that more than a fifth of disabled people who responded to the survey lived in homes which were difficult to move around or get in and out of. More concerning, the survey found that 25% of wheelchair users felt they were prisoners in their own homes because of poor access and location.

3.6 1,400,000¹⁵ people in England who have a serious medical condition or disability require specially adapted accommodation. Of those, 403,000 are council tenants, 222,000 are tenants of Registered Social Landlords, 84,000 are “private renters” and 666,000 are owner occupiers.

3.7 300,000 of those people thought their accommodation was not suitable for someone with their medical condition. This equates to 1 in 2 disabled children, 1 in 3 disabled adults aged up to 64 and 1 in 5 disabled pensioners living in unsuitable accommodation.

3.8 The survey also found that there were 270,000 households that contained a person with a serious medical condition or disability living in

¹² Health Survey for England 2001

¹³ The Big Picture: Housing and Disability 2002

¹⁴ John Grooms Survey of physically disabled people 2003

¹⁵ The Survey of English Housing 2001/02

accommodation that was not suitable. Of these, 180,000 said that adjustments could be made to their homes to make it suitable. However, only 25% of them actually expected the adjustment to be made.

3.9 In Wales¹⁶, 35,000 occupied “first homes¹⁷” in the local authority sector have an unmet need for adjustments such as grab rails, ramps etc. Comparable figures for Housing Associations and for the private rented sector are: 10,000 and 13,000. Overall, there are 211,000¹⁸ people in Wales in all forms of rented tenure who have a limiting long-term illness or disability.

3.10 In Scotland¹⁹, 330,000 households in the social sector have at least one household member with a limiting long-term illness or disability, and there are 38,500 in the private rented sector.

What are the barriers?

3.11 The evidence indicates that there are a fairly large number of disabled people who might need disability-related adjustments to the common parts of their residential premises and that some, but by no means all of them, are able to make those adjustments. So the question which arises is: what are the barriers for those disabled people who cannot make adjustments?

The legal position

3.12 The following analysis is based on a review commissioned from counsel²⁰, which is at Annex 6.

3.13 It is necessary to consider both relevant statutory provisions, and the terms agreed between the parties as set out in the lease or tenancy. There is some relevant legislation concerning consent to the making of improvements. The Housing Acts 1980 and 1985²¹ introduce implied terms into protected, statutory and secure tenancies which, broadly speaking, enable a tenant to make an improvement to the premises with the consent of the landlord, such consent not to be unreasonably withheld. However, the extent to which these rights could be relied upon to make access improvements to the common parts is limited.

3.14 Duties in the DDA 1995²² (introduced by the DDA 2005) will require certain reasonable adjustments to let premises, including common parts to be made by landlords and managers of premises which have been let. Broadly speaking, this would be where a practice, policy or procedure or term of the letting makes it impossible or unreasonably difficult for a disabled person to

¹⁶ Living in Wales 2004 survey of households and dwellings.

¹⁷ First homes refer to a person’s main home and exclude second homes, holiday homes and empty dwellings.

¹⁸ Census 2001.

¹⁹ Scottish Household Survey 2003/04.

²⁰ Jonathan Karas was instructed by the Department for Work and Pensions (DWP) to provide advice to the RGCP and for no other purpose.

²¹ Section 81 of the Housing Act 1980 and section 97 of the Housing Act 1985.

²² Sections s24A to 24F of the DDA 1995. An explanation of these provisions is at Annex 2.

enjoy the premises or to make use of an associated benefit or facility, or where providing an auxiliary aid or service would facilitate enjoyment or use. Whilst the DDA 1995 does not require a landlord to make physical alterations to any part of the premises (including the common parts), a landlord may, for example, have to install a portable ramp or allow a wheelchair to be left in the common parts. Other new provisions in the DDA 1995 will assist lessees wishing to make disability related improvements to their homes. However, none of these provisions were intended to confer a right to make adjustments to common parts of leased premises and they will provide only limited assistance to lessees in this area.

3.15 When found in a lease the phrase 'common parts' does not have a definite legal meaning²³. Under a lease for premises in multiple occupation, the various lessees and occupants of the property may have rights over the common areas. The lease should define in words or by reference to a plan those areas which are to be common parts in this sense. It would also define the precise rights which the lessee under the lease has over those common parts. The lease should also provide for who is responsible for repairing and maintaining the common parts and may make express provision for who may be entitled to improve the common parts (this would probably be the landlord or management company and not the individual lessees) and should also set out how any repairs, maintenance and improvements would be paid for and by whom. But because of the lack of uniformity in lease arrangements, even if some leases make useful provision in relation to common parts, others will not.

3.16 In the absence of express provision, it is unlikely that a landlord will have any *obligation* under the terms of a lease to make any improvements to the common parts of multiple occupation premises to accommodate a lessee who is disabled. However, it may be that the landlord has the *power* to do so, though he may not charge the lessees as part of a service charge without express provision in the lease for this, and he would also have to consider whether the adjustments had any effect on the rights of the other lessees and occupants. If the landlord does not have the power to make the adjustments, but does so anyway and in doing so breaches the rights of any other lessees he may commit an actionable nuisance (a common law action in tort). The landlord may also be in breach of his obligation not to derogate from grant (a contractual obligation arising out of the lease).

3.17 The extent to which the cost of work done can be recovered would depend on the terms of each lease. In practical terms, some management companies may consist only of the lessees themselves and may not have resources of their own to carry out any significant work, without the ability to recover those costs through service charges in the leases. Even where the landlord could recover the costs from all the lessees, a lessee may object to having to pay because they will gain no benefit from the work.

²³ There is a specific definition of common parts which applies to commonhold properties.

3.18 It is also unlikely that a lessee would have an express right under the terms of a lease to make any disability-related improvement to the common parts of multiple occupation premises, though they may have an implied right to carry out certain repairs in some cases.

3.19 Therefore, at best, lessees only have limited rights to make disability-related adjustments to the common parts of leased premises. In reality, leases and legislation do not generally give lessees any practical or effective rights to make, or have made, disability-related improvements to the common parts of their leased premises.

3.20 Our conclusion is that the law in England and Wales currently does not seem to help landlords or disabled people when it comes to making adjustments to common parts. This appears to be in contrast to Germany, France and Sweden which seem to have some mechanisms in place that would allow a disabled person to make an adjustment to common parts if required (based on information obtained for us by DWP on the law in several countries - see Annex 7).

Practical issues

3.21 Even where a disabled person can make an adjustment, there are issues about payment, maintenance and removal of the adjustment if it is no longer needed. The comparatively worse financial situation of disabled people²⁴ and the effect an adjustment might be perceived as having on the value of the premises are all potential barriers to making adjustments.

Cost

3.22 Chapter 2 noted that the number of DFG applications for adjustments to common parts was negligible. On average, authorities receive only 1 or 2 such applications per year although some authorities have not received any such applications for a couple of years. Where applications are received, the most frequent request is for external ramping and a small amount of requests for door entry systems and stair lifts.

3.23 The Audit Commission estimates that one year's delay in providing a modest adjustment costs around £4,000²⁵ in additional home care hours. This could be exacerbated when account is taken of the fact that 22%²⁶ of disabled people live alone and therefore have no one on the premises who can help them, as compared with only 14% of non-disabled people.

²⁴ Compared to non-disabled people, disabled people have a lower household income on average and are more likely to be in the lowest income group – General Household Survey 2001. They are less likely to be in employment than non-disabled people – Labour Force Survey.

²⁵ Home alone: the role of housing in community care 1998

²⁶ 'Disabled for life?' attitudes towards, and experiences of, disability in Britain 2002 (Annexe A Table 7)

Property value

3.24 Concerns were expressed to us that adjustments might adversely affect the aesthetic look of the property (both externally and internally) and its value. We put this to the Reference Group²⁷. Responses showed that the majority of adjustments would have little or no effect on the value of a property, particularly if the adjustment was in keeping with the general design of the premises. However, views were more mixed when it came to stair lifts: around half of respondents considered that stair lifts would devalue a property.

Health and safety

3.25 Health and safety and fire regulations were raised by some of the Reference Group as a major concern. Again, stair lifts featured highly with concerns that they would, for example, narrow the width of the staircase useable by other lessees and so restrict egress in the event of a fire.

Other lessees' attitudes

3.26 Despite our experience and the input of the Reference Group, we were concerned that the information available to us said nothing systematic about how non-disabled lessees might view disability-related adjustments to the common parts. For example, would they generally support or oppose the making of adjustments; and would their attitude vary if they had to contribute to the costs involved.

3.27 To address this lack of information research was commissioned for us by DWP from the University of York's Centre for Housing Policy. This consisted of a telephone survey of around 200 disabled and non-disabled tenants and lessees²⁸ who live in accommodation with communal areas, three focus groups and some in depth telephone interviews. The report - 'Attitudes to making adjustments to common parts of rented and leased residential premises' is at Annex 10.

3.28 The telephone survey showed that 61% of non-disabled category households²⁹ supported adjustments to the property being made 'in principle'. However, this changed when the respondent was expected to pay for the adjustment (support fell to 21% of non-disabled respondents). Comparable figures for disabled category households³⁰ were 69% and 29%. In both cases there was a fairly large group (around 30%) who neither supported nor

²⁷ This consisted of 30 organisations with a broad range of experience – see Annex 8. We asked for members' views on specific issues and used the Group as a sounding board for our recommendations. We are grateful to members of the Reference Group for their valuable assistance.

²⁸ Unlike the rest of our report, when referring to the attitudes research the terms 'tenant', 'lessee' and related terms are not used in the generic sense.

²⁹ In the attitudes research – 'non-disabled category households' means households where no member of the household is disabled

³⁰ In the attitudes research – 'disabled category households' means households where either the respondent is disabled or another member of the household is disabled.

opposed adjustments.

3.29 Overall, the key findings of the research were:

- Most households, in all tenures and regardless of whether a member of a household had a disability, supported adjustments, on the assumption that they did not have to pay. Nonetheless, support was strongest among disabled category households.
- More households objected to adjustments than supported them if they were expected to pay for them. This finding held for each tenure and regardless of disability status.
- Support for adjustments appears to be strengthened by the usefulness of adjustments to households or neighbours, with consideration also given to their simplicity and durability.
- Cost appears to be the principal reason for opposing adjustments. Affordability was cited as a problem in focus groups, combined with concerns about the anticipated low quality of work conducted by LAs and the value for money where other priorities existed for improving buildings.
- Most respondent believed that either central or local government should pay for adjustments.
- The impact of adjustments on the value or marketability of property did not register as a significant or consistent reason for opposing adjustments in the survey, although it did feature in the leaseholder focus group. Local authority tenants in a focus group pointed to the vulnerability of adjustments to vandalism, the difficulty in maintaining them and the impact that measures designed to improve access might have on the security of a building. Some leaseholders suggested that adjustments might be impractical in older buildings and might affect their character.
- Where adjustments had been carried out they commanded a high degree of satisfaction in both disabled and non-disabled categories. Overall, among council tenants, costs appear to have been borne primarily by the landlord, but with a significant contribution from direct beneficiaries.

3.30 The main conclusions of the research were:

- There is strong support in principle for adjustments.
- However, support is extremely price sensitive: it collapses if households are expected to pay.

- Adjustments are most likely to command support if they are of practical use, simple and durable.
- Adjustments are least likely to command support if they are vulnerable to vandalism, unsuited to a dwelling or reduce its security.
- Where adjustments have taken place they command a high degree of satisfaction among both disabled and non-disabled category households.

3.31 The final Chapters of the report record our conclusions based on the evidence we have collected, and make a number of recommendations.

Chapter Four – Conclusions

4.1 In the light of the issues raised with us, and having collected a variety of evidence, three main questions seem to us to need answers.

Is there an unmet need for more adjustments to be made to the common parts for disabled people?

4.2 There have been no research projects looking specifically into the need for adjustments to common parts. So there are no hard and fast figures that prove the need, one way or the other, for disability-related adjustments. It is clear from our own experience and that of our Reference Group that landlords do make adjustments to the common parts for disabled people. However, it is equally clear that not enough landlords do so, as some disabled people are unable to leave their homes because they cannot traverse the common parts of the property they live in. Of the disabled people who want to make adjustments (not just to common parts) only 25% thought that they would be able to do so; and 25% of wheelchair users consider themselves prisoners in their own home. The available evidence, including that of disabled peoples' own experience, leads us to conclude, therefore, that there is unmet need for adjustments to common parts.

Is the current legal framework adequate to meet this unmet need?

4.3 Our analysis of the current law shows that a disabled person who needs an adjustment to solve a common parts access problem cannot rely on the law to ensure it is made. There is no clearly applicable legislation or even guidance that sets out the rights of the various parties, and leases do not generally deal with the issue. So landlords have no framework within which to decide how to deal with a request for an adjustment and they can be left like 'piggy in the middle' between a disabled person who needs an adjustment and other lessees who object to it. This can lead to disputes between the various parties (some people in this situation have written to us). If disputes cannot be resolved, they will probably fester and relationships between the various parties deteriorate. It is to landlords' credit that, in the absence of a suitable framework, some adjustments are made. But we have concerns about continuing to leave disabled people reliant on the goodwill of the landlord and other lessees to achieve adjustments.

Will other lessees object to disability-related adjustments?

4.4 The attitudes research undertaken for us by the Centre for Housing Policy showed that the majority of respondents did not oppose adjustments when they did not have to pay for them. Indeed, around half of the respondents already had some experience of adjustments being made to the common parts (such as grab rails, door entry systems, ramps / level access and better lighting). Non-disabled people also cited (more frequently than disabled people) points such as adjustments being useful to them, their families and visitors when asked why they supported adjustments. So we

conclude that there would not be widespread opposition to adjustments amongst other lessees so long as they are not expected to pay for them.

4.5 The question which results from the answers to the above questions is:

What could be done to meet this unmet need?

4.6 The next two Chapters describe our recommendations for meeting this need in ways which we believe will be acceptable to the various parties and strike a fair balance between their respective interests.

Chapter Five – Options and Recommendations

5.1 We believe that there are two main approaches to meeting the unmet need for adjustments to the common parts of leased residential premises. There is also, of course, a ‘do nothing’ option.

5.2 The first main approach is a non-legislative one which would, in effect, actively build upon the existing good practice that exists and spread it more widely. The second is a legislative approach which would provide a framework for seeking adjustments and resolving disputes. In reality, the non-legislative approach will feed into the legislative one, and should be taken forward even if the Government cannot introduce legislation quickly (or decides not to do so after consultation).

5.3 This Chapter, therefore, sets out some of the options we have considered and makes a number of recommendations.

Do nothing

5.4 Counsel’s review highlights the difficulty of changing the law. We recognise that there is some good practice, and a case could be made out for simply leaving things as they are in the hope that such good practice will spread and lead to a general improvement in access to common parts. This would have the benefit of avoiding (or limiting) disruption and cost for landlords and other lessees. It would also ensure that there was no interference or conflict with existing legislation and procedures.

5.5 However, doing nothing is unlikely to be seen as a sufficient response to the political pressure that brought about the review. More importantly, bearing in mind that improvement (if any) would be likely to occur over a long time and the scale of the problem, this would not in practice be a sufficient response. The law would continue not to provide any useful mechanism for making adjustments and so some disabled people would remain ‘prisoners in their own homes’. Disputes and dissension would continue over adjustments with, as now, no final arbitration or way of resolving them.

5.6 Accordingly, we rejected this option.

Non-legislative - Improving the ‘system’

5.7 Having looked at the law and practice around the making of adjustments to common parts, we believe that there are a number of non-legislative levers which the Government could use to improve the way the ‘system’ works. The net cost of this is estimated at £12 million in the first year – based on 4,500 extra Government funded common parts adjustments³¹.

³¹ For an explanation of the costs see Chapter 7 – Making adjustments to common parts of leased residential premises – cost benefit analysis.

Finance

5.8 A key issue when it comes to making adjustments is the cost. Help from ICES is available for lower cost adjustments and DFGs may be available for other adjustments. DFGs in particular are oversubscribed. We are aware of the current review of DFGs and the various recommendations from Bristol University. In particular, we commend the Government on its speedy decision to end the means test on families where adjustments are for children. This is a major improvement.

5.9 It would not be within our terms of reference to comment on the detail of Bristol University's recommendations. However, a major problem with DFGs, identified by Bristol University and many other observers, is under-investment. DFGs are already available for making adjustments to common parts yet current take-up for common parts seems to be low³² due partly we feel to lack of resources. Accordingly, as part of a non-legislative package, **we recommend (1) that the Government should significantly increase DFG funding.**

5.10 During the Government's Spending Review in 2007, or at the earliest opportunity, we believe that a high priority should be placed on increasing the resources allocated to DFGs (this will be particularly important in meeting increased demand which will result from our legislative recommendations). We note also that in allocating resources the Government will be subject to the duty to have due regard to the need to promote equality of opportunity between disabled people and other people³³.

5.11 Increasing the availability of financial assistance would overcome one of the main objections to adjustments i.e. 'who pays'³⁴. The access improvements funded by DFGs are a key way of improving equality: in a very real sense, equality starts at home. Someone who cannot even get out of their home has very little equality of opportunity. We anticipate that should the Office of the Deputy Prime Minister (ODPM) consult disabled people on what more the Department needs to do to meet its duty to promote equality, extra funding for DFGs would be high on the list of responses.

Guidance

5.12 One of the current problems is uncertainty about exactly what adjustments can be made to common parts and who has an interest in them. This is not surprising as the law makes little specific provision in relation to making adjustments and leases vary considerably. This ignorance can itself be a barrier to making adjustments. Lessees who want adjustments do not know the best way of proceeding, lessees who object are unsure whether

³² Information from an informal Local Government Association survey of some local authorities.

³³ Section 49A DDA 1995, which comes into force 4 December 2006

³⁴ Attitudes research undertaken by the Centre for Housing Policy showed that 60.5% of non-disabled people had little in principle opposition to adjustments of common parts but this dropped significantly (to 46.2%) when they were expected to pay for the adjustment.

their grounds for doing so are relevant, and landlords can be left like ‘piggy in the middle’ – trying to bring resolution to situations about which their lessees feel very strongly but with inadequate tools for doing so.

5.13 Accordingly, we **recommend (2) that the Government should provide guidance on the making of adjustments to physical features of common parts.** Ideally, this should be in statutory guidance. The guidance should draw attention to the availability of DFGs and the ability of landlords to make applications for grant (which would not attract means testing). We feel, though, that at the very least, guidance should be issued for the social sector, either by the Government or by intermediaries such as the Housing Corporation. Irrespective of its status, we feel that guidance would help many lessees and landlords negotiate their way through what can seem to them like a minefield.

Alternative dispute resolution

5.14 A major problem with the current situation is knowing how to resolve disputes between the various parties. This situation is not unique to common parts disputes, of course, and a range of organisations and mechanisms already exist to enable people to resolve disputes. These include: conciliation, arbitration and mediation. They go under the generic name of ‘alternative dispute resolution’ (ADR). The DWP provided a very helpful paper for us which described the current ADR mechanisms, bodies and costs involved (many are free). Annex 9 contains the summary table from that paper.

5.15 It is likely that some of these ADR mechanisms would already be available if those disputing the making of adjustments to common parts wished to avail themselves of the service. We believe it would be helpful for more people to access these services, as it could bring resolution to otherwise intractable problems, and we believe that the Government’s guidance should encourage the use of ADR mechanisms.

5.16 **Accordingly, we recommend (3) that the Government should investigate whether it can stimulate the use of Alternative Dispute Resolution in common parts disputes.**

5.17 This recommendation might be met by, for example, providing extra funding for ADR services, paying the fees of lessees who use the services, or by extending the scope of those already involved such as the Independent Housing Ombudsman.

Legislative

5.18. We believe that increasing the money available for DFGs, providing guidance and encouraging ADR mechanisms is a viable package of measures which will improve the system when a disabled person needs an adjustment. However, it is clear that voluntary mechanisms for resolving disputes only work when the parties volunteer to use them. The refusal by a key party to

use voluntary mechanisms can mean that there is no resolution of issues and the problem festers. This helps no-one, least of all the disabled person who cannot use the common parts.

5.19 Accordingly, whilst we have recommended that the Government should take forward various non-legislative approaches, we have also gone on to develop a legislative solution to the problem because this is likely to be the best long term answer and one which will make a real difference to people's lives. However, we recognise that our ideas need further testing and that the Government will want to satisfy itself that the scale of the problem does indeed justify new legislation. Therefore, **we recommend (4) that through public consultation the Government should establish whether new primary legislation is required and seek views on our specific proposals.**

5.20 Clearly, any legislation will need to balance the rights and views of the parties concerned. Circumstances vary considerably. It would be difficult, and potentially unfair to many people, to develop legislation which imposed fixed solutions irrespective of circumstances. However, legislation can impose a framework within which individual cases are decided on the basis of what is reasonable in the circumstances to allow the courts flexibility to take account of individual circumstances.

5.21 We recognise that what one person sees as beneficial flexibility in the concept of 'reasonableness', another person sees as unhelpful vagueness, and there are sometimes calls for further definition. There are various legislative approaches to providing guidance on how 'reasonableness' should be interpreted. For example, the DDA 1995 sets out "factors" on the face of the legislation (e.g. in employment, the extent to which it is practicable for the employer to make an adjustment), and makes provision for the Disability Rights Commission (DRC) to issue codes of practice setting out guidance, which can include those and other factors. The courts must take such codes into account where they consider the guidance relevant to a case. We believe that this provides a useful model.

5.22 We recognise also that any new legislation needs to respect, and strike a fair balance between, the rights and interests of all parties including affected third parties, such as other lessees, and any superior landlords. For example, a freeholder of a building may have granted rights of way over the common parts to a number of lessees to allow access to their premises, but the common parts remain in his possession. Or indeed, the freeholder may have let the entire building (including the common parts) to another person, who in turn then lets out part of it, and grants rights of way over the common parts. Any legislation needs to reflect such property interests. .

5.23 Legislation would also need to recognise that landlords are unlikely to have any expertise in disability access. The disabled person is the one best placed to determine, with expert help from e.g. occupational therapists as needed, what adjustments are appropriate to meet their access needs.

5.24 However, the disabled person will not always be the lessee: he might, for example, be the child or other relative of the lessee. Yet it would be contrary to the principle of existing legislation and practice to give disabled occupiers who are not themselves the lessee the right to make adjustments to the common parts.

5.25 We have considered these and other issues very carefully. We have also consulted our Reference Group on them. We believe that we have managed to develop proposals for new legislation that meet the various constraints, which will be generally acceptable and which will provide increased accessibility in common parts.

5.26 Our aim in making these proposals is to make it easier for disabled people to obtain adjustments to common parts. This should increase the number of people who would be eligible for DFG funding. It is, therefore, essential to increase the funding for DFGs (as in Recommendation 1) because without the availability of adequate financial support the full benefit of legislative change would not be realised.

5.27 We recommend (5) that the Government should develop (and consult on) legislation for England and Wales which would ensure that when requested by a lessee to make a disability-related adjustment to the common parts of let residential premises, the landlord would be under a duty to make the adjustment where that is reasonable. Factors for assessing reasonableness would need to be set out in the legislation and explained in a code of practice. Rights of third parties would need to be taken into account as a relevant factor. Where the landlord complies with the duty, this should be taken into account if he is accused of failing to fulfil obligations which he owes to lessees other than the person who requested the adjustment. Provision would need to be made to ensure that the landlord can pass on the costs of maintenance of the adjustment through a service charge. The duty should apply also to commonhold premises. The DRC should provide guidance on the duty in a statutory code of practice and provide a conciliation service. The lessee (or landlord if he chooses to do so) would be responsible for paying for the adjustment. The landlord could set reasonable conditions when agreeing to make the adjustment.

5.28 These are the key points only, some of which are considered below. Chapter 6 provides more detail on our proposed new duty, and identifies some things that will need to be considered by the Government. Chapter 7 sets out a cost benefit analysis of this proposal, which estimates a net saving to the Government of £27 million in the first year from its introduction.

5.29 This proposed duty would mean in practice that where a lessee, or someone in his household, needs a disability-related adjustment to the common parts of the property, the lessee would request a specific adjustment from the landlord. If it would be reasonable for the landlord to make the adjustment, then the landlord would be under a duty to do so. Factors that should be taken into account when the landlord considers the reasonableness of making the adjustment would be set out in legislation and expanded upon

in a DRC code of practice, which the courts would be required to take account of when hearing a case. Landlords would be able to set conditions when agreeing to make an adjustment, such as a condition that the lessee pays for re-instatement of the property when the disabled person leaves, if that is reasonable

5.30 It is the case, that not all leases will expressly reserve to the landlord the right to alter (or improve) the common parts or to reclaim maintenance costs through a service charge. Without express provision, the landlord risks coming into conflict with other lessees (i.e. other than the person who has made the request) who could claim breach of the landlord's covenant to them of quiet enjoyment, or even sue under the tort of nuisance. Our proposed legislation would need to take account of and make provision for such matters. The proposal is that the rights of third party lessees, and the likely degree of disturbance which the adjustments would cause, should be factors in deciding whether it is reasonable for the landlord to be under a duty to make the adjustment. Where the landlord complies with this duty, this would be taken into account if he is accused of failing to fulfil obligations which he owes to lessees other than the person who requested the adjustment.

5.31 For simplicity, we have assumed that the landlord owns the building. In reality, the landlord ('L1') may have been granted a lease of the building by the freeholder (the superior landlord 'L2'). L1 would not therefore own the common parts and may not have the right to make adjustments to them. Our proposed duty would need to be capable of applying in such circumstances, to ensure that the lessee has the right to request disability-related adjustments to the common parts. The description in this chapter and in chapter 6 should be read with this in mind.

5.32 We recommend (6) that when it consults on the proposed new duty the Government should, in particular, seek views on whether the proposal achieves the right balance and provides suitable protection for the landlord, the disabled person and any other affected lessees or other persons with an interest (for example a superior landlord, where the landlord is himself a lessee).

5.33 In addition, we propose that the cost of the adjustment itself should not be passed to other lessees, but be borne by the lessee who requests it (or the landlord if he chooses to do so). Maintenance costs associated with the adjustment would, in general, be shared between all lessees. Provision will need to be made to ensure that the landlord can pass on the costs of maintenance of the adjustment through the service charge. However, there are some adjustments where maintenance costs may be particularly high (for example, stair lifts). Accordingly, we believe that the legislation should provide in such circumstances for the possibility of both ownership and maintenance costs to be dealt with differently: they could fall wholly on the lessee who requested them.

5.34 We considered whether any sectors or tenure types needed to be treated differently. Although the attitudes research identified some differences

of opinion between tenures when it comes to supporting or not supporting adjustments³⁵, neither we nor our Reference Group identified any sectors or tenures that needed different treatment. However, **we recommend (7) that when it consults on our proposed new duty, the Government should seek views on whether any sectors or tenures need to be treated differently.**

5.35 A key issue is who pays for the adjustment. Three broad options are available: the lessee who requests the adjustment (for himself or a member of his household) should be responsible for paying for the adjustment and its installation; all the lessees should pay for the adjustment; the Government should pay for all adjustments.

5.36 We have recommended (above) that the lessee who requests the adjustment should be responsible for paying for it. We believe this is fair in that the cost would fall on the person who wants the adjustment (either for himself or for a disabled person living with him). It should also mean that the disabled person has control over the adjustments made (either directly as the lessee or through the lessee if the adjustment is for a disabled occupier), and the lessee may be able to get help from DFGs with the cost. This option (i.e. the lessee pays for adjustments) is estimated to result in a net saving to Government expenditure of £27 million³⁶ in the first year alone.

5.37 An alternative, which we do not favour, is that all lessees should pay towards the costs of adjustments. We believe that this would fuel any resentment or hostility to adjustments that might exist amongst neighbours and lead to unnecessary arguments about the allocation of costs. In the attitudes research, support fell markedly (particularly amongst leaseholders) when the assumption was that the respondent should pay for the adjustment, it would also mean that the focus would switch from the adjustments that disabled people need, to how much they might cost. That would be undesirable. (The costs and benefits of this alternative are not quantifiable as it is not possible to know how much this will reduce the numbers making adjustments.)

5.38 The final alternative on payment that we considered was that the Government should pay for all common parts adjustments. Clearly this would be welcomed by landlords and lessees³⁷ alike, but we simply do not think it is a practicable option. The DFG budget is heavily oversubscribed. Even if more resources were to be put into DFGs (as we have recommended), demand is likely to outstrip supply. In that context, we think it is untenable to expect common parts' adjustments to be fully funded whilst retaining a limit on

³⁵ Among the non-disabled respondents to the attitudes research, support for adjustments appears to be slightly weaker among leaseholders and opposition slightly stronger, compared to social and private tenants, at least when there is an assumption that the respondent does not have to contribute towards the cost. No such difference can be detected when the assumption is that the respondent will contribute towards the cost of adjustments.

³⁶ For an explanation of the savings see Chapter 7.

³⁷ Just over half of those who responded to the attitudes research said that the Government / Local Authorities should pay for adjustments.

adjustments needed in living areas. This would also, obviously, be the most expensive option – with an estimated net cost to Government of up to £64 million in the first year alone.

5.39 We envisage that the new duty would be a free-standing one and that failure to comply with the duty would be enforceable. However, there would also need to be a contract between the landlord and the lessee covering issues like payment for the adjustment. In developing our proposals further the Government will need to give careful thought to the rights of redress.

5.40 We are undecided about which would be the most appropriate court or tribunal for hearing disputes. Leasehold Valuation Tribunals (LVT – a form of Rent Assessment Committee) would seem ideal for the purpose, not least because the members are expert in housing issues and the LVT can visit the property and instruct a surveyor to inspect the property if necessary. However, the remit of LVTs is limited by statute and issues it cannot handle have to be passed to the county courts. The decisions of LVTs also have to be enforced in the county courts. By contrast, the county courts are also used to handling housing issues, but they have greater flexibility and powers and are able to take account of all issues that may arise in the course of hearing a dispute. They are also the forum for cases of alleged discrimination under the reasonable adjustment provisions of the DDA 1995, and the improvement provisions in that Act and in the Housing Acts 1980 and 1985.

5.41 Accordingly, **we recommend (8) that the Government should consider what rights of redress for the new duty would be suitable, and which would be the most appropriate forum for hearing disputes.**

5.42 **We recommend (9) also that the DRC's powers to provide a conciliation service³⁸ should be extended to include disputes about the new duty; and that the Government should consider whether the remit of any of the existing statutory ADR mechanisms (e.g. the Independent Housing Ombudsman) should be extended.**

5.43 We have benefited from the input of DWP, ODPM, the Department for Constitutional Affairs, the Department of Health (DoH) and the National Assembly for Wales to our deliberations. We believe it would send a powerful message of joint working and co-operation if the Government's consultation was to be conducted jointly by the five organisations.

5.44 We have also benefited from the input of the Scottish Executive. Our legislative recommendations apply to England and Wales only because we recognise that the law on common parts in Scotland is markedly different to that in England and Wales. In Scotland, most property is owned and occupied on a basis equivalent to freehold. It is frequently the case that common parts

³⁸ Sections 28 and 49H of the DDA 1995. The Equality Bill, which is currently before Parliament, proposes replacing the DRC (and the Commission for Racial Equality and the Equal Opportunities Commission) with a single Commission for Equality and Human Rights (CEHR). The CEHR would provide the DRC's current conciliation functions and should, in our view, similarly take over conciliation of common parts when it is set up.

are jointly owned by a mix of owner occupiers and landlords. In Scotland new rights for tenants under the Housing (Scotland) Bill (which has been passed and is awaiting Royal Assent) to make alterations to suit a disabled person's needs include the common parts, but only to the extent that the tenant's landlord has control over them. There can therefore be access problems where other owners of common parts do not choose to consent. As housing is a devolved issue, **we recommend (10) that the Scottish Executive should be invited to apply the concepts of our proposed new duty to the position in Scotland with a view to considering any legislative changes that might be necessary to ensure broad equivalence across Great Britain.**

5.45 It is usually cheaper and more effective to make access improvements during refurbishment than retrospectively. We considered, therefore, whether the duty should require anticipatory access improvements when refurbishing the common parts. We concluded that the duty should be as described above (i.e. a reactive one) but **we recommend (11) that the Government should consider when developing our proposal whether any resulting legislation should also require the making of access improvements to the common parts when refurbishments are undertaken.**

5.46 We are aware that the Government has recently rejected a recommendation from the House of Lords Science and Technology Committee that Part M of the Building Regulations (which deals with access issues) should, in effect, incorporate the Lifetime Homes Standards. We note the Government's decision instead to make the Standards a component of some levels of the Code for Sustainable Buildings that is being brought forward for consultation. **We recommend (12) that when the Code for Sustainable Buildings is revised (following consultation) the Government should ensure that suitable references are made to improving the accessibility of common parts of premises in new builds and when undertaking refurbishments.**

5.47 In addition, **we recommend (13) that the Government should investigate whether guidance or instructions on improving the accessibility of common parts in new builds could be given on a regional basis e.g. by the Regional Housing Boards.**

Chapter Six – Further detail about the proposed new duty

6.1 The previous Chapter gave an outline of our proposed new duty to make adjustments to the common parts of leased residential premises. This chapter provides a fuller description of the proposed duty and, in boxes, an explanation of our thinking. The chapter also includes some further recommendations.

High level description

6.2

- Where reasonable, the landlord of residential leased premises would be under a duty to make adjustments to the common parts used by lessees of the building to improve access for a disabled lessee or disabled occupier.

Scope

6.3 The duty would apply

- only to premises in England and Wales;
- in respect of the common parts;
- to the landlord of leased residential premises, irrespective of the type of tenure, which has common parts used by lessees and other lawful occupiers of the building;
- to commonhold premises
- where persons have been granted a licence to occupy premises;

6.4 The new duty would thus include lawful occupiers of the leased premises (e.g. children and lodgers), and unregistered Social Landlords (e.g. almshouses, homes for retired service personnel).

- where premises have been sub-let;

6.5 We are conscious that the existing and new premises duties in the DDA 1995 apply where premises have been sub-let. Thus, a sub-tenant who needs an adjustment (for himself or for a disabled occupier) can seek one from his immediate landlord or the superior landlord as appropriate. If sub-letting is not covered by the proposed duty a sub-tenant will have no right to an adjustment to the common parts and they will be no better off than now even if the Government enacts a new duty.

- but possibly not to certain small premises.

6.6 We considered whether there should be an exemption from our proposed duty for small premises, perhaps based on the DDA1995's exemption for 'small dwellings'³⁹, and that Act's exemption from the reasonable adjustment duties on controllers of let premises who let their only or principal home and do not use the services of a professional management agent. We consider that such an exemption could be helpful in ensuring that the proposed duty is proportionate and does not intrude unnecessarily into private arrangements. Accordingly, **we recommend (14) that the Government should consider whether there should be an exemption from the proposed duty for small premises and seek views on it when consulting on the new duty.**

Nature of the duty

- 6.7 The duty would apply only where
- a request had been received by the landlord from a lessee for the landlord to make a particular adjustment to the common parts of leased residential premises;

6.8 We believe that the lessee should have to request a *particular* adjustment, rather than simply asking for an unspecified adjustment. The concept behind this is that the lessee will identify the adjustment he needs and ask the landlord for that one. This might, of course, involve an assessment from e.g. an occupational therapist. The landlord will only have to consider whether it would be reasonable to make *that* adjustment.

6.9 However, the nature of the adjustment and its efficacy will have a bearing on whether it is reasonable to make it. So although the landlord will not be responsible for deciding whether adjustment X is in fact the right or the most appropriate one, if the landlord concludes that it would not be reasonable to make adjustment X he could offer to make adjustment Y. However, such an offer would be voluntary – although, having had adjustment X rejected, the lessee might ask for adjustment Y or some other one, which the landlord would then need to consider.

6.10 Our idea behind this approach is, so far as practicable, to maximise the disabled person's responsibility for deciding, and control over, what adjustment will most help him (through the lessee where he is not the disabled person), and minimise the need for the landlord to get involved in assessing the disabled person's access needs.

³⁹ Broadly speaking, a small dwelling is one in which the landlord or manager shares living accommodation with those not of his household, and either lets out accommodation in the premises to not more than two other households; or 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.

- the adjustment would improve access for a disabled person who is a lessee or lawful occupier;

6.11 “Disabled person” should have the meaning given to it by the DDA 1995 i.e. a person with a physical or mental impairment which has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities.

- without the adjustment access or use of the common parts would be impossible or unreasonably difficult for the disabled person.

6.12 There needs to be a point at which the duty bites. We believe that the trigger for the new duty should be similar to that used in the DDA 1995’s new reasonable adjustment duties which apply to controllers of premises. The trigger there is that without the adjustment ‘something’ (e.g. enjoyment of the premises) would be *impossible or unreasonably difficult* for a disabled person who is a lessee or lawful occupier to do. We consider that this captures the essence of what the proposed duty is intended to achieve but, clearly, the Government will need to consider the precise wording and consult on it.

- Guidance on the new duty should be provided in a code of practice issued by the DRC⁴⁰. The code should, where relevant, be taken into account in any legal proceedings.
- The landlord would only have to make the requested adjustment to the common parts where it would be reasonable for him to do so in all the circumstances of the case.

6.13 Balancing the rights of the various parties involved will be crucial to the effectiveness of the proposed new duty. The concept of ‘reasonableness’ will be used to achieve this, so setting the right parameters for determining what is reasonable will be crucial. Reasonableness is used throughout the DDA 1995 and in other legislation. It is a powerful concept which enables the needs of different parties to be balanced.

6.14 However, we believe that the legislation also needs to provide for “factors” to be set out in primary and secondary legislation which will help determine whether it would be reasonable to make an adjustment. And that guidance on the factors (and in general) should be provided in a DRC code of practice.

⁴⁰ Or its proposed successor, the CEHR.

6.15 The sorts of factors we have in mind are:

- impact on the health and safety, including fire safety, and welfare of other lessees in the building;
- scale of the proposed adjustment;
- extent of any disruption and the effect on occupiers of the building;
- the nature of any legal rights of other lessees;
- extent of any disruption and the effect on occupiers of adjoining buildings;
- feasibility / practicability of the adjustment (for example, any effect on the integrity of the structure);
- nature of the lease (for example, type, length and term remaining);
- nature of the building
- effect of, and compliance with, third party requirements such as building and planning rules and other statutory requirements;
- practicability of reinstatement (where the landlord imposes such a condition and it is reasonable to do so);
- impact on the ongoing maintenance costs on other lessees;
- impact on value of the building;
- ability to pay the landlord's reasonable costs incurred in making the adjustment (for example, professional fees).

6.16 Where reasonable, therefore, a landlord would be able to refuse to make an adjustment where the adjustment would, for example, significantly compromise someone's health or safety or if planning permission was required but consent could not be obtained.

6.17 The Government will need to ensure that any legislation is compatible with the European Convention on Human Rights – and in particular Article 1 of the 1st protocol and Article 8 which protect the right to peaceful enjoyment of possessions and to private and family life. Striking the right balance between the interests of the landlord (including any superior landlords), the lessee or occupier who needs an adjustment and other lessees' rights over their property (e.g. through the use of factors) will be key to ensuring compatibility.

Payment and ownership

6.18 Although the landlord would be responsible for making the adjustment,

- the lessee would be responsible for paying / arranging payment for it;
- the landlord would be able to impose any reasonable conditions when agreeing to make an adjustment;
- at the landlord's discretion, the lessee would be able to make the adjustment;
- the landlord should be responsible for maintenance costs but should be allowed to pass these on to all lessees under, for example, a service charge;

- however, the lessee who requested the adjustment should be responsible for maintenance costs where these are high⁴¹ (such as stair lifts);
- where the lease does not allow for the landlord to pass on the maintenance costs associated with the adjustment through the service charge, the legislation should provide the necessary powers to do this.

Costs

6.19 We have proposed that the lessee should be responsible for paying for adjustments. This would be consistent with the DDA 1995's improvement provisions (new section 49G DDA 1995 which was inserted by the DDA 2005) and should minimise the likelihood of wrangling about costs with the landlord and neighbours.

6.20 In practice, some adjustments will be paid for by means of DFGs or other schemes (e.g. ICES up to £1000). However, that will still leave many (perhaps most) adjustments to be paid for from the lessee's own resources.

6.21 Many adjustments may benefit other lessees e.g. a concrete ramp will help those with pushchairs or shopping trolleys, as well as any other lessees with mobility difficulties; a CCTV door entry system could benefit all lessees by improving security. Some adjustments are likely to benefit only the disabled person, for example, a stair lift – but even here there may be others in the block who would want to use it once it was installed or if they become disabled.

6.22 We have had to consider, therefore, whether it is acceptable to expect the first lessee who acknowledges the need for help and requests an adjustment to be the one who pays for all of it.

6.23 Individual circumstances vary considerably. It would be possible to devise a scheme that e.g. required other lessees to contribute to the cost of adjustments in a fixed proportion, in some other proportion (e.g. based on contributions to the service charge where there is one) or in proportion to the benefit they and their occupiers received from the adjustment. However, such mechanisms would have their own problems. For example, a fixed proportion would be arbitrary and linking payment to benefit received would probably be impracticable as it would require some way of assessing that benefit with avenues for appeal.

6.24 Similarly, we recognise that from the Government's perspective the suggestion by just over half of respondents to the attitudes research that the Government should fund all adjustments is unlikely to be attractive. DFGs will in future pay more towards the cost of adjustments needed by children (following the abolition of the means test of parents), and many more changes

⁴¹ This might best be set out in regulations following consultation on the meaning of 'high'.

have been recommended in the review of DFGs. However, we do not expect future changes to DFGs (if any) to resolve the issue we face of deciding who should pay for adjustments to common parts. Nor can the issue sensibly be left open.

6.25 The attitudes research shows that amongst respondents there was little 'in principle' opposition to adjustments to common parts. However, support fell significantly and opposition rose (each by around 40 percentage points) when it was suggested that the respondent would have to meet some of the costs. Around a fifth of non-disabled respondents and about a tenth of disabled respondents thought that some combination of people (e.g. landlords, all residents, Government / LAs) should pay for adjustments. Just over half of respondents thought that the Government / LAs should pay. In practice, because of DFGs and ICES the Government / LAs will contribute to some of the costs of adjustments, thus meeting the research respondents' expectations.

6.26 On balance we concluded that the lessee should be responsible for paying for adjustments. This is a pragmatic solution which should minimise opposition from other lessees and avoids having to get into issues of apportionment. However, some of the perceived unfairness in this approach (fewer than 5% of respondents thought that only the direct beneficiary should pay for adjustments) will be mitigated by our approach on maintenance costs – see below.

Ownership

6.27 Landlord and tenant law is complex when it comes to deciding who owns 'things' fixed to premises. Broadly speaking, in a dwelling a thing which is fixed to the land (otherwise described as "annexed to the land") becomes part of the land. "Land" in this case would be the premises. Essentially it is a question of fact (the mode and extent of the "annexation") as to whether something is fixed / annexed to the land, and intent (whether the annexation was for the permanent improvement of the premises, or merely for a temporary purpose, or for the better enjoyment of the thing).

6.28 Our proposal that the ownership of any fixture made as a result of an adjustment should be determined according to ordinary principles of landlord and tenant law will result in many cases in adjustments paid for by the lessee being treated as a landlord's fixture and thus belonging to the landlord. However, in some cases other specific arrangements would apply e.g. where something like a stair lift is leased.

6.29 Given the complexity of the law on this, and the limited time available to us, we have concluded that ownership should be determined according to ordinary principles of landlord and tenant law. However, **we recommend (15) that the Government should consult on the principles which should apply to determining the ownership of any disability-related adjustments to the common parts.**

Maintenance

6.30 Our proposal that landlords can set reasonable conditions when agreeing to make an adjustment is intended to allow a landlord, where reasonable, to require the lessee to pay for e.g. professional fees.

6.31 Although the DRC code will set out guidance on what might be reasonable conditions to impose, maintenance of adjustments is particularly relevant to the issue of who pays for and who owns an adjustment.

6.32 We consider that requiring the lessee to pay for the maintenance of an adjustment that he does not own and which benefits other people would be particularly invidious. Clearly, not all adjustments will have maintenance costs e.g. barring accidental damage or vandalism, grab rails or a concrete ramp need no significant maintenance. Conversely, where maintenance is required (e.g. a CCTV door entry system) such maintenance simply takes the place of maintenance that would in any case have been required for the original installation – albeit that the costs might sometimes be higher.

6.33 Landlords will already in most cases be responsible for the costs of maintaining the common parts and are likely to have some mechanism for recouping maintenance costs e.g. through a service charge or periodic rent increase. Accordingly, we consider that the costs of maintenance for an adjustment should similarly fall on the landlord. The potential unfairness to the landlord / lessees who do not benefit from an adjustment but have to pay towards its maintenance through a service charge seems less to us than forcing a lessee to pay for maintaining an adjustment used by others and which he probably does not own despite having paid for it.

6.34 However, some adjustments may incur high maintenance costs and might also raise particular issues around ownership. Stair lifts have most frequently been raised with us in this context, even though they are far from being the most common adjustments installed⁴². We accept that other arrangements may be appropriate here. Accordingly, we consider that where maintenance costs are high (for example, where a stair lift is involved) the landlord could (i.e. he will not be required to do so) pass on to the lessee who requested the adjustment all the maintenance costs (arrangements for this would need to be agreed early in the process). In such cases, it might be equitable for the lessee to have ownership of the adjustment conferred on him where it would otherwise have belonged to the landlord.

6.35 Accordingly, **we recommend (16) that the costs of maintenance for an adjustment should fall on the landlord and so be capable of being passed by the landlord to all lessees. But that where maintenance costs are high, the landlord should be able to pass on to the lessee who requested the adjustment all the maintenance costs**

⁴² According to the English Longitudinal Study on Aging 2003, only 6.8% of adjustments for men were stair lifts, and 8.6% for women.

6.36 For the sake of completeness, we should record that we did consider, and reject, other approaches to this. Lessees might, for example, have been required to pay

- for the maintenance of adjustments which they do in fact *own*. That would, though, require a case by case examination of who owns each adjustment which could lead to disputes / legal cases which might otherwise have been avoided;
- for the maintenance of any adjustments which they *lease*;
- for the maintenance of adjustments which only they or their occupiers *use or benefit from*. Again there could be arguments about usage, and maintenance costs would have to be reapportioned if another person suddenly began to use / benefit from the adjustment.

Reasonable conditions

6.37 There may also be issues about the running costs of some adjustments, and particular adjustments in respect of which a reinstatement condition would never be appropriate.

6.38 We concluded that trying to establish a set of rules that covered every circumstance would be very complicated and inflexible. It seemed better to us, therefore, to leave issues such as running costs and reinstatement to reasonableness i.e. the landlord could require the lessee to pay the running costs / reinstate premises if that would be a reasonable condition to impose in the particular circumstances. The DRC code would, though, provide guidance on what might be reasonable conditions. The sort of conditions which we thought might be reasonable where the lessee is permitted to carry out the adjustment rather than the landlord doing so, are:

- obtaining any necessary planning or building regulation consent;
- carrying out works in accordance with agreed plans and specifications;
- allowing the landlord to inspect works before and after completion;
- rectifying any defects noted by the landlord;
- employing qualified and competent contractors for the task;
- the holding by the contractor of public liability insurance for a sum suitable for the work involved;
- acceptance by the lessee of responsibility for any consequential damage arising from the adjustment;
- payment of the landlord's reasonable costs incurred in connection with granting consent for the lessee to carry out the works.

6.39 There are complex issues about the handing over of money by the lessee for the adjustment or if the works cost far more than the lessee expected and can afford. Such issues will need to be considered and resolved for any legislation: for example, what if the works are not done or the costs cause the lessee to be in debt to the landlord (that is potentially

significant if any such debt were to be treated as rent arrears as that is a mandatory ground for eviction). To help with this, **we recommend (17) that the Government should develop a model contract which would record the terms of any agreement between the landlord and lessee.**

Other matters

6.40

- the DRC should have the power (i.e. at its discretion) to provide a conciliation service to the parties involved in any dispute over adjustments to common parts;
- the DRC should be able to provide legal assistance to a disabled person;
- other ADR mechanisms should not be prevented from applying.

6.41 The DRC already arranges for independent conciliation relating to the DDA 1995's access to goods and services duties, the premises duties and (from December 2006) the Act's improvement provisions. This service, which is free, works well. Using ADR procedures is often in everyone's interest. Conciliation services that require payment may put lessees and landlords off using them.

- Complaints about failure to make an adjustment or about unreasonable conditions should be made to a suitable court or tribunal.

6.42 The new duty should be a self-standing one that applies to the landlord with failure to comply with the duty being actionable. However, there would also need to be a contract between the landlord and the lessee covering issues like payment for the adjustment. Failure to comply with that duty would also be actionable. We have recommended that in developing the duty further, the Government should give careful thought to whether it would be appropriate to have two rights of redress.

6.43 Chapter 5 describes our views on using the county courts or the LVT as the forum for hearing and resolving disputes about adjustments to common parts. We have recommended that the Government should consider and consult on which of these would be the most appropriate forum. Such consideration would need to include whether third parties (for example, other lessees) would have the right to make their views known. This is likely to be relevant when considering whether the new legislation is compatible with human rights requirements.

- The new duty should preferably form part of disability legislation.

6.44 Although we believe that the new duty should be in the DDA 1995, we do not believe that failure by a landlord to make an adjustment which it would have been reasonable to make (or the setting of unreasonable conditions) should be treated as discrimination. The Government is undertaking a review of discrimination legislation with a view to a Single Equality Bill. We think this would be a suitable legislative vehicle for our proposals. However, if an earlier legislative opportunity arose (for example, a Housing Bill) we think this should be taken. We recognise, of course, that in practice where specific legislation falls in the statute book is for Parliamentary Counsel to decide, though we understand that Ministers may express a view.

6.45 We recognise also that the Law Commission is developing a Housing Bill from its Renting Homes project, and did inform the Law Commission of our review. If / when the Law Commission presents a Bill the Government will need to consider anything relevant to it from our review of common parts.

Chapter 7 - Making adjustments to common parts of leased residential premises – cost benefit analysis

7.1 Clearly, a key issue when considering our recommendations is how much will they cost / save. The DWP has done an analysis of this for us, set out below.

Options

7.2 Three options are considered:

1. No change – common parts not covered by the legislation
2. Legislative change, cost incurred by
 - a. lessee requesting adjustments
 - b. landlords / all lessees
 - c. Government
3. Improved funding, guidance and conciliation for adjustments to common parts, no legislative changes.

Numbers affected

7.3 The Survey of English Housing identifies 270,000 households with disabled people who consider their accommodation to be unsuitable; this figure has been adjusted to get a figure for England and Wales of 285,000. It is assumed that all households living in flats and maisonettes have some common parts – 18% of households live in a flat or maisonette. A small proportion of other households will also have common parts (e.g. shared driveways and parking areas), it is not possible to quantify how many. It has been assumed that 20% of households have common parts. It is therefore estimated that **57,000 disabled people** (20% of 285,000) are facing difficulties because of inaccessible common parts.

7.4 The actual number of disabled people the proposed change will impact on are, however, much greater than this – disabled people with access issues are currently restricted in their choice of housing, this will affect their ability to purchase property and move home, for more suitable accommodation or to be near work.

7.5 There are three groups of disabled people, this will impact on:

1. Those who are already impaired and living in unsuitable accommodation (potentially prisoners in their own home)
2. Those who are already impaired and want or need to move (from suitable or adapted accommodation)
3. Those who become impaired and need to make adjustments to stay in their home

7.6 The numbers in group 2 could be as high as the number of disabled people who have different access requirements (1.4 million disabled people⁴³) - currently their choice of housing is restricted.

7.7 The number of people with the potential to one day fall into group 3 is as large as the number of people living in accommodation with common parts – estimated as 20% of the population. In a minority of cases these people may not be able to access their homes and as a result may go into care homes, where independent living could have been an option.

Note – figures provided in the costings below, may not sum due to rounding. Costs have been rounded to the nearest £ million and number of adjustments to nearest 1,000.

Option 1: Do nothing

7.8 No additional costs.

Option 2 – Legislative changes putting landlords under a duty to make reasonable adjustments to common parts, where reasonable

a) Cost incurred by lessee requesting adjustment

Benefits to disabled people

7.9 It has been estimated that half of the 57,000 disabled people facing difficulties because of inaccessible common parts (29,000 people) will make adjustments to their common parts in the first year following the legislative change. This seems to be a reasonable assumption – given that awareness of the DDA 1995 among disabled people is around 50%.

7.10 Allowing adjustments to common parts will enable more disabled people to move home more easily; fewer disabled people will be ‘prisoners in their own homes’, fewer will have accidents and will generally increase their ability to participate in society, work and live independently.

7.11 A recent report by the Joseph Rowntree Foundation⁴⁴ concluded that spending on adjustments appears to be a highly effective use of public resources with many benefits for the disabled people concerned. Even minor adjustments (e.g. handrails) produced a range of lasting results – 62% of respondents felt safer from risks of accidents and 77% perceived a positive impact on their health. Major adjustments (e.g. lifts) in most cases had ‘transformed people’s lives’. Adjustments to common parts would be expected to have similarly positive effects on people’s lives.

⁴³ Survey of English Housing, 2001-02

⁴⁴ The effectiveness of housing adjustments, Joseph Rowntree Foundation, 2001

Costs to Government

7.12 Costs to Government arise through the funding of some of the adjustments made to common parts. There are a number of funds available for disability-related adjustments. ICES are available through adult social services for minor adjustments up to a value of £1,000. Two funds are available for adjustments costing over £1,000, eligibility depends on tenure type. For leasehold owner occupiers and private renters funding is provided through DFG. For council lessees funding is provided through their Housing Revenue Accounts (HRA). Both are means tested.

7.13 It has been assumed that half of the adjustments made to common parts will cost under £1,000 and half will cost over £1,000. Therefore an estimated 14,000 common parts adjustments costing under £1,000 will be made and 14,000 costing over £1,000 will be made. This is likely to over estimate the cost - available data on internal adjustments for disabled people show that they are more likely to be minor adjustments, e.g. 60% of people needing adjustments needed a handrail⁴⁵. The estimated cost given here of funding adjustments therefore represents the maximum likely cost.

Disabled Facilities Grants and Housing Revenue Account

7.14

- Of the estimated 14,000 people making common parts adjustments costing over £1,000, it is assumed that half will make applications to receive funding through DFGs or HRAs, and it is known from the Local Government Association that 40% of DFG applications do not proceed. It is therefore estimated that an additional 4,000 grants will be paid in the first year at an average payment of £5,700⁴⁶.
- This gives a first year cost of £24 million.
- The Survey of English Housing shows that 30% of disabled people living in unsuitable accommodation are council lessees. A 70/30 split between DFG and HRA budgets is therefore assumed, resulting in £17 million additional DFG expenditure and £7 million additional HRA expenditure
- It has been assumed that all DFG applications made in the first year will be processed and paid in the same year. Due to the time taken to process DFG applications, without any improvements to the DFG processes or funding a proportion of these first year costs (and associated benefits) are likely to occur in the second year. Before a lessee can make a grant application they will have to identify and cost the work needed – the grant may take up to a year to be paid. The costs and benefits from DFG funded adjustments may therefore occur later than implied here.
- Alternatively, as central Government funding for DFGs and HRAs is set, no extra grants may be paid overall. Where DFG and HRA are

⁴⁵ English Longitudinal Study of Aging 1st wave 2003

⁴⁶ Based on ODPM figures, uprated to 2005/6 prices

paid for common parts adjustments other applications may not be met or delayed that would otherwise have been met.

- Estimated cost to DFG and HRA budgets is £24 million.

Integrated Community Equipment Services

7.15

- As ICES cover adjustments costing up to £1,000 an average payment of £500 has been assumed.
- It has been assumed that half of the estimated 14,000 people making common parts adjustments costing under £1,000 will apply for an ICES and that the same proportion as DFGs proceed, this gives an estimated 4,000 potential extra grants in the first year.
- This gives a first year cost of £2 million.
- LA receive an annual budget for ICES from the DoH. If this budget is not increased, no extra ICES may be paid, instead where ICES are paid for common parts adjustments other applications may not be met or delayed that would otherwise have been met.

Estimated cost to Government of funding adjustments (DFGs, HRAs, ICES):
£27 million

Supporting People

7.16

- It is possible that allowing people to independently leave their home, possibly for the first time in years, may result in a short term need for support with learning new skills – such as budgeting, paying bills and shopping, as they may not be used to carrying out these activities themselves. The ODPM's Supporting People programme provides such housing related support services to vulnerable people – for example older people and people with learning disabilities.
- This option is expected to have a negligible effect on the Supporting People programme. Many of the people affected, even those in the 'prisoners in their own home' category, will still have left home and taken part in activities such as going to the post office or council office to pay their rent or go shopping. Some may not have done so very often, but most would have been able to get out at least some times, while depending on someone else to do so. It would be expected that those that previously went shopping, for example, with someone else, would not be able to phase out this source of support until they were confident enough to go alone.

Housing Benefit

7.17

- The costs to the person installing the adjustment will not be paid for through their rent or service charges and therefore will not be eligible for Housing Benefit (HB).
- The maintenance of most adjustments will be included in the general maintenance of the building and may therefore affect the maintenance or service charge which may affect lessees' HB. However, maintenance is very likely to only be included in the general maintenance where the cost of doing so is very low. In many cases it would simply be in place of existing maintenance costs (e.g. where an accessible door entry system replaces a non-accessible one). Spreading this over all lessees would have a negligible effect on service charge and therefore also HB.
- Where maintenance costs are high, the intention of the legislation would be that this would be financed by the person requesting the adjustments and would remain separate to rent or service charges and would therefore not be eligible for HB.

Benefits to Government

7.18 Benefits to Government arise through reduced provision of care, both home and residential, for disabled people with problems accessing their home. Adjustments to common parts may allow some people currently receiving care to reduce the amount of care they receive. There are possible savings to the National Health Service (NHS) from fewer people going into hospital because of accidents and people being able to return home sooner.

Home care savings

7.19

- The Audit Commission⁴⁷ carried out visits to people waiting for funding for adjustments to their home and found that 17% were receiving care, which could have been reduced if the adjustment was made. Data from DoH suggests 25% of disabled people need adapted accommodation while data from the Scottish Executive suggests between 19% and 23% of disabled people need personal care assistance.
- Based on these figures it is estimated that 20% of the 29,000 disabled people making adjustments to the common parts of their property receive council funded home care that they would be able to reduce by half with an adjustment to the common parts of their property.
- This gives an annual saving of £17 million

⁴⁷ Home Alone – the role of housing in community care, Audit Commission 1998

Residential care

7.20

- Improving access to disabled people's homes may reduce the numbers needing to enter residential care. 15% of the 130,000 people entering residential care each year, i.e. 20,000 people, do so because their home is no longer suitable. If this was reduced by between just 1% and 5%, the annual savings would be between £7 million and £36 million.
- There is potentially an additional saving from people who have entered long term residential care now being able to return home. It is assumed here that this effect will be negligible.

Estimated savings from care provision: £24 million to £53 million

Hospital admissions

7.21

- It is not known how many disabled people are admitted to hospital each year because of accidents at home due to unsuitable accommodation.
- Some reduction in the number of people admitted to hospital each year would be expected from common parts adjustments.
- The NHS may also incur savings from being able to send people home earlier where their accommodation is more suitable.

Benefits to carers

7.22

- There are estimated to be over 5.2 million informal carers in the UK.
- Informal carers will be able to reduce the numbers of hours they spend caring. This will improve the quality of their lives allowing them more time for themselves and potentially to enter the labour market. The Joseph Rowntree Foundation research concluded that even minor adjustments reduced physical and mental strain on family carers and gave them more freedom and peace of mind.
- For some, this may have the additional effect of allowing the disabled person to live at home rather than entering residential care – for a significant number (38%) of people entering residential care, stress on carers is one of the reasons stated for moving into a residential care home⁴⁸.

Cost to other lessees

7.23

- Other lessees will not pay for the actual adjustment – the person requesting the adjustment will be responsible for paying for it. Where

⁴⁸ Care home for older people - admission, needs and outcomes, Personal Social Service Research Unit, 2001

the maintenance costs are low they are likely to be included in the general maintenance costs for the building, resulting in a small ongoing cost to other lessees. Where maintenance costs are particularly high it is very likely the costs will be passed on to the household requesting the adjustment.

- Other lessees may be inconvenienced by installation and maintenance of some adjustments.
- Other lessees may also feel that the adjustment is visually unattractive or not suited to the building and so reduces the value of the property. However, the attitudes research found that where lessees were not expected to contribute towards the cost of the adjustment only 6% and 3% of non-disabled and disabled lessees respectively opposed disability related adjustment being made. The report concluded there is little 'in principle' opposition from other lessees to common parts adjustments.
- Of those opposing adjustments to common parts being made when not expected to pay, the most common reasons cited were the maintenance of the adjustment, the disruption during installation and fears of reducing the value of the property.

Benefits to other lessees

7.24

- Other lessees may also benefit from the adjustments made. The attitudes research found that around a half of households with common parts reported that adjustments to common parts had already been made. This group expressed a very high level of satisfaction with the adjustments.

Wider benefits

7.25 This section outlines the benefits to society and the economy from increasing a significant number of disabled people's participation and ability to move home more easily.

Increased number of owner occupiers

7.26 Disabled people are more restricted in their choice of housing than non-disabled people. Some of this restriction may be due to inaccessible common parts.

7.27 Increasing the stock of housing available to disabled people may lead to more disabled people buying their own property – opening up the leasehold market (12% of owner occupier homes are leasehold) to more people. This will contribute to Gordon Brown's intention to create 1 million more home owners. Increased home ownership has a number of benefits including freeing up social housing, providing people with an asset base that can provide retirement income, encouraging people to improve the up keep of their homes and become more involved in their community.

Improved labour market outcomes

7.28 Increasing the supply of accessible housing allows disabled people to move home more easily, thereby enabling them to move to areas of high employment or to take up a job offer. Although the numbers who are now more enabled to move home to find work and actually do so will be small, this will make some contribution to increasing the numbers of disabled people in work and improving labour market flexibility.

7.29 For those that are in the 'prisoner in their own home category' being able to independently access their property may enable them to take up employment opportunities in their local area.

Costs v Benefits

7.30 It has only been possible to quantify the monetary costs on Government funding of adjustments and formal care costs. The costs of funding common parts adjustments are estimated at £27 million. The savings in formal care costs are estimated to be up to £53 million. It is therefore concluded that the quantifiable benefits outweigh the quantifiable costs – with possible savings to the Government of £27 million in the first year alone.

7.31 There are also significant benefits to the quality of life of the disabled people affected and in many cases their carers. There are additional knock on benefits to their local communities, the economy and the housing market. This, combined with findings that other lessees are unlikely to oppose adjustments they do not have to contribute to financially, suggests that there is a net benefit to option 2a.

7.32 The costs and benefits of option 2b and 2c are outlined where they are different from option 2a.

b) Cost incurred by all lessees

Costs and benefits to disabled people

7.33 Sharing the costs of the adjustments across all lessees may encourage more disabled people to make common parts adjustments as they will not be bearing the whole of the cost. This effect will be reduced by the fact that many would have received a grant if they were to bear the costs themselves, but may remain for those not aware of the grants or means tested out of receiving a grant.

7.34 However, due to the need to reach agreement and potential for negative reactions from neighbours, many may be discouraged from making adjustments, particularly more costly ones. Indeed, in some cases, where agreement cannot be reached the only way forward may be taking formal legal action. It is expected that more people will be put off by the increased hassle of spreading the payment than will be incentivised by sharing the

costs. That is, the expected net effect is fewer common parts adjustments being made.

Cost and benefits to other lessees and landlords

7.35 Other lessees are likely to consider it unreasonable that they should contribute towards the costs of an adjustment that they do not want or do not see a direct benefit to themselves from. The attitudes research found much lower levels of support and higher levels of opposition to adjustments when respondents were asked to contribute towards their costs. When all lessees have to bear the cost they are likely to focus more on the cost issue than the reasonableness of the actual adjustment being made.

7.36 As this option is likely to generate a greater number of disputes and therefore time landlords and lessees spend dealing with disputes there is also the opportunity cost of their time to be considered. This is an unquantifiable cost.

Costs v Benefits

7.37 It is not possible to estimate how much these effects will change the expected number of common parts adjustments made. It is assumed though there will be a proportional reduction in the estimated costs and benefits as estimated for option 2a – and hence a proportional reduction in net savings to Government spending.

b) Cost incurred by Government

7.38 Under this option the Government would pay the full cost of all adjustments to common parts, rather than just those where people apply for already available grants and are accepted.

Costs and benefits to other lessees and landlords

7.39 The attitudes research indicates that most respondents (disabled and non-disabled) believe that central or local government should pay for adjustments to common parts. As with the person requesting the adjustment paying, this option would greatly reduce the opposition from other lessees, who are unlikely to object in principle but do not feel they should have to pay.

7.40 Reducing the opposition from other lessees also reduces the opportunity costs of time spent dealing with disputes.

Costs and benefits to Government

7.41 It is assumed that the same number of adjustments are made – 29,000 in the first year and that the same proportion are minor (costing under £1,000) and major (costing over £1,000) adjustments. This gives a first year cost to Government of £89 million. This is likely to be an under-estimate of the costs as extra funding would be expected to fuel extra demand and possibly

encourage landlords to make applications for adjustments that are only marginally disability-related.

7.42 If the same number of adjustments are made, the estimated savings from spending on home and residential care will be the same – i.e. up to £53 million.

Estimated cost to Government is at least £35 million to £64 million in the first year.

Option 3 – Improved funding, guidance and conciliation for adjustments to common parts, no legislative changes – ‘improving the system’.

Benefits to disabled people

7.43

- The current lack of understanding on what adjustments can be made to common parts, what funding is available to who and who has responsibility for paying for the adjustments is likely to mean that some adjustments to common parts are not being made that with greater clarity may be made.
- It is assumed that improved guidance and conciliation will make the process easier for disabled people but will have negligible effects on the actual numbers making adjustments because of the lack of a clear right to make adjustments or of a duty on landlords to do so.
- It is known from the Survey of English Housing that 27% of disabled people living in unsuitable accommodation have not made adjustments because they think it would cost too much. It is assumed that the same percent of people with unsuitable common parts have not made adjustments due to the cost. This gives 15,000 people who may be influenced by the increased funding available.
- It is further assumed that for half of the 15,000 cost will be the only reason for not making adjustments (i.e. not also objections from neighbours), so 7,500 will be prompted to make adjustments and apply for funding.
- It is assumed that although the funding will be increased the same eligibility criteria will apply and that 40% of grant applications will not proceed, as currently.
- It is estimated that an additional 4,500 adjustments will be made. They will see the same benefits as outlined in option.

Costs to disabled people

7.44

- No extra costs – as all extra adjustments and maintenance will be funded.
- It has been assumed that guidance and conciliation service will be provided free of charge.

Benefits to Government

Home care savings

7.45

- With 4,500 extra people making adjustments that decrease their need for home care (again assuming 20% receive home care and they are able to halve the amount of care they need), Government will save £3 million in home care costs in the first year.

Residential care savings

7.46

- With only an extra 5000 making adjustments, it has been assumed this will not have a substantial affect on the annual inflow into care.

Costs to Government

7.47

- The cost of funding an extra 5000 adjustments is estimated to cost an additional £14 million in the first year.
- There will also be unquantifiable costs of issuing guidance and providing conciliation service

Costs v Benefits

7.48 It has only been possible to quantify the monetary costs on Government funding of adjustments and formal care costs. The costs of funding common parts adjustments are estimated to be around £14 million in the first year. It is estimated that there will be no significant savings in residential care, and savings of £3 million in home care costs.

The net cost to Government spending is estimated of £12 million

7.49 The value of the actual costs and benefits are obviously very dependent on the number of people making adjustments following the increased funding – the assumptions lead to an estimate that only an extra 5000 people will make adjustments in the first year. If the actual number were to be greater than this – the costs and benefits are expected to increase by the same proportion – the costs will outweigh the benefits by the same factor.

Conclusion

7.50 The analysis of the costs and benefits lead to the conclusion that the most cost effective option is option 2a - legislative change, cost incurred by the lessee requesting the adjustment. This gives cost efficiency savings to Government of £27 million in the first year. It also maximises the number of disabled people able to improve the quality of their life through common parts adjustments. The savings from this option are compared below to the costs of the other options.

Table 1 – summary of impact of all options

	Additional adjustments made	Net cost
Option 1	0	0
Option 2a	29,000	- £27 million (i.e. a saving)
Option 2b	Un-quantified (*)	Un-quantified
Option 2c	29,000	£35 - 64 million
Option 3	4,5000	£12 million

* assumed to be considerably fewer adjustments than option 2a

Note: negative costs are savings

7.51 The costs given here are first year costs. The first year costs will be the highest as the stock of people currently living with unsuitable common parts will be enabled to make the adjustments they need – and they would be expected to do so in the first year. There will be others that do not become aware of the changes in the first year, but do so in later years and then make adjustments – this group would be expected to phase out after the first few years. There will be others who become impaired and then need to make common parts adjustments. In coming years then both the costs and benefits and therefore the net benefit will reduce and then level off. The costs and benefits will reduce by the same factor, so the benefits will always outweigh the costs by the same factor.

Index of Annexes

Chapter Two**Annex 2*****DDA premises provisions***

An outline of the premises provisions in the DDA1995, as amended by the DDA 2005.

Annex 3***Review Group on Common Parts Terms of Reference***

The formal Terms of Reference for the Review Group on Common Parts.

Chapter Three**Annex 4*****Stakeholder maps by tenure***

Three maps that set out the stakeholders for “Local Authority”, “the private sector (long leasehold blocks of flats)” and the “private sector (private renting)”.

Annex 5***Examples of disabled peoples’ experience***

Examples of disabled people’s experience where they have tried to make disability-related adjustments to the common parts of leased premises. These examples have been taken from the DRC’s Helpline⁴⁹ and from information supplied by landlord and advisory organisations.

Annex 6***Legal review***

A legal review, undertaken by Jonathan Karas, a barrister with expertise in housing law, of the current law and how it applies to adjustments to common parts.

⁴⁹ This is a free service provided by the DRC. The telephone Helpline can be contacted on 08457 622 633.

Annex 7

International comparisons

Information (obtained by DWP) from eleven countries on their approach to adjustments to common parts. Six of the countries (USA, Republic of Ireland, Canada, Australia, New Zealand and South Africa) were chosen because their legal traditions are in common with Great Britain. Five European Union countries (France, Germany, Spain, Sweden and Malta) were selected to reflect the EU experience.

Annex 8

The Reference Group's Terms of Reference and membership

The formal Terms of Reference for the Reference Group and a list of the Reference Group's membership.

Chapter Five

Annex 9

Alternative dispute resolution

Non-legislative routes (identified by DWP) that are available for resolving disputes.

Research

Annex 10

Research report: "Attitudes to making adjustments to common parts of rented and leased residential premises"

Research (commissioned by DWP on behalf of RGCP) from the Centre for Housing Policy. This consisted of a telephone survey of around 200 disabled and non-disabled people who live in accommodation with communal areas, three focus groups and some in depth telephone interviews.

DDA premises provision

Disabled people have some protection against discrimination when they rent or buy property; this is set out in sections 22 to 24 of the DDA 1995. It provides that it is unlawful for a person to discriminate against a disabled person in relation to the disposal of premises:

- In the terms on which they offer to dispose⁵⁰ of the premises to the disabled person;
- by refusing to dispose of the premises to the disabled person; or
- in their treatment of the disabled person in relation to any waiting list for the premises.

The DDA 1995 also provides that it is unlawful for those who manage premises to discriminate against a disabled person occupying those premises:

- In the way they permit the disabled person to use any benefit or facilities;
- By refusing or deliberately not permitting the disabled person to use any benefits or facilities; or
- By evicting the disabled person or subjecting them to any other detriment.

It is also discrimination for someone whose licence or consent is required for the rental or other disposal of premises to withhold that licence or consent for disposal to a disabled person.

Discrimination in these contexts occurs if, for a disability-related reason, the landlord or manager treats the disabled person less favourably than others to whom that reason does not (or would not) apply, unless that treatment can be justified.

Treating a disabled person less favourably can only be justified in certain circumstances, these include:

- The landlord or manager consider the treatment is necessary to protect someone's health and safety; or
- The disabled person is incapable of entering into an enforceable agreement.

In either case it must be reasonable for the landlord or manager to hold that opinion.

The duties apply to all types of premises, both commercial and residential. However, 'the small dwellings exemption'⁵¹ excludes some small residential premises from the provisions.

⁵⁰'Dispose' has a wide meaning and includes, for example, the sale, lease or rental of a property.

Disabled people who think they have been discriminated against can apply to the county court (sheriff court in Scotland). If discrimination has occurred, the court is able to order payment of compensation. It can also make a declaration as to the rights of the parties involved and issue an injunction (in Scotland, an interdict) to prevent any future repetition of discrimination.

Duties enacted in the Disability Discrimination Act 2005

The 2005 Act adds to the existing protection for disabled people by requiring a 'controller of premises', (i.e. a landlord or manager of let premises, or premises that are to be let), to make reasonable adjustments for disabled tenants and occupiers. The new duties are set out in new sections 24A to 24L which are inserted into the 1995 Act. In addition, under new section 49G of the DDA 1995, landlords in England and Wales will be under a duty not to withhold consent unreasonably if a tenant wishes to make a disability-related improvement to residential premises where the lease allows him to make improvements.

Reasonable adjustment

As with the existing premises provisions, there are some exemptions. The DDA 2005 applies the small dwellings exemption to the new duties of reasonable adjustment. In addition, premises which are, or have been, the principal or only home of the person letting them will be exempt, provided the services of a professional person (e.g. an estate agent) have not been used in the letting.

Under the new duties, provided certain conditions are met (for example, that a request has been made), a controller of premises that are to let, or of premises which have been let, must make reasonable adjustments to their practices, policies and procedures, change a term of a letting (only for premises that have been let) or provide auxiliary aids and services for a disabled person.

Practices, Policies and Procedures

A controller of premises may have to take reasonable steps to change a practice, policy or procedure. The duty arises in respect of let premises where the practice, policy or procedure makes it impossible or unreasonably difficult for a disabled tenant or occupier to enjoy the premises or to use an associated benefit of facility; and in respect of premises to let, where it makes it impossible or unreasonably difficult for a disabled person to rent the premises.

⁵¹ Broadly speaking, a small dwelling is one where the landlord or manager shares living accommodation with those not of his household, and either lets out accommodation in the premises to not more than two other households; or 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.

Provided certain conditions are met, the controller of premises must take reasonable steps to change the practice, policy or procedure concerned so that it no longer makes enjoyment or use (or becoming a tenant) impossible or unreasonably difficult for the disabled person.

Terms of a Letting

Similarly, a controller of let premises that have been let may have to take reasonable steps to change a term of the letting if the term makes enjoyment of the premises, or use of an associated benefit or facility, impossible or unreasonably difficult for a disabled tenant or occupier.

Auxiliary Aids and Services

A controller of let premises which have been let will have to take reasonable steps to provide an auxiliary aid or service if that would enable or facilitate a disabled person's enjoyment of the premises or their use of any associated benefit or facility. This duty arises where the effect of not providing an auxiliary aid or service would be to make enjoyment of the premises, or the use of an associated benefit or facility, unreasonably difficult or impossible for a disabled person. Similarly, where premises are to let, reasonable steps must be taken to provide an auxiliary aid or service where that would enable or facilitate a disabled person to take a letting of the premises.

However, the duty does not arise unless the auxiliary aid or service is needed specifically in connection with the use of the premises. A controller of let premises would not, for example, have to supply a wheelchair for a tenant who had difficulty in walking, as the tenant would need this for general purposes, and not just for moving around the flat.

Justifications

A controller of premises may justify a failure to make a reasonable adjustment only where he believes:

- The treatment is necessary not to endanger someone's health and safety;
or
- The disabled person is incapable of entering into an enforceable agreement (such as a lease).

In either case, the controller of premises must show that it is reasonable to hold that opinion.

Enforcement

A disabled person who believes they have been discriminated against will be able to apply to the county court (sheriff's court in Scotland). If discrimination has occurred the court will be able to order payment of compensation. It can also make a declaration as to the rights of the parties involved, and issue an

injunction (in Scotland, an interdict) to prevent any future repetition of the discrimination.

Physical Features

A controller of premises will not have to take any steps that would involve the removal or alteration of a physical feature.

Improvements to let dwelling houses

Section 16 of the DDA 2005 which inserts new Part 5A into the DDA 1995 sets out new procedural and evidential provisions for England and Wales relating to the making of disability-related improvements by a tenant (although these do not apply to protected tenants, statutory tenants, or secure tenants as they already have comparable protection). It also gives the DRC powers to issue guidance in a code of practice about all disability-related improvements, to provide conciliation where there are disputes between landlords and tenants and to support legal cases.

Commonhold premises

Commonhold is a new system of freehold ownership which is applicable to blocks of flats, shops, offices and other multiple occupation premises in England and Wales. A commonhold development will consist of interdependent freehold properties, referred to as 'commonhold units', and common parts. Each unit will be owned by the unit-holder; the common parts will be owned and managed by the commonhold association, which is a limited company. Each of the unit-holders (or one of them where a unit is jointly owned) will be members of the company. In commonhold there is no landlord and tenant relationship between the unit-holders and the commonhold association.

The commonhold will be managed by the commonhold association in accordance with rules set out in a commonhold community statement. The statement will include mandatory provisions prescribed by law which cannot be changed, and may contain rules specific to the circumstances of each specific commonhold which could be changed. In certain circumstances it may be possible for the commonhold association to affect a unit-holder's enjoyment of his premises or use of a benefit or facility located in the common parts of the commonhold development.

To ensure that disabled people who are unit-holders are not discriminated against, a number of provisions were made in DDA 2005. New powers provide for the extension of the current duties of less favourable treatment to commonhold premises. In addition, powers in section 24L enable the new duties of reasonable adjustment to be applied to commonhold premises.

Review Group on Common Parts – Terms of Reference

1. To review the legal position in relation to alterations to the common parts of rented demised premises and to make recommendations to the Minister for Disabled People and the Minister for Housing to improve access for disabled people.

2. In particular to investigate, commission and develop:

i) evidence supporting the need for change (for example, the number of disabled people affected by inaccessible common parts, the effect on their lives and nature of alterations that are needed);

ii) options for change, including non-legislative ones;

iii) an assessment of the regulatory costs and benefits of the options identified;

iv) implications for the position in Scotland;

v) at least initial recommendations no later than 31 December 2005; and, subject to Ministers' decisions,

vi) consult on recommendations early in 2006.

3. Chairman - Jos Joures (Head of the Department for Work and Pensions (DWP) Disability Rights Division (DRD)).

4. Other Members:

Charlotte Sewell (Head of Leasehold Reform and Park Homes Team, Office of the Deputy Prime Minister);

Sally Christopher (Policy Manager - Property Rights and Law Commission Branch in the Department for Constitutional Affairs);

Robert Feline (Branch head in the Department of Health's Equality and Human Rights Group)

Caroline Gooding (Special Adviser and Director of the Disability Rights Commission).

Roger Harris (Head of the Private Sector Housing Branch of the Scottish Executive)

Richard Timm (Head of the DWP's Disability Discrimination Bill premises team in DRD);

Helen Tomkys (Team Leader in the Department of Health's Older People and Disability Division);

Ginnie Shaw (HoDis – National Disabled Persons Housing Service Ltd)

Alison Jarvis (The Joseph Rowntree Foundation)

John Mills (The Association of Residential Managing Agents)

Ian Fletcher (The British Property Federation)

Anthony Essian (The Leasehold Advisory Service)

Richard Gard (National Landlords Association)

Ruth Lucas (Local Government Association)

Simmy Viinikka/Justine Antil (DWP Solicitors Office)

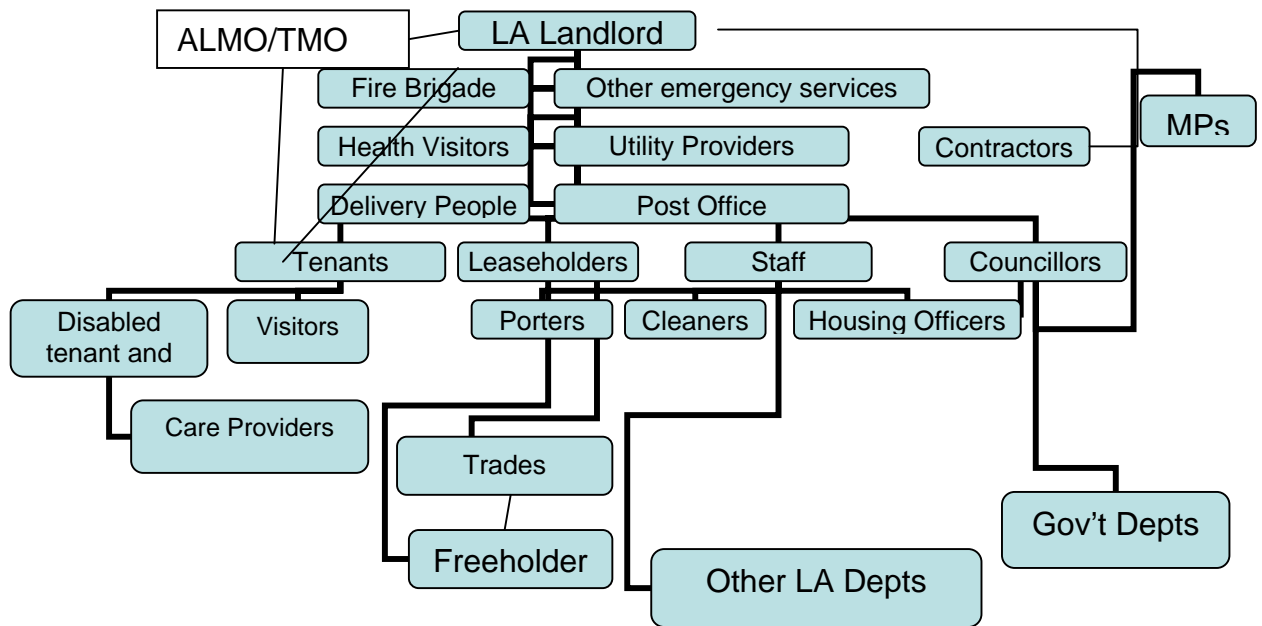
5. RGCP has powers to appoint other people as members and to invite people to assist with its work either in person or in writing. It sought ways to involve in its work organisations of disabled people, landlords and others who have a direct interest in common parts of premises.

6. Secretariat - provided by DWP's DRD, which will also bore the cost of the review.

Stakeholder maps by tenure

The following charts list the people who may be involved when considering adaptations to the common parts of rented / leased premises.

LOCAL AUTHORITY (LA)



Levels of Consultation

Connections that require consultation

LA to consult: (where there is an Arms Length Management Organisation (ALMO) or Tenant Management Organisation (TMO) the LA would do this in conjunction with the ALMO or TMO)

- Tenants (only those that would be affected by the change – not whole tenant body)
- Leaseholders (those affected)
- Freeholders (“ “)
- Staff (all who would be affected by the change)
- Care Providers (whose who would be working in the block with the adaptation)
- Relevant LA departments – such as legal and planning
- Councillors (particularly the ward councillors for the area that the adaptation would be situated in)
- Contractors (only where the adaptation would affect the running of their contract)
- Fire Brigade (for large units with regular fire checks)

Connections that LAs may wish to consult (in addition to those above)

Emergency service provides
Fire Brigade (for smaller units)
Health visitors

Connections where the LA may wish to inform of adaptation

Post Office
Utility Providers
MPs
Government Departments (returns to ODPM on DFGs would probably do this)
– but there maybe cases where they have to inform the Secretary of State
about change of use (Legal dept would advise)

Connections where no consultation/information should be required

Tenant's visitors (this would be impossible to monitor and reasonably do)
Leaseholders and freeholders repair's people (not contracted by the authority
– again this would be impossible to monitor and to do)

Private sector – long leasehold blocks of flats

RED = MUST BE CONSULTED

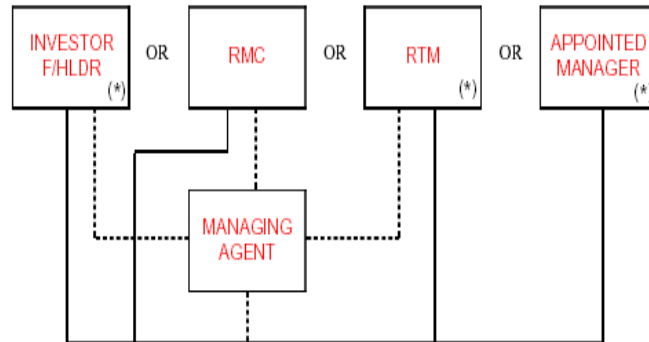
GREEN = SHOULD BE CONSULTED

BLUE = SHOULD BE INFORMED ON NEED TO KNOW BASIS

YELLOW = NO NEED TO INFORM OR NOT PRACTICAL TO DO SO

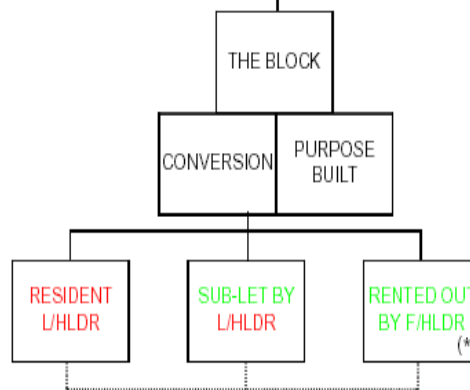
PART I:-

OWNER AND/OR CONTROLLER OF BUILDING:-



MANAGER:- (OWNER/CONTROLLER DIRECT OR M/A)

TENURES:-

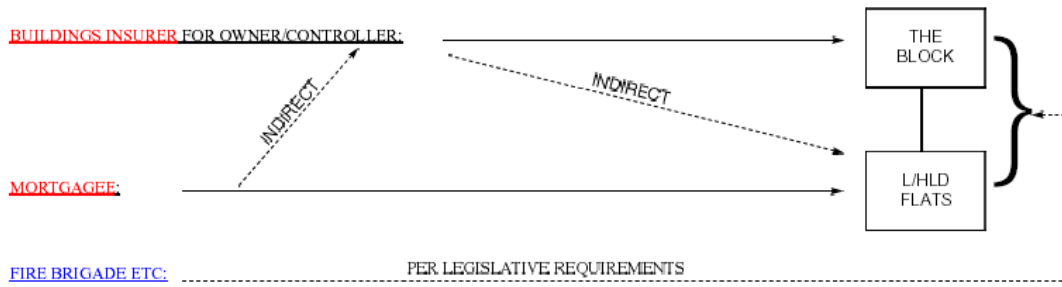


ADDITIONAL INVOLVEMENT:-

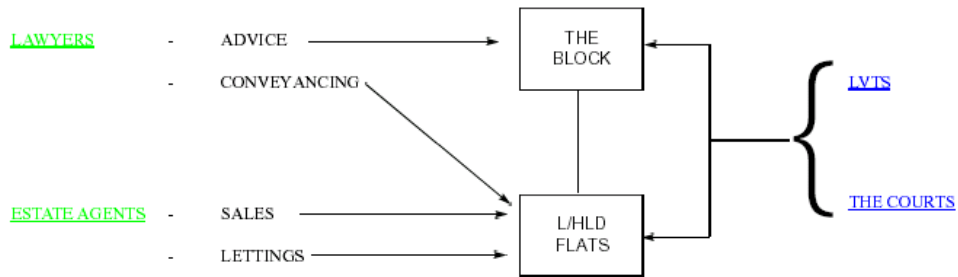
- Legal responsibility
- - - - - Responsibility as agent of principal
- Res Assoc. Rights of Consultation

(*) These would not apply to commonhold - read c/hold association for RMC and unit holder for l/hldr.

PART II:-

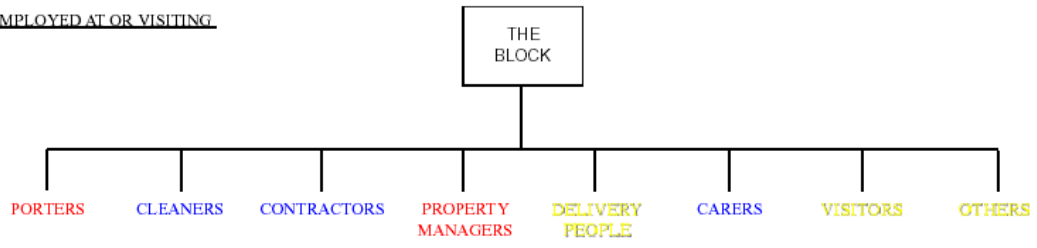


PART III:-

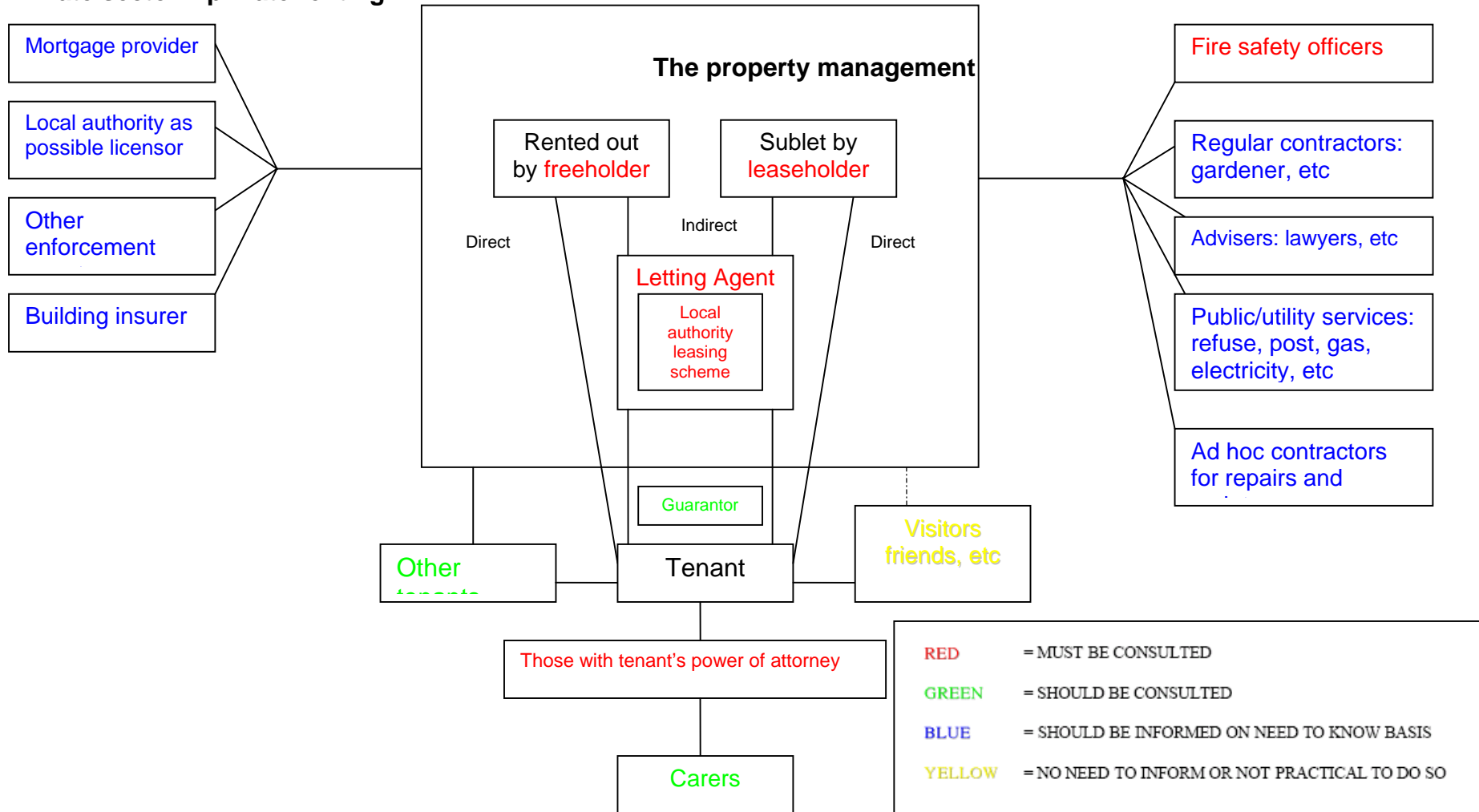


PART IV:-

EMPLOYED AT OR VISITING



Private sector – private renting



Note: with flats, a long leaseholder will often sublet and in those circumstances this map becomes an extension of the green 'bits' of part 1 of the map.

Examples of disabled peoples' experience

- A. "An elderly couple were living on the first floor of a two storey building and the husband became housebound. The wife requested permission to have a stair lift installed in the communal hallway at her own expense (including ongoing maintenance). The hallway was shared by a total of 4 households including the applicant. We consulted with her 3 neighbours who did not have any objections so permission was granted on the understanding that as and when they sold their home the stair lift would be removed and the area made good".
- B. "A residents association requested external handrails be fitted outside ground floor flats on a scheme for the elderly to assist residents climbing steps into their home. This was discussed and agreed with residents and rails were fitted with the cost being met out of the sinking fund account for the development".
- C. "We agreed to let a property to a disabled man (wheelchair bound) and his partner. Both are employed and with a little state assistance can afford to pay the rent themselves. The bungalow is a lovely property which has been renovated to an excellent standard at great expense to the landlords. The landlady considered the application to rent the property and with a bit of persuading agreed the let. *I have to be honest and say that many landlords would not have agreed this let to these people as others were seeking this property.*

The favourable deciding factor for the landlord was when I quoted the current disabled discrimination act governing the residential lettings. The landlord was comforted by the fact that the landlord did not have to make changes to the property (ramps etc) and agreed the let to this couple. If the landlord was liable for making changes to the property when required you can be sure that we would have let the property to someone else and the disabled tenant would have been declined for one reason or another.

As it happened the tenants have had great difficulty getting a suitable ramp for the property installed and the new upvc front door needs to be lowered. The landlord has agreed for this work to be done at the tenants cost. I understand that the tenant can claim up to £200 access benefit towards this cost. The surplus cost is being split between the tenant and the landlord".

- D. "A disabled leaseholder in a wheelchair asked if we would provide a set of automatic doors to the front entrance. The local manager looked at this request sympathetically (even though it was highly unlikely the work would ever go ahead) and obtained a quotation (for about £11,000). Other leaseholders then "got wind" of the request and my office was bombarded with telephone calls and letters. We were castigated for

even considering the matter (“you want to turn this place into a nursing home”) and the poor old leaseholder was sent to Coventry”.

- E. “Caller was phoning on behalf of her boyfriend’s father who following an accident is now paralysed. He is still in rehabilitation and is preparing to come home. He lives in a block of flats and he along with the other residents own their flats.

He has put forward proposals for a lift to be installed to enable him to gain access to his flat but two members of the management board have refused it. There is going to be a ballot for all the residents in the block of flats concerned and the surrounding blocks to decide whether the permission should be granted.

The two member of the board that are refusing to give permission are saying that the lift will restrict access and bring down the property values. Some residents who live in the block of flats next to the proposed flat are not happy because they say it will look like an old people’s home!”

- F. “Caller wanted to know whether a Housing Association is breaking the law by removing an accessible entrance to a block of flats because of complaints by the tenants that they stayed open too long. Then replace them in another area with an automatic closing gate but with steps making it difficult for those using scooters to access. When the Housing Association was challenged on this, their response was to say that they do not house severely disabled people.”
- G. “A couple buy into a brand new retirement development. She is fit, he uses a wheelchair. Internally, the development is designed for wheelchair access, but there is a step down from their French windows to the patio. The couple wanted a ramp placed at the door and approached the developer. The developer refused, saying it was sold as seen. The couple then approached the management company and we explained that we could not spend collective service charge money on something that would benefit just one individual. The local MP, disability alliance and various other bodies got involved. We asked other leaseholders how they felt and the overwhelming majority said they did not want us to spend “their” money on such an improvement. Eventually a compromise was reached whereby the couple paid for a demountable ramp, but the whole episode caused a lot of grief”.
- H. “The caller is calling on behalf of 2 of his clients who live in a block of flats. A management group in which the clients pay a yearly service charge runs the flats. The flats that the caller clients are living in are having their fire alarms up graded because the two clients are deaf they will need a different alarm than the other people living in the flats. The alarms that the clients need are one that flashes and a vibrating pager but this will cost the client an extra £200 and the management are not will to pay this or spread the cost over the other people living in the flats.

The caller wanted to know were they would stand on this and if they can do this?"

- I. "A Citizens Advice Bureau in Wales reported that she was unable to use her mobility scooter as she could not access the back lane behind her property. She has applied to the local authority planning department for a path to be built so she can use this lane, but has been told that her request is unlikely to be granted, as the cost would be prohibitive and the client would not be a priority case".
- J. "A Citizens Advice Bureau in the West Midlands reported that their client could not use the wheelchair ramp designed to provide access to her property as it needed to be specially adapted for her use. When she asked the housing association to make the changes, she was told that they had no grant money left for that financial year and that the work would have to wait for several months".
- K. "Caller contacted on behalf of her father who lives in sheltered accommodation. He has chronic emphysema and is increasingly housebound, and unable to climb stairs. He has asked for a stair lift and offered to pay for the installation and maintenance of it. His neighbour has objected and the management committee have said that they cannot overrule the objection, and that all four people in the block must agree."
- L. "Caller lives in a housing association flat and there is a communal stairway for the residents who live on the upper floors. Caller has severe arthritis that has affected her mobility and she finds climbing up and down the stairs to get to her flat difficult. Caller has had a quote for a stair lift to be fitted and has consulted a fire officer who has confirmed that it would not be a fire hazard. Caller is unable to go ahead with the installation of the stair lift because one of her neighbours has complained about the proposal claiming that it would be a fire hazard. Caller wanted to know whether the Housing Association should allow the stair lift to be fitted."
- M. "A retirement development was built without any provision for storing buggies. The local estate manager obtained a quotation for construction of a buggy store and formally consulted owners. Again, a rather forceful reaction from leaseholders, including several solicitors' letters expressing opinion that we had no power to do this under the lease. Proposal dropped and leaseholders now store buggies in their apartments".
- N. "Request from disabled lady in non-retirement development to have main door changed In order to make access easier for her. On consultation all other leaseholder rejected the proposal".
- O. "When a stair-lift was fitted in a communal area at a cost of £6,000 the resident unfortunately passed away 2 weeks later. The remaining

residents objected very strongly to the stair lift being in place and it had to be removed”.

- P. “Residents have also complained when a stair lift was in place in a communal area as it was deemed unsuitable when they had visiting children to their properties”.
- Q. “The received email reads as follows: A CRY FOR HELP what would constitute the perfect 80th birthday present for a disabled senior citizen living in a first floor flat? In X’s case it was receiving a letter from the Main Landlord / Freeholder of the Flats property granting her permission to install a stair lift along the ground floor to first floor stairway of the block of flats where she lives. So, X lived happily ever after.....not quite.

She duly informed the Property Agents appointed to service the flats, of the letter of permission from the Freeholders to install her stair lift, and her intention to purchase such forthwith. X received a swift reply from the property agents forbidding her to have a stair lift installed and threatening legal actions against her if she did so. Yep, you got it....the birthday present turned sour.

X and her husband bought their first floor flat when the property was first constructed in 1978. Both were hale and healthy, and 25 years younger, at that time.

There are 24 flats, four blocks of six flats each, with two flats on each of the three floors. There is a single entrance / exit to each block, with commercial width staircases accessing the first and second floor flat units.

In recent years X has undergone two hip operations which, coupled with the advances of old age, have disabled her walking mobility and caused her to use a crutch. X is registered as a disabled person. While she can move around quite well, albeit slowly, on level ground, the stairway from the ground floor to her first floor flat proved a major obstacle, taxing her deteriorating physical condition and declining energy to the point of exhaustion and collapse.

X canvassed various stair lift manufacturers. They duly inspected the stairway and advised that the proposed stair lift could be installed with simplicity, and mounted on the stairs itself, without fastenings to the wall of the stairway. These units are designed for the narrow confines of regular household stairs, fold away compactly when not in use, are of silent operation and would thus present no obstruction to the commercial width stairway of X’s flat’s block.

X applied for permission at the Flats holding company Annual General Meeting, where her petition was refused. With support from other sympathetic residents X undertook to resolve any grey areas and

implications by contacting the Fire Safety Officer and the Planning Permission office. Both offices studied the stair lift details and replied that such installation complied with Fire Safety Regulations and planning permission was not required. The Fire Safety Officer further stated that the stair lift would provide a fire escape system for X in the event of a fire breaking out in the flats block.

X further composed a detailed list of her recognised responsibilities for the stair lift, which included third party insurance cover, the fact the costs of the stair lift and its maintenance would be borne by herself, the low voltage power supply would be connected to her electric meter and that the stair lift would be removed without noticeable effect if ever she moved.

This well-documented petition was again presented at the 2002 Annual General Meeting.....and yet again denied. One member of the Management Committee even had the distasteful audacity to proclaim to the assembly that there would never be a stair lift installed while she was a Director of the Management Committee. This is the type of animosity displayed against an 80-year old invalid lady by certain callous neighbours.

Later in 2002 X's husband was hospitalised with a heart condition and she became a virtual prisoner in her own flat. Unable to shop for her everyday needs, unable to go downstairs and collect her mail, unable to venture outside to the dustbin area and dump her kitchen and household wastes, and unable to visit her husband in hospital. All of these factors would have been possible if a stair lift had been installed. Thus in an attempt to improve the quality of her life X decided to apply for permission to install a stair lift yet again at the 2003 Annual General Meeting. And yet again permission was refused. In a pathetic attempt to shrug responsibility for repeatedly denying X's petitions the Management Committee stated that the power to grant permission did not lie with them, but rather with the Freeholders. Thus X wrote to the Freeholders directly, petitioning their permission to install a stair lift, and on her 80th birthday received their most gracious reply, granting permission and wishing her well with the improvement the stair lift would definitely provide to the quality of her life.

As previously mentioned X duly informed the agents, only to be informed that legal action would be initiated against her if such installation went ahead, with intimidative mention of consequential damages being attached.”

Legal review

Jonathan Karas was instructed by DWP to provide advice to the RGCP and for no other purpose.

ADVICE

1. The Review Group on Common Parts (RGCP) has been set up by the Department for Work and Pensions (DWP). Its function is to consider the practical and legal difficulties faced by tenants and leaseholders in securing adaptations to improve access over the common parts of the premises (such as the stairs and entrances) for themselves (if they are disabled) or for other disabled occupiers. The Review Group, therefore, needs to understand the current legal framework under which rights are enjoyed over “common parts”.

1. This area of law is complex: it is underpinned by contractual relationships contained in leases (which are often sophisticated documents). These contractual relationships give rise to property rights in land with legal consequences: for instance, a tenant has an interest in land, the right to possession and the ability to maintain actions for “trespass” and “nuisance” for interferences with that right as well as the contractual right of “quiet enjoyment”⁵². The law is then overlain by a substantial body of statutory regulation. In addition, sometimes the right to occupy is granted under a “licence” which may or may not be contractual but which does not give rise to an interest in land. Because of this complexity, I shall not in this Advice undertake a comprehensive analysis of the law and principles involved. I shall merely set out in very general terms the broad structure of the relevant legal framework and summarise my views on the points which have been raised. If a more discursive analysis is

⁵² The landlord’s covenant for “quiet enjoyment” which will be implied, if not expressly agreed, gives a tenant a qualified right to possession of the property without interruption.

required either generally or on a particular topic, I shall provide further advice as required.

Leases and tenancy agreements: what are “common parts” and the nature of tenants’ rights over them?⁵³

Common parts: generally

2. When found in a lease, the phrase “common parts” is not one with a definite legal meaning. Under a lease of premises in multiple occupation⁵⁴, the various occupants may have rights over areas in common with others (usually other occupiers of the building and very often with the landlord). These areas are often referred to as “common parts” (but sometimes one will see other terminology; for instance, one sometimes finds references to an “estate” or a “building” over which such rights are granted).

What a well-drawn lease will usually provide

3. A well drawn lease of premises in multiple occupation will define in words and/or by reference to a plan those areas which are to be common parts in this sense. It will also define the precise rights which the tenant under the lease has over those common parts.
4. A well drawn lease will also:
 - (1) provide for who is to have responsibility for repairing and maintaining the common parts (usually this will be the landlord or a management company);

⁵³ Instructions paras 52 and 54

⁵⁴ In this Opinion, unless it appears otherwise, I use the phrase “multiple occupation” in the colloquial sense and not in the technical sense in which it is used in Housing practice.

- (2) make express provision if it is contemplated that anyone is empowered to improve the common parts (sometimes a lease will provide that a landlord or management company may improve common parts as one of the services provided; I do not recall, however, seeing a residential lease under which individual tenants have been given this power); and
- (3) provide for how the cost of repairs, maintenance, improvement etc. are to be borne between the various parties who have rights over the common parts.

The nature of rights over common parts

5. The rights which tenants have to make use of “common parts” may be characterised either as easements or as “licences coupled with grants”. Either way, they are capable of enduring through changes of ownership and binding successors in title to the landlord’s land over which the rights are granted.
6. Sometimes, tenants will be granted rights over adjacent land the ownership of which is *not* retained by the landlord but over which the landlord itself has rights. These rights will be capable of binding successors in title to the land burdened with such rights if they are “easements”. A right of way is an easement. Not all rights over the land of a third party are easements so as to be capable of binding successors to the third party. A true easement is either a right to do something or a right to prevent something; a right *to have something done* is not an easement; an easement will generally not put the owner of the land over which it exists under an obligation to do something. For instance, a right of way does not put the owner of the land over which it runs under an obligation to maintain the way⁵⁵.

⁵⁵ See e.g. *Duke of Westminster v Guild* [1985] 1 Ch 688, 700F

7. The right of a tenant to use common parts will usually extend to licensees of the tenant. So, disabled people who occupy premises of which someone else is the tenant will be able to use the common parts *as licensees of the tenant*. They will, however, have no contractual rights against the landlord.
8. The extent of a landlord's and a tenant's respective rights over and obligations in respect of "common parts" will be a matter of construction of the contract under which the rights are granted (usually a lease or tenancy agreement).

Rights and obligations to improve common parts

9. In the absence of express provision, it is unlikely that a landlord will have any *obligation* under the terms of a lease to improve the common parts to accommodate a tenant who is disabled. The landlord may, however, have obligations to repair and maintain the common parts⁵⁶.
10. On the other hand, some leases may be widely enough drawn to give the landlord *powers* to improve common parts to accommodate a tenant who is disabled (or another disabled person who uses the common parts) and to recover the cost of doing so through the service charge provisions in the relevant leases. Even in the absence of express reservations of the right to carry out improvements to the common parts, the landlord will usually retain sufficient powers to be entitled to carry out works over these areas provided that such works do not interfere with the rights of others⁵⁷. If, however, the landlord carries out works of improvement which it has not reserved to itself the right to do and those works interfere with the exercise of the rights of tenants over the common parts, it may be in breach of its obligation

⁵⁶ Woodfall's Landlord and Tenant, para 13.004.

⁵⁷ But in the absence of express terms in the lease or an agreement, the landlord will not be able to recover the cost of such improvements from the tenants: see para 17 below.

not to derogate from its grant to those tenants and/or may commit an actionable nuisance.

11. It is unusual to find a tenant being granted an express right to improve the common parts of a building in multiple occupation. Such an express provision is something which I have not seen in a residential lease.
12. In some instances, however, the grant of an easement may have implicit within it the right to maintain or improve the subject matter of the easement. This right will extend to repairing the subject matter of the grant so as to put it into the condition contemplated by the grant (for instance, it might enable the tenant to *repair* a broken handrail). The right will also extend to *improvements* carried out to facilitate the use contemplated by the grant. Accordingly, a tenant may be able to carry out work to common parts at his or her own expense provided that these works do not interfere with the rights of others: for instance, the tenants may have the right to improve the surface of a pathway or drive over which rights of way were granted⁵⁸. Whether such right is implicit, and the extent of such a right, will depend upon the construction of the lease in question⁵⁹.
13. Again, whether the tenant would have any obligation to re-instate the improvements at the end of the lease would depend upon the terms of the lease in question. In the absence of express provision, there would be no obligation on the tenant to reinstate nor a right for anyone to recover any “compensation for tenant’s improvements” if the tenant was within his or her rights to carry them out⁶⁰.
14. On the other hand, in the absence of a clear provision in the lease, the rights of a tenant may well not extend to entitling the tenant to

⁵⁸ See generally Gale on Easements, 17th edn. para 1-82 ff.

⁵⁹ The dicta in the Scottish case of *Drury v McGarvie* [1993] SLT 987 at 992 to which I have been referred is consistent with these propositions

⁶⁰ Instructions 53(d).

improve the *structure* of the common parts so as to change the nature of the easement contemplated at the date of the grant. For example, the grant to a tenant of a right to use a staircase will not on the face of things, entitle him or her to install a chair lift. Likewise, in the absence of clear words, I doubt that an implicit right would enable the tenant to install new lighting or to interfere with electrical installations within the possession of the landlord. Furthermore, in the absence of clear indications to the contrary, it might well be doubtful whether such a grant would extend to replacing handrails on a staircase which were in place when the grant was made if these were in a good state of repair (though if the tenant were to repair a handrail which was in *disrepair* that would be a different matter – see above). Of course, a lease may be drafted expressly to limit the extent of a tenant's rights to carry out works to the common parts

15. If a tenant were to carry out works to common parts without a right to do so under the terms of the lease or without the permission of the landlord, then this would amount to a trespass to the landlord's property and the landlord may have a claim for damages. What is more, any interference by the tenant with rights enjoyed by someone else over the common parts might amount to an actionable nuisance.

How are works to the common parts to be paid for

16. In shorter term tenancies, it is often the case that the rent will include the contributions to services etc.. In long leases, there are usually provisions for service charges to be collected from the lessees. Unless there is a provision in the lease allowing the collection of service charges for improvements to the common parts (as opposed to repair or maintenance) the lessees will *not* be obliged to contribute to the cost of improvements.
17. The extent to which contributions may be recovered will depend on the terms of each lease. Each lease will be construed in its own

context. On the other hand, “[t]he purpose of the service charge provisions is relevant to their meaning and effect. So far as the scheme, context and language of those provisions allow, the service charge provisions should be given an effect that fulfils rather than defeats their evident purpose.” In general service charge provisions have the purposes of ensuring that the landlord that reasonably incurs liability for expenditure for the benefit of all its tenants there should be entitled to recover the full cost of doing so from those tenants and each tenant should reimburse the landlord a proper proportion of those service charges⁶¹.

Conclusions on the rights of disabled tenants to secure improvements to common parts under the terms of leases

18. In practice,

(1) under the contractual terms of a lease or tenancy agreement, it is possible that a tenant at his or her own expense may be able to carry out works of improvement to common parts in so far as these works are ancillary to the rights over those parts granted under the terms of the lease (as indicated above, these rights may be implicit); on the other hand, a lease will not be construed so as to permit a tenant to carry out significant works of alteration to the common parts of a building if these works go beyond what was contemplated at the date of the grant of the lease (having regard to the terms of the lease in its context);

(2) the landlord may have the power to carry out improvements to the common parts; but

⁶¹ See *Universities Superannuation Scheme Ltd v Marks & Spencer Ltd* [1999] 04 EG 158

(3) whether or not the landlord will be able under the service charge provisions of the relevant leases to recover the cost of carrying out such improvements, will be a question of the terms of each lease;

(4) if the landlord does not have the right to recover the cost of the improvements from the lessees; the cost of the improvements will either fall on the landlord or others who separately agree to contribute to the cost of these improvements⁶².

19. It should be borne in mind that landlords of residential premises in multiple occupation are often companies owned by the lessees themselves. In any event, very often such landlords (or management companies) will not have the resources of their own to carry out significant works of improvements without an ability to recover the cost of the improvements through the service charge provisions in the relevant leases.

20. Even if the landlord has the right to recover the cost of improvement through the service charge provision of the relevant leases, my Instructions note that “where neighbours object, the plan will invariably falter” (paragraph 5). That a neighbour may object to having to contribute to the cost of improvements from which he or she will receive no tangible benefit, is intelligible. It is also understandable that landlords might not wish to enter into a disputes with tenants who object to the carrying out of improvements.

21. Disputes about the extent of rights of access and works to common parts are likely to fall within the jurisdiction of the Courts. Most such disputes will be determined in the County Courts⁶³.

⁶² If improvements are required by statute, it is again a matter of construction of the lease whether or not the cost of improvements can be recovered from the tenants. In the absence of express terms, it is unlikely that the cost of the landlord’s works to comply with statute will be recoverable from the tenants.

⁶³ Instructions para 53(d).

Statutes

22. I have been asked to consider statutory provisions (other than the Disability Discrimination Act 1995 and the amendments made by the Disability Discrimination Act 2005⁶⁴) which may affect the position of disabled people's rights over common parts.
23. There are a number of legislative codes giving tenants security of tenure⁶⁵. In general, these do not affect tenants rights to alter and improve *common parts* (as described above).
24. The exceptions are sections 81 to 83 of the Housing Act 1980 (which apply to protected tenancies) and section 97 to 99 of the Housing Act 1985 (which apply to secure tenancies). These introduce implied terms into the tenancies so that a tenant will not make an improvement without the consent of the landlord, such consent not to be unreasonably withheld. "Improvement" means any alteration in or addition to a dwelling-house. "Dwelling-house" includes land let together with the dwelling-house⁶⁶ and land for these purposes appears to include easements and rights over land⁶⁷. There are further provisions concerning consent and, in the case of secure tenancies, compensation etc.. It appears at least arguable therefore that landlords to which these provisions apply may not unreasonably withhold their consent to improvements to the subject-matter of easements over common parts. It is, however, doubtful whether these provisions will be construed so far as to allow a tenant by means of works of improvement to extend the nature of the rights over land which he or she was granted: thus where the "land" is a right to use a staircase, I doubt that these provisions can be construed to give a disabled tenant the right to install and use a chairlift. In short, while

⁶⁴ Instructions by e-mail 23rd June 2005

⁶⁵ Instructions paras 59-60

⁶⁶ Housing Act 1980 s.85 – see Rent Act 1977 s.26 Housing Act 1985 s.112(2))

⁶⁷ Interpretation Act 1978 s.5 and Sch 1

these provisions could arguably be construed to give the tenant the right to make *physical* improvements within the scope of the right which they were granted; they could not give the tenant the right to improve on the rights themselves.

Landlord and Tenant Act 1985

25. The Landlord and Tenant Act 1985 restricts the amount recoverable by landlords as service charges in respect of dwellings and provides procedures which must be adopted by landlords before service charges are recoverable. Under these provisions “relevant costs” (which include contributions payable directly or indirectly for improvements) are to be taken into account in calculating service charges only to the extent that they are reasonably incurred and where they are incurred on the provision of services or the carrying out of work, only if the services or works are of a reasonable standard.
26. This statute is relevant. Even if a landlord is entitled under the terms of a lease to recover the cost of adaptations through the service charge provisions contained in leases, questions may still remain concerning
 - (a) whether it has gone through the relevant procedures under this Act; and
 - (b) whether the costs were reasonably incurred and the work carried out to a reasonable standard.
27. Disputes over the recoverability of service charges under leases are generally within the jurisdiction of the Leasehold Valuation Tribunal. Accordingly, if a landlord carries out adaptations to the common parts of a building and seeks to recover the costs, there might (depending on the circumstances of the case) be arguments over whether the cost of works for the benefit of one tenant or occupier were

reasonably incurred (particularly, for instance, if the tenant or occupier had a short term interest).

Landlord and Tenant Act 1987

28. This Act contains a number of provisions regulating the relationship between landlord and tenant. Of particular significance to the issues which may arise in considering works of adaptation of common parts are the provisions of sections 35, 37 and 38. These provisions allow for the variations of long leases of flats to be made in certain circumstances. Any party to a long lease may make an application. For instance, where a lease does not make satisfactory provision for the recovery by one party to the lease from another party to it of expenditure incurred or to be incurred by him, or on his behalf, for the benefit of that other party or of a number of persons who include that other party; and/or the computation of service charges, variations may be ordered.
29. These provisions, however, do *not* in terms allow for variation of the leases to give a landlord a power of *improving* the common parts if on the true construction of the lease(s) in question he has no such power. The Secretary of State has power under s.35(2)(g) (which was introduced by the Commonhold and Leasehold Reform Act 2002 s.163) to prescribe matters by regulation in respect of which variations may be ordered. In principle, it seems to me that these powers can be exercised to prescribe that leases may be varied to enable persons to adapt the common parts to provide access for disabled people and to recover the cost of doing the same.
30. If the variation is disadvantageous to another party, however, compensation may become payable by a party to the lease: see s.38(10). The existence of these provisions for compensation is important and forms part of the substantive scheme of these provisions. Without such provisions, it is possible that this legislation

would result in the infringement of rights under Article 1 of the 1st Protocol to the European Convention on Human Rights (which protects property) to the extent that variations substantially affect the rights of landlords and tenants.

31. The powers to make variations under these provisions are now vested in the Leasehold Valuation Tribunal. I have some experience of obtaining variations when the jurisdiction was vested in the County Court. In cases where substantial buildings or estates are involved, co-ordinating such applications where there are numerous tenants (and their mortgagees) who are affected may be a time-consuming and costly exercise. The Leasehold Valuation Tribunal's jurisdiction to make provision for the costs of applications is narrow: see Commonhold and Leasehold Reform Act 2002 s.174 and Sched 12 para 10(4).

*Commonhold and Leasehold Reform Act 2002*⁶⁸

32. There are two aspects of this legislation that are particularly relevant: (1) commonhold and (2) the right to manage.
33. "Commonhold" is a new form of shared ownership by "unit-holders". It is a scheme which provides for the ownership of the freehold of interdependent properties ("units") and the corporate ownership and management of the associated common parts by the unit owners (a "commonhold association"). No one in the scheme has a greater interest in the individual unit than the registered unit-holder and a "commonhold community statement" will govern the use and maintenance of the units. The contents of the commonhold community statement are governed by the Commonhold Community Regulations 2004. The statement must make provision for
 - (c) regulating the use of the common parts;

⁶⁸ Instructions para 61

(d) requiring the commonhold association to insure the common parts;

(e) requiring the commonhold association to repair and maintain the common parts

(f) the alteration of the common parts

See ss, 25-26 and 69 of the 2002 Act and Sched 3 paras 4.4-4.6 of the 2004 Regulations. Under para 4.6.1 of the Regulations, it is provided that

The commonhold association must not make any alterations to the common parts or cause or permit the common parts to be altered unless the proposed alteration is approved by ordinary resolution.

Accordingly, alterations to common parts to make adjustments to make them suitable for disabled unit-holders (or other occupiers) will only be possible with the concurrence of the commonhold association in this way.

34. The “right to manage” gives lessees the opportunity to carry out functions relating to services, repairs, maintenance, improvements and management generally, previously carried out by the lessor, and thus to obtain practical control of a building. These functions are carried out through “RTM” companies. The right to manage may be exercised in relation to premises if

(g) they consist of a self-contained building or part of a building, with or without appurtenant property⁶⁹;

(h) they contain two or more flats⁷⁰ held by qualifying tenants; and

(i) the total number of flats held by qualifying tenants is not less than two thirds of the total number of flats contained in the premises.

⁶⁹ “appurtenant property” in this context means a garage, outhouse, garden, yard or appurtenances belonging to or usually enjoyed with, the building or part of flat (s.112(1)).

⁷⁰ “flat” in this context means a separate set of premises (whether or not on the same floor) (a) which forms part of a building, (b) which is constructed or adapted for use for the purposes of a dwelling, and (c) either the whole or a material part of which lies above or below some other part of the building (s.112(1)).

There are a number of criteria that must be fulfilled, but in general qualifying tenants must have long leases (in general, leases for a term exceeding 21 years).

35. Where the right to manage is vested in a RTM company, the RTM company has the management functions of the landlord under each lease of the premises over which the right has been acquired. The extent of the obligations and powers of the RTM company to carry out or permit works to common parts will be regulated by the terms of the various leases under which rights may be exercised over the common parts. The analysis set out above in relation to leases (and the recovery of service charges) is relevant to considering the role which RTM companies will have.

The Housing Act 2004

36. Among other things, this Act deals with Housing Conditions. “Common parts” of buildings containing one or more flats⁷¹ are included within the scope of this legislation. Part 1 of the Act replaces the existing housing fitness standard contained in the Housing Act 1985 with the Housing Health and Safety Rating System. It also adapts and extends the powers of enforcement currently available to local housing authorities to tackle poor housing conditions. These changes are intended to help local housing authorities to prioritise their intervention based on the severity of the health and safety hazards in the home.
37. I do not know whether in practice the powers under this legislation will be used to cure deficiencies in access for disabled people. Part 1 of this Act does not in itself give tenants rights which are directly enforceable against their landlords but gives local housing authorities enforcement powers. The scheme of Part 1 provides a new system

⁷¹ For the definition of “flat” see s.1(5). The meaning is similar to that used in the Commonhold and Leasehold Reform Act 2002; see previous note.

which operates by reference to the existence of “hazards” on residential premises the detailed descriptions of which are to be prescribed (see s.1(2); s.2(1)). Since “hazard” for these purposes of means “any risk of harm to the health or safety of an actual or potential occupier of a dwelling or house in multiple occupation (“HMO”) which arises from a deficiency in the dwelling or HMO or in any building or land in the vicinity (whether the deficiency arises as a result of the construction of any building, an absence of maintenance or repair, or otherwise)” (s. 2(1)), it appears to me that deficiencies which cause a risk of harm to health and safety of actual or potential disabled occupiers of dwellings or HMOs are within the scope of this legislation. On the other hand, deficiencies which fall short of causing such risk are not “hazards” for these purposes.

Other duties on landlords etc apart from the terms of the lease⁷²

38. In addition to the duties mentioned above, landlords and management companies who own or occupy common parts have other duties to disabled tenants, occupiers and visitors arising out of that ownership or occupation. There are duties in the tort of negligence, under the Occupiers Liability Act 1957, and under the Defective Premises Act 1972⁷³. These duties, however, are qualified duties to guard against harm to persons and property. Until there is such harm, there will (in general) be no claim in respect of any breach of these duties. Of course, if the owner of property is aware of a hazard which might give rise to a breach of duty (e.g. a crumbling staircase), he would be wise to take steps to ensure that there is no harm to person or property but it is most unlikely that these duties will in themselves enable a tenant to secure improvements to access before such harm arises.

⁷² Instructions para 63

⁷³ See generally, Clerk and Lindsell on Torts, Chapter 10.

39. There may be other legislation (such as the Fire Precautions Act 1971 etc) which is relevant to access and the state in which common parts are kept. This legislation is not something of which I have day-to-day experience. Accordingly, following discussion with Instructing Solicitor, this Advice will not deal with it.

The availability of grants

40. Disability Facilities Grants are available in certain circumstances. These, however, will only be made where the applicant has a power or is under a duty to carry out the relevant works⁷⁴. The availability of such grants, therefore, does not appear to take matters much further forward in terms of rights and obligations. On the other hand, the availability of such grants may in practice reduce resistance from landlords and leaseholders who would otherwise have to contribute to improvements.

Licensees⁷⁵?

41. The extent to which a licensee will have a right to make an improvement, will depend upon the terms of a licence. Unless the licence is one to which some form of security of tenure attaches (such as the secure tenancy regime⁷⁶), the rights of the licensee to secure alterations to common parts will be determined by the terms of the license agreement. In practice, licence agreements will not give residential occupants any right to carry out works to common parts. Generally in the private sector, licensees have no security of tenure.
42. As I have indicated above, duties in tort, under the Occupiers Liability Act 1957 and/or the Defective Premises Act 1972 are likely to be of limited practical assistance.

⁷⁴ Instructions para 50

⁷⁵ Instructions para 61

⁷⁶ Housing Act 1985 s.79(3). This applies to local authority tenancies and certain other "public sector" tenancies.

Does current law and practice provide (or are they capable of providing) a suitable means for disabled tenants to secure the making of adaptations to common parts? If not, what possible ways would I suggest in which the issue might be pursued?

43. As can be seen from the above analysis, in many cases disabled tenants may have only limited rights to secure adaptations to common parts of premises apart from agreement with the landlord and others who have rights over common parts.
44. I am unable to say whether this is a problem in practice and (if it is) whether it is one which requires positive intervention in existing contractual relationships between landlords and tenants.
45. There are plainly possible solutions to ensure that there is a sufficiency of suitably adapted housing within the housing stock as a whole. For instance,
- (j) provision can be made for building regulations in respect of newly built or newly converted premises;
 - (k) planning policies can ensure that all buildings are adapted to a specified standard and/or that within any development of a significant scale, a proportion of houses can be specifically adapted to the needs of disabled people.

These solutions, however, will not result in adaptations of existing buildings in which disabled people already live under existing leases. It is possible that the new regime under the Housing Act 2004 may be used to secure improvements in cases where the deficiencies can amount to “hazards” within that Act (see above).

46. If it is considered that disabled tenants and other occupiers must be provided with clear rights to enable the adaptation of common parts in existing premises, then a number of possible legal formulae may be adopted in legislation to secure adaptations of existing premises.

(5) The disabled tenant (or contractual licensee) might be given the right to carry out works to the common parts over which they have rights. To give the disabled tenant the right to carry out the works to the common parts is potentially problematic, since this may involve interference with the rights over the common parts with others. The exercise of such rights unilaterally by disabled tenants will inevitably bring some disabled tenants into conflict with their landlords and/or other tenants who use the common parts. Questions will inevitably arise as to whether the proposed adaptation is within or goes beyond that which is authorised under the statute. (For instance, if a disabled tenant's rights are qualified so as to enable "reasonable adjustments" which do not "unreasonably interfere" with the exercise of rights of others, there will often be scope for disagreement over what is "reasonable" or "unreasonable"). It will not always be possible to solve such questions by agreement.

(6) It is also theoretically possible to give disabled occupiers who have no contractual right to use the common parts a right to carry out works themselves. This, however, would be extraordinary. In effect, they would be given a right to carry out work on property in respect of which they have no contractual or proprietary right. Not only would this carry with it the possibility of conflict with the rights of others, one would also need to define which occupiers had such rights and the extent of such rights.

(7) The landlord or other person controlling the common parts might be given a power and/or put under a duty to make suitable adaptations. This could be achieved by a term implied into each lease or other

instrument under which a person had a right over the common parts (and any prescriptive right over the common parts might be made subject to such terms too). This solution may also lead to conflicts of the sort suggested in the preceding paragraphs.

- (8) If the above suggestions are adopted, it will be necessary
 - (a) to identify and/or regulate the extent to which the exercise of these powers or duties may be exercised so as to override the existing contractual rights of others to use the common parts; and/or
 - (b) to specify the extent to which those rights are to be protected.

- (9) Provision will need to be made for how these costs are to be borne in the absence of agreement between the relevant parties. There are three obvious possibilities:
 - (i) the disabled tenant (or other person carrying out the work) should be responsible;
 - (ii) the landlord or other controller of the common parts should be responsible; or
 - (iii) the cost should be borne by all occupiers as part of the services provided to the building through the service charge provisions in the lease.

- 47. If it is perceived that the greatest need for adaptations of common parts occurs in the context of long leases of flats, then consideration could be given to amending ss.35 to 38 of the Landlord and Tenant Act 1987 or prescribing regulations allowing for adaptations and the recovery of costs, where leases do not make satisfactory provision for this.

- 48. The Commonhold Regulations could be amended to secure for disabled tenants adjustments to common parts for themselves and/or disabled occupiers who may live in the premises. Of course, this provides the possibility of disputes between disabled

tenants/occupiers and commonholders about the extent of the adjustments required. How the cost of the alterations is to be borne is also a matter for which provision must be made: if it is the commonhold association/all unit-holders, then again, the increased possibility of disputes between disabled tenants and commonholders will arise.

49. Provision could be made in the “Right to Manage” legislation to give duties and powers to RTM companies in relation to adaptations of common parts within their management powers. Any such provision would need to protect the position of the reversioner(s) who retain an interest in the premises but whose rights to manage have been transferred to the RTM companies. Since RTM companies are run by lessees, any dispute between a disabled tenant and the RTM company about the extent of the adaptations that should be made and how the cost should be borne, would often be a dispute between the disabled tenant and his or her neighbours.
50. The above possible solutions lead to possible infringements of rights under the European Convention on Human Rights. Careful consideration will need to be given to balancing the needs of disabled people against the interests of others who have rights over the common parts.
 - (10) The rights of the landlord and other occupiers of a building over the common parts are all capable of being “property” for the purposes of Article 1 of the 1st Protocol to the Convention.
 - (11) Depending on the nature of the rights granted to tenants and/or occupiers there would be a deprivation of or control of that property such as to “engage” Article 1 of the 1st Protocol.
 - (12) The state has a wide margin of appreciation in implementing social or economic policies: *James v United Kingdom* (1986) 8 EHRR

123, ECtHR, para [46]. A statute might, *depending on the circumstances*, legitimately provide for additional rights to be given to tenants or occupiers or additional duties could be imposed on landlords or others to secure improvements to common parts. It would, however, be necessary to decide whether the interference with Convention rights was proportionate.

- (13) Deciding whether a measure is proportionate can be undertaken in a two stage process. At the first stage, the question is: can the objective of the measure be achieved by means which are less interfering of an individual's rights? At the second stage, it is assumed that the means employed to achieve the legitimate aim are necessary in the sense that they are the least intrusive of Convention rights that can be decided in order to achieve the aim. The question at this stage of the consideration is: does the measure have an excessive or disproportionate effect on the interests of affected persons⁷⁷?
- (14) If the aim is to ensure that existing premises are adapted for disabled people, then it seems that nothing less than some degree of interference with the rights of other will achieve that aim. On the other hand, it will be necessary to consider carefully the extent to which the rights of others are overridden and consider whether the statutory formula involves the least interference with a view to achieving the aim.
- (15) Assuming that the means employed to achieve the legitimate aim are necessary in the sense that they are the least intrusive of Convention rights in order to achieve the aim, the question will arise whether the measures have an excessive or disproportionate effect on the interests of affected persons? The availability of compensation

⁷⁷ *Samaroo v Secretary of State for the Home Department* [2001] EWCA Civ 1139 at [19], [20]. In my view, this approach is correct when considering the construction of legislation by the State which has the direct effect of depriving individuals of their rights in circumstances specified by the state (compare *R (on the application of Clays Lane Housing Co-operative Limited) v The Housing Corporation* [2004] EWCA 1658; the present case is *not* a case like *Lough v FSS* [2004] EWCA 905 which was concerned with *decision-making* in the planning context: see *Clays Lane* at para [21] and [25]).

is a relevant matter to consider⁷⁸. Thus, if the cost of the adjustment was borne by the tenant and/or by a system of grants, then the view might be taken that *de facto* the system was proportionate. The position would be that much stronger if compensation were provided for any loss in value of the rights affected. On the other hand, if the cost of the improvements was put upon the landlord or other occupiers without compensation, then it might be less easy to argue (depending on the extent and cost of the adjustments required) that the system was proportionate.

(16) The existence of procedural safeguards is also a relevant matter.⁷⁹ Thus, if a mechanism and formula were devised to ensure only those improvements which were reasonable in all the circumstances (including their effect on the interests of others who have rights over the common parts), then the overriding of rights over common parts would be more easily justifiable.

51. To the extent that the *homes* of those who have rights over common parts are affected, Article 8 of the European Convention will also be engaged (this article requires respect for the home). Similar questions about the extent to which the interference is justifiable and proportionate will arise. It does not seem to me that these questions are in substance different from the ones which I have considered above.

52. There are plainly differences in tenure between long leases and shorter term tenancies within the protection of the Rent Act 1977, the Housing Act 1985, and the Housing Act 1988. Shorter term tenancies

⁷⁸ See *Sporrong and Lönnröth v Sweden* (1982) 5 EHRR 35 at para [73]; *James v United Kingdom* (1986) 8 EHRR 123, ECtHR at para [54].

⁷⁹ For instance, in *Jokela v Finland* (2003) 37 EHRR 26 ECtHR at para [45] the Court observed (in a different context): "Although [Article 1 of the First Protocol] contains no explicit procedural requirements, the proceedings at issue must also afford the individual a reasonable opportunity of putting his or her case to the responsible authorities for the purpose of effectively challenging the measures interfering with the rights guaranteed by this provision. In ascertaining whether this condition is satisfied a comprehensive view must be taken of the applicable procedures".

will often not make provision for a service charge separate from the rent. In these cases there will be no mechanism or formula by which tenants can be required to pay for the adjustments and (what is more) it may be even more obviously disproportionate to require such tenants to fund adjustments to premises in which they only have a short term interest. In the case of the social housing sector (as well as other sectors), consideration will need to be given to how such adjustments are to be funded since the rent available to social landlords may not be sufficient to fund improvements.

53. Conversely, if a disabled tenant only has a short-term interest in premises, then questions will arise as to the proportionality of requiring the adaptation of common parts of premises which the disabled tenant only has a right to use (and a commitment to pay rent towards that use) for a limited period. The questions become starker in the case of disabled occupiers who have no contractual right to occupy and use the common parts but who simply live with a tenant who has rights over the common parts.
54. Unless a mechanism can be devised which will ensure that grants are available in every case, none of the possibilities for securing adaptations of common parts seems to me to be entirely satisfactory. In many cases both disabled tenant and landlord will not have sufficient funds to carry out the works. It should not be assumed that landlords or other controllers of the premises have funds available beyond those that are recoverable through service charges and/or existing rental income. Furthermore, there would need to be a strong objective justification to require all tenants who have a right over the common parts to fund the improvements if (a) they did not agree to bear these costs under the terms of the lease and (b) (as may often be the case) they receive no practical benefit from the works. If contributions to costs are to be required from persons other than the disabled tenant or occupier who requires the work, consideration should be given to providing a formula and mechanism which would

ensure that contributions are required only as is reasonable in the circumstances (including whether it is reasonable in all the circumstances to expect them to fund the adaptations).

55. Leaving aside the possible formulation of a regime for securing adaptations of common parts to improve access for disabled people, the RGCP will need to consider the practical point that the adaptations not only affect the homes of disabled people and might put economic burdens on landlords, they will affect the homes of others who live in the buildings affected. The common parts in question form an important part of the premises over which all the occupants of the sort of building in question have rights. They can in effect be considered as part of their homes. If such occupants resist improvements (for instance, on aesthetic grounds or because they are forced to contribute financially to the improvements or because, for instance, a particular improvement may be perceived as lowering the value of their property), there is real scope for “neighbour disputes” to arise. One should not underestimate the resentment (whether or not it is justifiable and whether or not it is strictly lawful) that a perceived interference with a person’s home can cause. Such disputes often become intractable and can blight the lives of those affected regardless of the legal merits of the case.

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International comparisons

1. The predominant form of tenure, for example, do most people rent or buy the place they live in.

Germany	The predominant form of tenure in Germany is renting. 42.2% live in their own premises, 55.5% live in rented accommodation and 2.3% live in sub-rented accommodation.
South Africa	The predominant form of tenure in South Africa is rental. There is no information available about whether disabled people are more likely to rent or buy, but it is important to note that the vast majority of South Africa's population are impoverished, and most disabled people are likely to fall into that category.
Ireland	Believed that "most" people with disabilities bought homes rather than rented them, which was in line with purchasing patterns for the population as a whole.
Canada	<p>Alberta Based on the latest information the ratio of Albertans who owned their homes versus rented was more than 2:1. The predominant form of tenure is owned.</p> <p>Ontario The predominant form of tenure for the province is ownership. Out of the 4.21 million households in Ontario, 2.86 million households are owner households (68%), while 1.35 million households are renter households (32%).</p> <p>British Columbia Approximately two-thirds of households are home owners.</p>
Sweden	In 2003 57% of the population aged 16-84 lived in "small properties". 48% in detached or semi-detached houses and 9% in terraced houses. 43% lived in multiple occupancy buildings. 8% in properties with 1-2 stories, 24% in properties with 3-4 stories and 11% in properties with at least 5 stories. These proportions have been stable since the mid 1980s. Proportionally more of those with a disability live in multiple occupancy buildings: 61% of those

	with psychological problems, 52% of those with a visual impairment and 46-47% of those with severely limited mobility.
France	Most French people are owner occupiers. 56% of all householders.
New Zealand	1/3 of New Zealanders rent their homes. As such New Zealanders are predominantly home owners.

2. If the predominant form of tenure is rental, is it social renting, provided by the state, or private, provided by individual landlords.

Germany	The predominant form of renting is private, from private individuals or property companies. According to the German Tenants Association, the share of social renting dropped from 20% in 1987 to 6% in 2002.
South Africa	Most rentals are provided by private landlords. There is a small amount of social renting, and where it exists the state does try to make it available to disabled people as a priority group.
Ireland	Where renting is the preferred form of tenure, people with disabilities are given an additional housing allowance which enables them to move into private developments rather than be accommodated in social housing.
Canada	<p>Alberta Of the rented, social housing rental is a relatively small proportion. Landlords privately own the majority of rental units.</p> <p>Ontario Most of the rental housing is in the private sector — nearly 1.08 million households rely on the private market, while 270,000 households in Ontario live in social or assisted housing.</p> <p>British Columbia Private rentals far outnumber social (government or non profit owned) rentals.</p>
Sweden	<p>Around 50% of the population aged 16-84 live in owned properties (mostly detached or semi-detached houses). 15% live in “bostadsrätt” (the nearest Swedish equivalent to leasehold) and 34% in a rented property. Rental properties are predominantly flats. 60% of those who rent are single. Most are young or pensioners.</p> <p>A bostadsrätt is a form of shared ownership. The property (usually a block of flats, but it can also be a row of terraced properties, or a house converted into flats) is owned by an association. The “owner” of each flat purchases a share in the association equivalent to their share of the property (based on the area of their flat). In addition to an upfront purchase fee monthly charges are paid to cover utility bills, mortgage repayments, upkeep of common areas, a repair fund, etc. A bostadsrättsförening can vary in size from 5-6 families to 250+, with correspondingly varied management structures.</p> <p>Over half the rental flats in Sweden belong to companies owned by local authorities or otherwise qualify as</p>

	<p>“general benefit companies” (defined as a limited company, association or foundation run: with no or little profit; principally for the purpose of managing properties consisting of rental flats; approved as a “general benefit company”). The presumption is that municipally owned companies are general benefit companies but this is not always so: a company can lose its status, e.g. If it pays back too big a dividend to the owning local authority. There are 320 such companies in Sweden. 60% own 500-5000 flats, the largest manages over 50 000. In contrast the majority of private landlords own less than 10 flats.</p> <p>Municipal housing companies do not just provide “social” housing for the disadvantaged. While they may set aside a portion of their housing stock to help meet their obligations to the homeless and other disadvantaged groups, most of it is open to all. Indeed most try to ensure a mix of people in each property/area (although this has been unsuccessful in the big cities, where some suburbs have become ethnic ghettos). A system of rent control means there is little difference in rent levels between public and private landlords.</p> <p>Local authorities own properties specially designed to be suitable for the elderly or disabled.</p>
France	<p>Most French people who rent in the private sector (20.7% of households) rather than the social sector (17.3% of households).</p>
New Zealand	<p>Of the 1/3 who live in rental accommodation, 81% of these people rent from a private landlord or trust. 19% rent from a public landlord (such as Housing New Zealand Corporation or a local authority). Ownership in the private rental market is highly fragmented.</p>

3. Do they have a similar concept as ‘common parts’ and how do they define that concept.

Germany	There is no concept or legal definition of "common parts".
South Africa	No response.
Ireland	Irish authorities did have a similar concept of "common parts". Although there is no specific technical term in use, there are regulations set down that govern "circulation within buildings" and this deals with issues that would normally arise under the concept of common parts.
Canada	<p>Alberta Yes, we call it "common areas" and it is defined in the Residential Tenancy Act (Revised Statutes of Alberta 2000 Ch. R-17.1) as: Interpretation 1(1) In this Act, (a) "common areas" means areas controlled by a landlord and used for access to residential premises or for the service or enjoyment of tenants;</p> <p>Ontario Yes, called "common areas"</p> <p>British Columbia Yes, the Province has a similar concept. In British Columbia's Residential Tenancy Act, the term "common area" is used to define any part of residential property the use of which is shared by tenants or by a landlord and one or more tenants.</p>
Sweden	"Common parts" are referred to in the Swedish property legislation but there does not seem to be a clear definition of the concept.
France	"Communal areas" are parts of buildings and land intended for the use or utility of all co-owners or several of them.
New Zealand	The concept of common property can apply to both owner occupied premises and rental premises, by virtue of the Unit Titles Act 1972 (UTA) and the Residential Tenancies Act 1986 (RTA). Gaps exist in New Zealand's legislation with respect to clarity around alterations to common property. The concept of common property is not clearly defined.

4. Are ‘common parts’ of premises included as part of the rented or leased premises or treated as a separate entity, as in England and Wales.

Germany	Whether common parts are included as part of the rented or leased premises depends on the individual contract. Contracts may, for example, include common parts such as a garden, a garage, a stairwell etc.
South Africa	As a rule, common parts are included in the rental agreement as part of the rented premises.
Ireland	No response.
Canada	<p>Alberta All common parts on the premises are under the ownership of the property owner or landlord. Tenants do not have control over the common parts for privately or publicly owned (e.g. social housing) rental properties. The use of common areas would not be part of the leased premises but within the lease the tenant would have a right to use common areas.</p> <p>Ontario "Common parts" are included as part of the rental premises. When tenants pay rent, they pay for the rental unit and the common areas of the rental complex.</p> <p>British Columbia Common areas are included as part of the rented or leased premises. A tenant's rent includes use of common areas, and a tenancy agreement establishes what the common areas are and how common areas may be used.</p>
Sweden	In a bostadsrätt the property, including the common parts, is owned by all. In a rented flat common parts appear to be separate (landlords are obliged to provide certain common facilities, such as a laundry room and storage areas).
France	The communal areas have a separate status just as in England and Wales
New Zealand	The Unit Titles Act 1972 provides for the subdivision of land and buildings into ‘units’, which are owned by individual proprietors and common property, which is owned jointly by the individual unit proprietors. ‘Common property’ in the UTA may include such things as lifts, stairways and recreation areas.

5. Do they have a mechanism that allows disabled people to make adaptations to those ‘common parts’ to improve their access and how does that mechanism works.

Germany	Tenants may alter rented accommodation if their disability justifies the alterations and if they pay for them. This may include alterations to those parts of the premises which allow access (and which may be common parts used by others, e.g. the stairwell). However, the landlord may reject the alterations if his/her interest in unaltered premises outweighs the disabled tenant's interest. The interests of the other tenants also have to be taken into account. Moreover, the tenant is obliged to remove any alterations he/she has made to the premises when the rental contract expires. The landlord may demand a deposit from the tenant as security and as a condition for agreeing to the alterations; this is in case the tenant does not remove the alterations when moving out.
South Africa	There appears to be little or nothing in the way of specific legislation or guidelines related to the specific rights of disabled people to make alterations to common areas of rented accommodation.
Ireland	Most new buildings are built according to the Building Regulations which were updated in May 2005 to include comprehensive requirements on access for disabled persons. Such accessibility requirements "could not be applied retrospectively" and as such, making adjustments to common parts to suit someone with a disability would require the consent of all those who use the common parts or communal areas.
Canada	<p>Alberta</p> <p>Because common areas of rental property are owned by the landlord, there is not a deliberate mechanism that allows disabled persons to make adaptations to common parts in rental properties. However, there are mechanisms in place that can effect modifications or adaptations to common parts of rental properties to ensure the building is accessible for disabled persons.</p> <p>The first mechanism is the existing legislation that requires barrier-free access for the design and construction of buildings. Section 4 (2) of the Safety Codes Act states:</p> <p>The Minister shall, in accordance with this Act, co-ordinate and encourage the principles of barrier-free design and access for any thing, process or activity to which this Act applies.</p> <p>Barrier-free means that a building and its facilities can be approached, entered and used and exited by persons with physical, mental or sensory disabilities. All buildings, apparently with the exception of single family homes, including semi-detached houses, duplexes, triplexes, town, row and boarding houses and certain industrial accommodations, are subject to the requirements for barrier-free access or access for disabled persons. Any multiplex rental building that does not fall under the exceptions listed above would be considered an apartment</p>

building.

The owner of the building is subject to the requirements for barrier-free access that were in force at the time of the design and construction of the building. For example, an apartment building constructed in 1992 would be subject to the barrier-free access requirements for the 1990 edition of the Code, but would not be subject to the provisions of the 1997 edition of the Code. However, changes to the building, such as renovations, often act as the "trigger" forcing the owner to modify the building to conform to the current Code in force. It is only very minor modifications that do not subject an older building to new Code requirements for renovations or other modifications. In this way, barrier free access requirements are applied to older buildings in addition to new buildings.

A second mechanism is the power of the authority having jurisdiction to remedy the existence of an unsafe condition. Should, in the opinion of the authority having jurisdiction (usually a municipality within its city or town limits) consider an unsafe condition to exist in a building, the authority may order the owner of the building to comply with the requirements of the current edition of the Code or effect changes to the building to remove the unsafe condition. Many of the barrier free Code requirements have the potential to be safety issues, particularly where the disabled person cannot enter or exit the building safely or access features of the building, such as a car park. This situation often occurs where the rental property owner has rented an apartment to a disabled person, but current barrier-free access requirements do not apply due to the construction of the building prior to the current edition of the Code. Government health officers also have the authority to order building owners to upgrade their buildings to satisfy barrier-free access requirements under the Code.

A third mechanism is the Barrier Free Design Policy Council. The Province established this Council to work with the government and provide representative associations of the disabled community a vehicle to advise the government on the appropriate needs for barrier free access. If the Council identifies areas requiring barrier free access or improved barrier free access under the Safety Codes Act, they may make recommendations to amend the Safety Codes Act or the codes regulated under the Act to the responsible Minister. Any person may make recommendations or complaints to the Council regarding barrier-free access code requirements.

	<p>Ontario The <i>Ontario Human Rights Code</i> guide “If your disability prevents access to housing or use of a service, you should identify any needs that may allow such access or use. A landlord or service provider then must make efforts to meet these needs but only to the point of undue hardship, which considers cost, any outside sources of funding and any health and safety concerns. If your needs simply cannot be met or you still cannot access the housing or use the service after your needs have been met, the landlord’s or the service provider’s duty to accommodate ends and there is no violation of the Code.”</p> <p>The code is a “complaints-based” legislation that permits individuals to file complaints with the Ontario Human Rights Code in an attempt to have such complaints settled without recourse to the Human Rights Tribunal of Ontario (HRTO) or, if required, to be adjudicated by the tribunal. This process would apply to alleged discrimination whether involving the immediate unit/premises actually being occupied by the tenant and the common parts.</p> <p>British Columbia No.</p>
Sweden	<p>In practice the rights of disabled people to make adaptations to their residential premises are governed by the “Law on Home Adaptation Grants”. (In theory a disabled person could make adaptations at their own cost, but this does not happen). Under the law disabled people have the right to a state grant for adaptations “in or in connection with” their place of residence. The law is part of social legislation but is overseen by the National Board of Housing, Building and Planning, who can issue further regulations if they consider it necessary to clarify the legislation. Decisions on grants are made by local authorities based on their assessment of the adaptations needed to allow a disabled person to live an independent life in their own home.</p>
France	<p>With regard to communal areas, any planned alteration is submitted for the co-owners’ approval. However, clause 93 of Law 2003-590 of 2nd July 2003 on “town planning and housing” has changed the rules on the majority needed in decisions to carry out work to improve access for handicapped people or people of reduced mobility in co-owned accommodation. From now on, the decision to carry out this work may be made by the general co-owners’ meeting based on a majority of votes cast by present or represented co-owners (clause 24 of Law number 65-557 of 10th July 1965), in other words the easiest majority to obtain, rather than a majority of votes</p>

	<p>from all co-owners (clause 25 from the same law) which was previously required. This rule applies both to work agreed upon and financed by all co-owners, and authorisations granted to one or more co-owners to conduct work at their own expense. This relaxation in terms of the required majority is likely to make it easier to adapt property and make it more accessible to handicapped people or people of reduced mobility.</p> <p>Article 41 of Law number 2005-102 of 11th February 2005 on equal rights and opportunities, participation and citizenship for handicapped people states that any new residential building must be accessible to handicapped people irrespective of their handicap (Clause L.111-7 of the building and housing code). With regard to existing residential buildings, it is also stated (clause L.111-7-2 of the building and housing code) that <i>“Decrees issued by the Council of State set the terms relating to accessibility for handicapped people for which clause L.111-7 makes provision, and which residential buildings or parts of existing residential buildings must satisfy when work is carried out on them, with particular reference to the nature of the buildings or parts of the buildings concerned, the type of work undertaken, and the ratio of the cost of work to the value of the buildings above which these terms become applicable. They also provide for conditions under which legitimate exemptions may be authorised where work is technically impossible or there are restrictions in terms of preserving architectural heritage, or where work carried out is clearly disproportionate to resulting benefits. These decrees are passed in consultation with the national consultative council for handicapped people. With regard to exemptions relating to buildings belonging to landlords who own a number of properties in excess of thresholds fixed by a decree issued by the Council of State, any handicapped people affected by this exemption have the right to be re-housed in an accessible building as described in Clause L. 111-7, under conditions outlined in the aforementioned decree issued by the Council of State”</i></p> <p>These measures are not yet applicable as they require a decree to be issued by the Council of State, which has not yet been published (publication expected before the end of 2005)</p>
New Zealand	<p>The UTA specifically prohibits unit proprietors from making additions or structural alterations to units without the consent of the body corporate (comprised of all unit proprietors). The Act is silent, however, on alterations to common areas – but this in practice also requires the consent of the body corporate, given that the body corporate is responsible for the repair and maintenance of common property. Recourse for resolving disputes arising under the UTA is generally via the High Court.</p>

6. Is that mechanism framed, for example, in legislation, codes of practice or some other form.

Germany	Section 554a of Germany's Civil Code gives people with disabilities the right to "barrier free" accommodation.
South Africa	Legislation with relation to people with disabilities generally focuses on the broader anti-discrimination issues.
Ireland	There are no rights within legislation to ensure that adjustments must be made. Rather, the idea appears to be that these adjustments are not required as there are sufficient new buildings, built with people with disabilities in mind to accommodate those with specific requirements. The provisions for disability rights in accommodation are covered solely by the Building Regulations, specifically within technical requirements
Canada	<p>Alberta</p> <p>The requirements for barrier free access are listed in the Alberta Building Code (Alberta Regulation 50/98) [referred to throughout as "the Code"], which is adopted by regulation under the Safety Codes Act. All mechanisms described above are governed under the Safety Codes Act and regulations. Another feature of the provisions is that an applicant may seek a "relaxation" from the requirements, but the test is strictly held to the following two conditions:</p> <ol style="list-style-type: none"> 1. The specific requirements are unnecessary; or 2. Extra ordinary circumstances prevent conformance. <p>It is a rare occurrence that a rental property will be able to satisfy this test to obtain a relaxation of the barrier free requirements. The decision maker for each relaxation request must consult the Barrier-Free Design Policy Council.</p> <p>Ontario</p> <p>The <i>Ontario Human Rights Code</i> is a provincial law that gives everybody equal rights and opportunities without discrimination in specific areas such as jobs, housing and services. The code's goal is to prevent discrimination and harassment because of race, colour, sex, handicap and age, to name some of the 16 grounds. It is the main mechanism for people with disabilities to address incidences of alleged discrimination in relation to a number of areas, including housing/accommodation.</p> <p>With respect to housing, the code specifically states: "Every person has a right to equal treatment with respect to the occupancy of accommodation, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status, handicap or the receipt of public assistance."</p>

	<p>The code is a “complaints-based” legislation that permits individuals to file complaints with the OHRC in an attempt to have such complaints settled without recourse to the Human Rights Tribunal of Ontario (HRTTO) or, if required, to be adjudicated by the tribunal. This process would apply to alleged discrimination whether involving the immediate unit/premises actually being occupied by the tenant and the common parts.</p> <p>The OHRC administers the code. It is an arm's length agency of government accountable to the legislature through the Attorney General. The HRTTO is a quasi-judicial, independent agency that deals with complaints under the code that have been referred to it by the OHRC.</p> <p>British Columbia Not applicable</p>
Sweden	<p>There is no general definition of “in connection with” in the Law or the accompanying regulation. In relation to rented properties, the Law states that adaptations to properties rented on second-hand contracts should only be approved if it is reasonable taking into account the length of the tenancy. It also includes a provision for a grant to remove adaptations: in or in connection with a rented flat or house; or in connection with a bostadsrätt in a multiple occupancy building, if the adaptation is designed to make it easier for a person with limited mobility to go in and out of their flat or to move to and from the building or within its grounds. This grant is awarded in situations where the adaptation is no longer needed and is a disadvantage to other tenants. In the case of rented properties, the owner must previously have agreed to give the local authority the right to house another disabled person in the flat and the grant is only available if they are unable to find another tenant when the flat becomes available.</p>
France	<p>Defined in building and housing codes. – New law from 11 February 2005 for new builds requires accessibility.</p>
New Zealand	<p>The main piece of legislation pertaining to alterations to premises owned by the occupier is the Building Act 2004. The Act requires buildings to contain facilities to enable access and use by people with disabilities, but only applies to buildings to which there is public access, not to homes or private residential properties.</p>

7. If any rights are set out in legislation, is it in disability, human rights or housing legislation or something else.

Germany	Section 554a of Germany's Civil Code on barrier free accommodation
South Africa	Bill of Rights: Act No.108 of 1996: chapter 2, Equality (section 9), Human Dignity (section 10) Environment (Section 24) Promotion of Equality and Prevention of unfair Discrimination Act 2000
Ireland	Provisions for disability rights in accommodation are covered solely by the Building Regulations, specifically within a technical requirements section. The Equality Authority (who represent people who have been discriminated against) also have a hand in overseeing these regulations are both inclusive and non-discriminatory, and in ensuring that they are implemented. The Equality Authority was of the view that the regulations are vague and that the legislation was surrounded by loopholes. However the opinion was that on questions of disability access, particularly where adjustments may be required, the law was very much a "grey area".
Canada	<p>Alberta It is primarily legislation governing building standards. Human rights as well as others may also apply. <i>Human Rights, Citizenship and Multiculturalism Act</i> (Revised Statutes of Alberta 2000, Ch. H-14) <i>Premier's Council on the Status of Persons With Disabilities Act</i> (Revised Statutes of Alberta 2000, Ch. P-21)</p> <p>Ontario The <i>Ontario Human Rights Code</i> , provincial legislation. The <i>Ontarians with Disabilities Act, 2001 (ODA, 2001)</i> <i>Accessibility for Ontarians with Disabilities Act, 2005 (AODA, 2005)</i> on June 13, 2005</p> <p>British Columbia The Human Rights Code prohibits discrimination in tenancy matters based on a person's, physical or mental disability.</p>
Sweden	Law on Home Adaptation Grants, 1992:1574 National Board of Housing, Building and Planning Regulation 1992:46 (to accompany the Law)

France	See answer to question 6
New Zealand	The Building Act 2004, the Unit Titles Act 1972, and the Residential Tenancies Act 1986 (RTA).

8. In whatever mechanism is used, what recourse does a disabled person have if there is a dispute?

Germany	All disputes about rented accommodation are referred to local courts and it is up to the courts to decide whether the disabled person's interests outweigh the landlord's interests or the interests of the other tenants.
South Africa	Broader anti-discrimination legislation.
Ireland	A judicial interpretation may be required to determine to what extent "reasonable accommodation" should be provided. However as it stands, the law has yet to be tested on this issue.
Canada	<p>Alberta A disabled person may forward a complaint or issue to the Director of the Alberta Building Code, and if the building owner is in breach of the Code, the Director has the authority to enforce the requirement. The proper procedure would be for the disabled person to make their complaint to the authority having jurisdiction, such as a municipality, which could enforce the Code if appropriate, including provisions to issue formal orders to comply with the Code and prosecute the owner for non-compliance in the Courts. Penalties include fines up to \$30, 000 and imprisonment for up to 1 year. There is also a branch of the Province called the Disability Council that has the authority to hear all complaints and issues related to disabilities. This Council has the authority to advise other departments, though its recommendations have no legal force with other departments.</p> <p>Ontario The code is a "complaints-based" legislation that permits individuals to file complaints with the OHRC in an attempt to have such complaints settled without recourse to the Human Rights Tribunal of Ontario (HRTO) or, if required, to be adjudicated by the tribunal. This process would apply to alleged discrimination whether involving the immediate unit/premises actually being occupied by the tenant and the common parts.</p> <p>British Columbia The Residential Tenancy Office offers a dispute resolution process that resolves residential tenancy disputes at hearings conducted by arbitrators, who receive their authority through the Residential Tenancy Act. Complaints under the Humans Right Code fall under the mandate of an independent Human Rights Tribunal.</p>
Sweden	An applicant can appeal to the Administrative Courts against a local authority's decision but there does not appear to be any appeal process against a landlord who does not give their approval.
France	They may lodge a judicial appeal with a court of first instance. The judge may grant authorisation to carry out work despite the refusal of the general meeting, in exception to the principle of the latter's authority, and with a

	<p>view to allowing a legitimate individual interest to be expressed, even if it contradicts the collective interest. The judge must comply with certain [rules] when authorising this work. Thus, no judicial authorisation may be granted if the anticipated work results in the appropriation of a communal area or a change in its designated purpose. (3rd Supreme Court of Appeal rulings, 21st March 2000, 26th January 2000 and 21 March 2000)</p>
New Zealand	<p>The RTA provides for the resolution of disputes by way of mediation or a dedicated Tenancy Tribunal. The filing fee for lodging an application is NZ\$20.00.</p> <p>Recourse for resolving disputes arising under the UTA is generally via the High Court.</p>

9. If they have no mechanism, have they considered allowing disability-related adaptations to ‘common parts’ and what conclusions did they come to.

Germany	No changes to the legislation were being considered at present as the legislation was still relatively recent. The right to barrier free accommodation had only been introduced in September 2001. The Ministry was not aware of any cases where tenants had gone to court to enforce their right in practice.
South Africa	
Ireland	About the vagueness and loopholes that surrounded the legislation - on questions of disability access, particularly where adjustments may be required, the law was very much a "grey area".
Canada	Alberta No other mechanism has been considered under building standards. Ontario No response British Columbia They are not aware of any changes envisaged.
Sweden	No response
France	Article 41 of Law number 2005-102 of 11th February 2005 on equal rights and opportunities, participation and citizenship for handicapped people states that any new residential building must be accessible to handicapped people irrespective of their handicap (Clause L.111-7 of the building and housing code).
New Zealand	Gaps exist in New Zealand’s legislation with respect to clarity around alterations to common property. Both the UTA and RTA are being reviewed at present and it is likely that the concept of common property will be better defined as a result.

The Reference Group's Terms of Reference and membership

Terms of reference

1. A list of organisations which are members of the Reference Group is attached.
2. Representatives will use their expertise and that of their organisations to assist, as requested by RGCP, in the review of the legal position in relation to alterations to the common parts of rented demised premises.
3. The purpose of the Reference Group is to provide RGCP with a broader viewpoint than its own of the relevant issues.
4. The Reference Group will achieve this by:
 - i) Specific input into any work commissioned by, or questions raised by, RGCP;
 - ii) Providing comments on any draft papers or proposals from RGCP before wider distribution;
 - iii) Informing RGCP of any evidence that supports, or does not support, the need for change (for example, the number of disabled people affected by inaccessible common parts); and
 - iv) Assisting with the assessment of regulatory costs and benefits of any options for change identified by RGCP.
5. The Review Group on Common Parts will report jointly to the Minister for Disabled People and The Minister for Housing by December 2005. Evidence and information received from the Reference Group will be used in preparing that report.
6. The Department for Work and Pensions provides the secretariat for RGCP and will act as the main contact point with the Reference Group.

Membership of the Reference Group

Age Concern England
Association of Residential Letting Agents
Association of Retirement Housing Managers
Chartered Institute of Housing
Disability Wales
Disabled Living Foundation
EROSH
Federation of Private Residents' Association
Habinteg Housing Association
Help the Aged
John Grooms Housing Association
Law Commission (Tenure review)
National Federation of Residential Landlords
National Federation of TMOs
National Housing Federation
Residential Landlords Association
Royal Institution of Chartered Surveyors
Shelter
Small Business Service
Tenant Advisory Participation Service
Tenants and Residents Organisations of England
Care and Repair Cymru
Care and Repair England
Anchor Trust Offices
The Housing Corporation
The British Council of Disabled People
Dial UK
Disability Charities Consortium
New Spirit Coalition
Disability Law Service
The Law Society

(Note: several of these are membership organisations)

Alternative dispute resolution

Non-legislative routes to solving disputes

Name of scheme	Available to	Process	Voluntary/mandatory	Charge	Remedy	Status of outcome
ADR Group	A range of customers, including court based and court assisted schemes	Mediation can follow fast track procedure (3 hours) or may be longer, depending on type of dispute.	Voluntary	Charge according to length of mediation session, and experience of mediator. Cheapest is fast track, at £400 (split between both parties).	A written agreement which both parties sign	Non binding.
AIMS	Residents of sheltered and retirement housing	Mediator works separately and together with both parties, helping them to reach an agreement and avoid court action.	Voluntary	Free	A written agreement which both parties sign	Non binding. Parties can proceed to court action if unhappy with outcome or agreement cannot be reached.

Name of scheme	Available to	Process	Voluntary/ mandatory	Charge	Remedy	Status of outcome
Court Mediation Schemes	Anyone who is intending to take a case to the county court.	Court either arranges a mediation session or refers case to a mediation provider. Mediation takes around 3 hours.	Voluntary, but a mandatory scheme has been piloted at Central London County Court and is being evaluated.	Fees based on value of claim. Typical 3 hour session for claim valued at £5,000 to £15,000 would cost £500 plus VAT, split between both parties.	A written agreement which both sides sign	Non binding. Parties can proceed to court action if unhappy with outcome or agreement cannot be reached.
National Mediation Helpline	Run by Civil Mediation Council and supported by DCA. Supplements court mediation schemes.	People wanting to arrange a mediation appointment contact the telephone helpline. The Helpline is supported by a website at www.nationalmediationhelpline.com Application can be made on-line.	Voluntary.	Fees based on value of claim. Similar to costs of court mediation schemes (see above)	A written agreement which both sides sign.	Non binding. Parties can proceed to court action if unhappy with outcome or agreement cannot be reached.

Name of scheme	Available to	Process	Voluntary/ mandatory	Charge	Remedy	Status of outcome
Disability Conciliation Service	Available only to people referred by DRC. Not open to general public.	<p>Scheme is provided by Mediation UK.</p> <p>Meeting arranged within 8 weeks of case being referred. Conciliator appointed from an independent panel. Face-to-face meeting on neutral ground. Takes around 3 hours.</p> <p>Legal representative not allowed but telephone contact with a legal advisor during meeting, is allowed.</p>	Voluntary	No charge – cost met by DRC from its Government funding.	A written agreement which both sides sign	<p>Non binding.</p> <p>Parties can proceed to court action if unhappy with outcome or agreement cannot be reached.</p>
DRS-CI Arb	Available to individuals and to business. Specific schemes run such as ABTA.	Independent arbitration, mediation and adjudication services provided. Most are documents-only processes. Legal representation discouraged. May take 3-6 months.	Voluntary.	Service is either free or costs less than small claims court. Legal aid may cover cost of preparation.	An arbitration award which can include compensation.	Arbitration is binding.

Name of scheme	Available to	Process	Voluntary/ mandatory	Charge	Remedy	Status of outcome
Hackney Disrepair Arbitration	Tenants of Hackney Council.	Tenants can make claims for disrepair and associated damages up to £50,000. Claims submitted to DRC-CI Arb (see above), who appoint an arbitrator. A documents-only process. Can take up to 2 months.	Voluntary.	Council pays the arbitrator's fees and cost of any expert witness. Tenants eligible for legal aid can get up to £500 to pay for advice and/or representation.	Arbitration can make a range of awards including compensation or an order to complete certain works.	Binding on both tenant and council.
Housing Ombudsman Service	Available to tenants and leaseholders of housing associations	Complaint submitted in writing within 12 months. Ombudsman will investigate, may ask for more information, or a meeting with parties, or a hearing.	Voluntary	No charge. Scheme is financed by contributions from member landlords.	Ombudsman will make recommendations, which can include that parties undertake mediation.	Binding. Member landlords are expected to comply with the decision of the Ombudsman. Tenants/leaseholders not allowed to resort to court action if unhappy with outcome.

Name of scheme	Available to	Process	Voluntary/ mandatory	Charge	Remedy	Status of outcome
LawWorks Mediation Service	Available to people who have been referred by a participating agency such as Citizens Advice, and where they cannot pay for a service and where no legal aid is available.	Mediation lasts for around 3 hours. Each party has own room and mediator moves between both rooms conveying information, facilitating discussion and working towards a settlement. Services of a lawyer are provided to assist in preparation for mediation and to represent client at meeting if necessary.	Voluntary	Free	A written agreement which both sides sign	Non binding. Parties can proceed to legal action if unhappy with outcome or agreement cannot be reached.
LEASE Mediation Service	Available to leaseholders in England and Wales.	Mediator meets privately with each party first, then joint meeting arranged where both parties meet face-to-face. A session normally takes up to three hours.	Voluntary	£100 for each party.	A written agreement which both sides sign	Non binding. Parties can proceed to court action if unhappy with outcome

Name of scheme	Available to	Process	Voluntary/ mandatory	Charge	Remedy	Status of outcome
Local Government Ombudsman (includes Public Services Ombudsman for Wales)	Available to anyone who has a complaint against a local government body and includes tenants of councils and certain other bodies.	Complaint sent to Ombudsman no more than 12 months after event being complained of. Investigation then undertaken which can include meeting with both parties.	Voluntary	No charge	Ombudsman writes to the parties involved, or makes a formal report, setting out how he thinks dispute could be resolved. May suggest that both parties undertake mediation.	No power to enforce decision, but councils nearly always comply with any recommendations made. No formal right of appeal against an Ombudsman's decision but matter can be referred to High Court for a judicial review.
Southwark Tenancy Arbitration Tribunal	Tenants, leaseholders, freeholders, and right-to-buy applicants living in Southwark.	Complaint is heard by a panel of three independent people. May include a home visit.	Voluntary	Free	Tribunal arbitrates and reports with their decision. Some mediation may be involved.	Decisions are binding.