Factsheet 2

Good practice and factors for consideration in England and Wales

Office for Disability Issues
HM Government

This factsheet is intended to help resolve some of the questions that arise in relation to disability-related alterations to common parts of residential premises.

Good practice and factors for consideration in England and Wales

2.1 This factsheet is intended to help resolve some of the questions that arise in relation to disability-related alterations to common parts of residential premises. It is not a definitive list and in some cases it may be advisable to obtain independent advice.

A. Does a landlord have to make disability-related alterations to the common parts of residential premises?

B. Who has rights and obligations in relation to the common parts?

C. Who can make alterations to the common parts of let residential premises?

D. How would a landlord know that the common parts are causing access difficulties for disabled people?

E. Is there anyone who can help with advice about alterations to the common parts?

F. What sort of things might need to be taken into account?

G. Can all landlords make alterations to the common parts?

H. Could the tenant make an alteration?

I. Who will pay for any alteration to the common parts?

J. Who would own any equipment that was installed?

K. What about other tenants or occupiers in the building?

L. What options are there if there are disagreements about an alteration?

M. What if the issues cannot be resolved?

N. Are there any special arrangements which apply to public sector landlords?

A. Does a landlord have to make disability-related alterations to the common parts of residential premises?

2.2 The Disability Discrimination Act 1995 (DDA) does not specifically require landlords or managers of premises to make disability-related alterations to the physical features of the common parts of residential premises. However, they may still have to make some reasonable adjustments to those common parts.

2.3 Where a landlord receives a request, under the DDA, to supply an auxiliary aid or service or to change a practice, policy or procedure, or a term of the letting in relation to the common parts, the landlord will be under a duty to make the adjustment if it is reasonable. For example, such a request may lead to the installation of a portable ramp, a change of door handles or an alteration to the colour of a wall or surface. A landlord or manager of premises might have to make changes to their practices, policies or procedures which may result in changes to the way the common parts are used. For example, the change might be that tenants are to leave nothing in common hallways so that a mobility scooter could be stored there. It would be advisable to seek advice where this would involve changing or varying the terms of a lease. When considering a request for a disability-related alteration, landlords and managers of premises should ensure that a refusal to make the alteration is not for a reason which relates to the disabled person's disability and cannot be justified, since this may amount to unlawful discrimination on the basis of less favourable treatment. (See Factsheet 3 'What does the law say?').

B. Who has rights over and obligations in relation to the common parts?

2.4 In all cases it is advisable to start by looking at the tenancy agreement to ascertain who has rights over, and obligations in relation to, the common parts. In most cases the common parts of a building remain in the control of the landlord (or other body such as a management company) even though the landlord will have given the tenants and others permission to use the common parts. Where the landlord retains control of the common parts they will often be under a duty to keep them in reasonable repair.

2.5 Landlords may have the right under the tenancy agreement to alter the common parts, provided that in doing so they do not breach any obligations or covenants concerning other tenants' rights of way over the common parts, or to their quiet enjoyment of the premises. Whether the landlord can recover the cost of any works undertaken via a service charge will also depend on the terms of the tenancy agreement.

2.6 Housing and landlord and tenant legislation as well as the DDA may be relevant, for example, whether statutory consultation is required in accordance with section 20 of the Landlord and Tenant Act 1985, but the current law does not offer clear or comprehensive answers as to a landlord's obligations in relation to common parts. (See Factsheet 3 'What does the law say?').

C. Who can make alterations to the common parts of let residential premises?

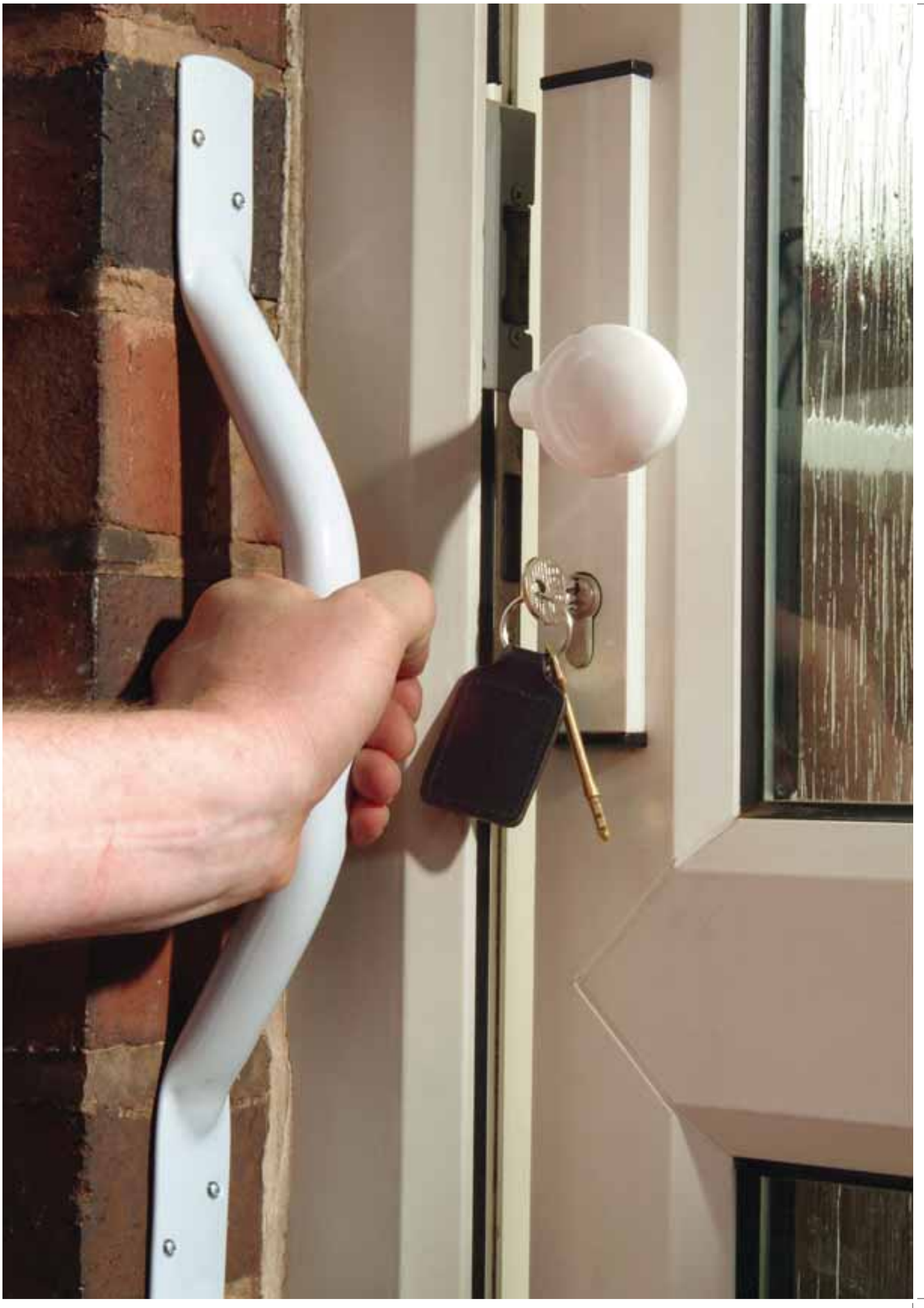
2.7 When considering whether and by whom alterations can be made to let residential premises it is necessary to start by looking at the terms of the tenancy agreement. (See paragraph 2.16 'Could the tenant make an alteration?')

D. How would a landlord know that the common parts are causing access difficulties for disabled people?

2.8 Where a tenant has yet to agree the tenancy or lease, and to make sure that a prospective landlord is aware of any disability-related access difficulties that a disabled person may have, it is always advisable for a tenant to discuss with the landlord any access difficulties that they, or a member of their household, have while they are negotiating their tenancy agreement.

2.9 Where a tenant or occupier becomes disabled after the tenancy agreement has been entered into, and finds that they have access difficulties, it would be advisable to discuss those difficulties with the landlord as soon as is practical.

2.10 However, before talking to the landlord, tenants should consider what would make access easier so that they can make constructive suggestions to the landlord. It would also be helpful for the tenant to acquaint themselves with the terms of their tenancy agreement.



- the feasibility/practicability of the alteration (for example, any effect on the integrity of the structure) – are there alternatives that would avoid or minimise any adverse effect
- the nature of the tenancy agreement (for example, type, length and term remaining) – for example, will the tenant be moving out of the let premises soon
- the nature of the building – is Listed Building consent required
- the effect of, and compliance with, statutory requirements such as Building Regulations and planning rules – who will obtain and/or pay for any consents that are required
- the practicability of reinstatement – whether the alteration can be removed when it is no longer needed and whether the premises can be returned to their original state
- the impact on the value of the building
- the cost of the alteration and who is to pay for it, as well as any reinstatement costs that may be incurred
- the tenant's ability to pay for the alteration (if the landlord will not be paying for it) and to pay for the landlord's reasonable costs incurred in making the alteration (for example, professional fees)
- whether the tenancy agreement(s) allow the landlord to pass on the costs of making an alteration to other tenants as part of a service charge
- whether the tenancy agreement(s) allow the landlord to pass on any maintenance costs for the alteration as a service charge
- whether statutory consultation is required in accordance with section 20 of the Landlord and Tenant Act 1985
- the arrangements for the payment of ongoing maintenance costs – for example, directly by the tenant or via a service charge to all tenants
- who else might benefit from the alteration
- any other third party interests, for example, arising from a mortgage or insurance policy.

2.14 This is not a definitive list and it should not be regarded as a yes and no tick list. It is important that a landlord who is considering making an alteration to the common parts to improve access considers all relevant factors before deciding on a particular course of action.

G. Can all landlords make alterations to the common parts?

2.15 The landlord may not be the freeholder – they in turn may have a superior landlord. In such cases, if the landlord wants to make an alteration to the common parts, the tenancy agreement might require them to obtain the consent of any superior landlord(s). The superior landlord/freeholder must not discriminate (see Factsheet 3 'What the law says'), but will otherwise be free to give or withhold consent to the proposed alteration subject to the rights and restrictions imposed by the terms of the tenancy agreement, such as a requirement to seek the consent of other tenants, or not to infringe the right of other tenants to use the common parts. However, permission from other parties may also be needed, for example, where the building is the subject of a mortgage or where the property is a Listed Building, or where planning permission or Building Regulation consent is required for the alterations.

H. Could the tenant make an alteration?

2.16 The law in this area is complex. It is unlikely that a tenancy agreement would give a tenant the right to improve or alter the common parts (for example, in order to install a stair lift). Landlords often prefer to exercise direct control over the making of any alterations, not least because it may affect others living in the building, but a landlord might give a tenant permission to make a specific alteration. However, if a landlord does let a tenant make an alteration, they are likely to impose some conditions. These conditions might include:

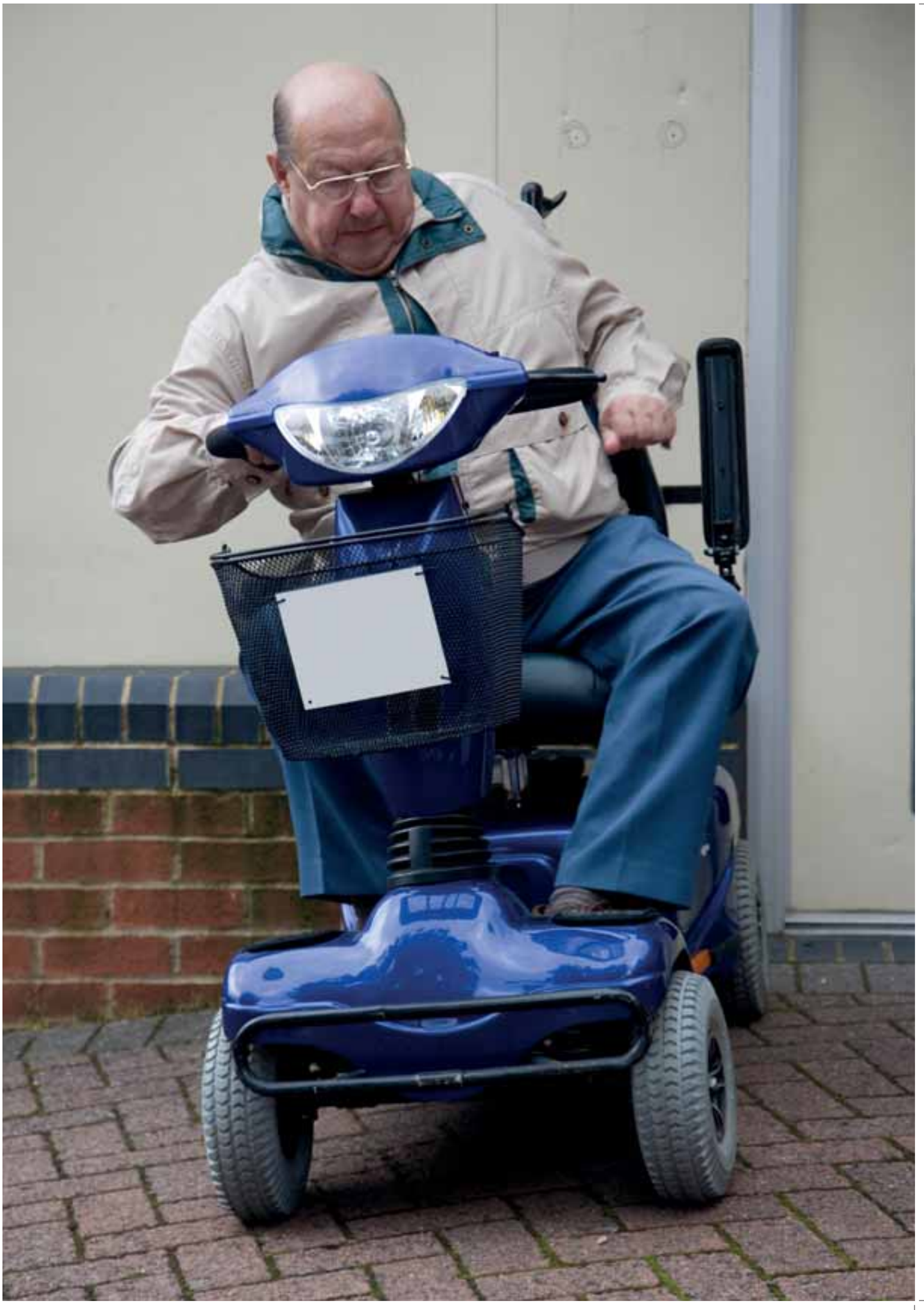
- obtaining any necessary planning or Building Regulation consent in advance of carrying out the works
- carrying out works in accordance with agreed plans and specifications and any planning permission
- allowing the landlord to inspect works before and after completion

- 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 appropriate for the work involved
- acceptance by the tenant of responsibility for any consequential damage arising from the alteration
- agreement to reinstate the common parts altered at the end of the tenancy
- payment of, or contribution towards, any increased insurance, maintenance and reinstatement costs.

I. Who will pay for any alteration to the common parts?

2.17 Subject to the terms of the tenancy agreement, the landlord and tenant will need to decide who should pay for any alterations. For example, whilst the landlord might agree to pay for the alteration, or the cost might be spread across all the tenants, it is likely that the tenant who has requested the alteration will be expected to pay for it. However, there may be grants available to landlords or tenants to pay for some or all of the costs. For example, subject to the applicant meeting various conditions, local authorities may be willing to provide grants under the Disabled Facilities Grants scheme. (See Factsheet 5 ‘Signposts to other sources of help’).

2.18 In many cases, it might be appropriate for the tenant who requested the alteration to pay for it. The key thing is that the landlord and tenant (and anyone else who has a legitimate interest) agree in advance on the alterations that are needed to overcome the access problems, agree who should pay for them and for any future maintenance that might be required, and agree the timescale for the work to be carried out. It may also be necessary to consider at this point whether statutory consultation will be required on any changes proposed, particularly if the intention is for the costs to be shared among all the tenants where this is possible under the terms of the tenancy agreement. (See Factsheet 5 ‘Signposts to other sources of help’).



J. Who would own any equipment that was installed?

2.19 Landlord and tenant law can be complex when it comes to deciding who owns 'things' fixed to premises – in other words, fixtures. In practice, the tenancy agreement might set out the position. If not, in general, anything fixed to the land by either party during the term of the tenancy will belong to the landlord at the end of the tenancy. It is called a "landlord's fixture", and cannot be removed by the tenant.

2.20 There are some exceptions which would entitle a tenant to remove such a fixture. The most relevant exception is where the parties agree that something is to be a "tenant's fixture". Where a tenant removes something in this way, they must make good any damage.

2.21 It will be important for the landlord and tenant to agree in advance whether anything that is being installed should be a landlord's fixture or a tenant's fixture. For example, where a landlord wants the premises re-instated at the end of the tenancy, the landlord and tenant should agree that the alteration will be treated as a tenant's fixture. However, if the landlord wishes to retain the fixture then they should agree that it is a landlord's fixture. Any agreement should also be in writing to help resolve any disputes that may arise at a later date.

K. What about other tenants or occupiers in the building?

2.22 It is always advisable for landlords to consult other tenants, early on, about any proposed alterations to the common parts. Many alterations will affect only the disabled tenant or the disabled occupier who need them to overcome access difficulties. However, some alterations may affect all those who live in the building and it will be important to take their views into account when considering whether or not a particular alteration should be made.

2.23 People can sometimes have very strong views about alterations being made to the building they live in, but a clear explanation of the reason for the alteration, and the consequences for the disabled person of not making it, can help to overcome objections. Such explanations and discussions may also suggest ways in which the plans could be modified, whilst still overcoming the access difficulties, in ways that would make the alteration more acceptable to other tenants.

2.24 Landlords should take the lead in this. They are ultimately responsible for the building and it is the landlord with whom all the tenants have a tenancy agreement.

L. What options are there if there are disagreements about an alteration?

2.25 Ignoring the problem and hoping that it will resolve itself is not the best approach. If agreement between all the parties cannot be achieved, it might be helpful to use an alternative dispute resolution service (See Factsheet 5 'Signposts to other sources of help'). For example, those affected by the alteration might agree to have an independent person or organisation conciliate or arbitrate between them. Broadly speaking, conciliation involves exploring the parties' views with them so as to help them reach an agreed solution. In arbitration, the parties agree beforehand to be bound by the arbitrator's decision once it has explored the parties' views. These services can sometimes be provided free of charge.

M. What if the issues cannot be resolved?

2.26 In certain circumstances, a disabled tenant or disabled occupier may be able to bring legal proceedings if a request to make a disability-related alteration to common parts (for example, failure to provide a portable ramp, but excluding alterations to the physical features) has been refused, and the refusal appears unreasonable. In such cases it would be for the court to determine the issues and, if the court decides in favour of the disabled tenant or occupier, to award compensation or damages or another remedy such as a declaration, as it considers appropriate.

However, even if such a case could be brought, it would be advisable to consider whether an alternative dispute resolution service could be used to explore whether the dispute can be resolved without court intervention. (See Factsheet 3 'What does the law say?').

N. Are there any special arrangements which apply to public sector landlords?

2.27 There are some additional considerations which apply to residential premises owned or managed by public authorities, such as councils. Since 4 December 2006, all public authorities have been subject to a 'Disability Equality Duty' (See Factsheet 3 'What does the law say?'). The Disability Equality Duty could affect public sector landlords (including housing associations) in relation to common parts and more widely as follows:

- when drawing-up a strategy for improving it's estate, a council or other public authority should consider making access improvements as part of that strategy – which might include changes to rented premises or to the common parts, or in the case of developments where the landlord has responsibility for roads, alterations to roads and pavements
- when reviewing the policy for allocating housing, a council or other public authority should consider whether disabled tenants are being offered suitable accommodation – and if not, revise its criteria to enable disabled tenants to secure accessible housing
- when devising a tenant satisfaction survey, a council or other authority should consider whether it knows about the experience of disabled tenants in comparison to non-disabled tenants – and whether it needs to improve services for disabled tenants
- when training housing staff (including on-site staff such as wardens), a council or other authority should consider what they need to understand about disability, and the authority's legal duties towards disabled tenants.

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

For details of services provided by the EHRC see their website at:

www.equalityhumanrights.com

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