



The Scottish Parliament
Pàrlamaid na h-Alba

Published 30 January 2020
SP Paper 666
1st (Session 5)

Local Government and Communities Committee Comataidh Riaghaltas Ionadail is Coimhearsnachdan

Relevant Adjustments to Common Parts (Disabled Persons) (Scotland) Regulations 2020



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Local Government and Communities Committee

To consider and report on communities, housing, local government, measures against poverty, planning and regeneration matters falling within the responsibility of the Cabinet Secretary for Communities and Local Government.



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Introduction

1. The Local Government and Communities Committee reports to the Parliament as follows-
2. The [Relevant Adjustments to Common Parts \(Disabled Persons\) \(Scotland\) Regulations 2020](#) were laid before the Parliament on 6 December 2020 and were referred to the local Government and Communities Committee for consideration.
3. These Regulations are made under section 37(1) and 207(4)(b) of [the Equality Act 2010](#) (“the Act”). They set out the process by which a disabled person may carry out relevant adjustments to common parts of premises if the disabled person uses or intends to use the premises as their only or main home, and a majority of the owners of the common parts consent.
4. The Policy Note accompanying the regulations states that a majority means a simple majority of one. It also states that owners must not unreasonably withhold consent but can apply reasonable conditions. In the event of a dispute, either the disabled person or any of the owners may apply to the Sheriff for a final decision.

Consideration by Committee

5. The Delegated powers and Law Reform Committee considered this instrument at its [meeting on 17 December 2019](#) and [determined](#) that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.
6. At its [meeting on 22 January 2020](#) the Local Government and Communities Committee took evidence on the instrument from:
 - Kevin Stewart, Minister for Local Government, Housing and Planning;
 - Angela O'Brien, Housing and Independent Living Team Leader; Scottish Government (below referred to as the "policy lead"), and
 - Alison Fraser, Solicitor, Scottish Government (below referred to as the "solicitor".)
7. During the evidence session, the Minister said that the project behind bringing forward these regulations had been complex and followed a consultation in 2011. At that time, 92 per cent of respondents agreed with the proposals behind the current regulations. The Minister said that he had then worked with the following on the the draft regulations and on a practical guide for disabled people-
 - the Convention of Scottish Local Authorities;
 - disabled people's organisations and disability groups such as Inclusion Scotland and the Glasgow Centre for Inclusive Living;
 - expert housing organisations including the Care and Repair Forum Scotland and Housing Options Scotland; and
 - the Equality and Human Rights Commission.ⁱ
8. The Policy Note states that, in the event of a dispute, either the disabled person or any of the owners may apply to the Sheriff for a final decision. The policy lead told the Committee that this approach was taken, rather than using the housing tribunal, as these matters are property related, rather than tenancy related. The Minister clarified that this approach would only be required in the event of a dispute where there were no other way of mediating and resolving the issue.ⁱⁱ
9. The Minister clarified that these regulations would prevent a situation where a single owner-occupier in a shared property prevents work to common areas being carried out. This, he said, had been an issue in the past where local authorities or housing associations had owned the majority of properties in shared ownership.ⁱⁱⁱ
10. During the evidence session, Committee Members sought to clarify whether a disabled tenant could use these regulations to apply for adaptations to their common areas without the permission of their landlord, or have the right of appeal

i [Local Government and Communities Committee Official Report 22 January 2020 Col 3.](#)

ii [Local Government and Communities Committee Official Report 22 January 2020 Cols 3-4.](#)

iii [Local Government and Communities Committee Official Report 22 January 2020 Col 6.](#)

to the sheriff. The policy lead said that the private tenants seeking to rely on the provision would still need the landlord's permission, in line with the provisions of the Housing (Scotland) Act 2006. In response to a request for clarification, she added that it appeared that the tenant could not, in the event of the landlord refusing permission, appeal to the sheriff, but that "we would have to consider that". The Minister affirmed that if a disabled tenant wished to make changes to common parts, they would still require the go-ahead from their landlord. He offered to provide the Committee with an outline of all relevant legislation in order to help further clarity on the situation^{iv}. However, the solicitor stated, "Regulation 3 gives a disabled person who is a tenant the right to make relevant adjustments to common parts". This was in response to a question as to whether a tenant has "no right" under the instrument if the landlord refuses consent. She also affirmed that "Tenants are covered just as much as landlords".^v

11. The following points were also raised during the Session-

- who would pay for adjustments under the regulations: the Minister referred to article 9(1) of the regulations, which provided the disabled person would pay, unless they had entered into some other agreements with co-owners of the common parts. However, he said that in many cases he would expect Integration Joint Boards to fund the costs^{vi}. The Minister acknowledged that, like other Members, he had sometimes been "frustrated" by decisions Boards had taken on whether to allow adaptations but said that this was an issue outside the scope of the regulations^{vii};
- perceptions of a "delay" between the consultation period and the introduction of the regulations. The Minister said that the regulations had been complex and that it had taken longer than he would have wanted to get the necessary legal permissions to proceed from the UK Government^{viii}; and
- the types of works which may constitute "relevant adjustments". The Minister clarified that the regulations did not change in any way the definition of "reasonable adjustment" already in use. He gave the examples of ramps or handrails, but said it would be "unwise" for him to speculate further. He further clarified that reasonable adjustments under the regulations specifically related to adjustments to facilitate access^{ix}.

12. Following the evidence session on the instrument, Kevin Stewart moved motion S5M-20243-

iv [Local Government and Communities Committee Official Report 22 January 2020 Col 6.](#)

v [Local Government and Communities Committee Official Report 22 January 2020 Col 4.](#)

vi [Local Government and Communities Committee Official Report 22 January 2020 Col 7.](#)

vii [Local Government and Communities Committee Official Report 22 January 2020 Cols 9-10.](#)

viii [Local Government and Communities Committee Official Report 22 January 2020 Col 5.](#)

ix [Local Government and Communities Committee Official Report 22 January 2020 Cols 8-9.](#)

That the Local Government and Communities Committee recommends that the Relevant Adjustments to Common Parts (Disabled Persons) (Scotland) Regulations 2020 should be approved.

13. The motion was agreed to without debate or division.

Conclusions

14. The Local Government and Communities Committee recommends that the Relevant Adjustments to Common Parts (Disabled Persons) (Scotland) Regulations 2020 be approved. We welcome this instrument, which will be of practical assistance to disabled people living in properties which have common parts and recognise the work that has gone into preparing them. We note, however, some uncertainty that arose in evidence-taking as to whether tenants can use these powers without the consent of their landlord. The Scottish Government offered to provide clarification on the exact legal situation and we look forward to receiving and publishing this in due course.

