



# **Reasonable Adjustments and the Equality Act 2010**

# Reasonable adjustments in relation to the letting of premises

## The duty to make reasonable adjustments

The Equality Act 2010 imposes a duty to make reasonable adjustments for disabled people, in relation to certain types of activity. This leaflet is about one of those activities: the letting of premises. Where a person leases premises such as a house, or makes them available to let, then the duty to make reasonable adjustments for a disabled person could apply.

It is important to note that the duty to make reasonable adjustments also applies to certain public service providers, however the duty to make a reasonable adjustment in those cases is different. It might not always be clear if a housing case falls within the letting of premises or in the provision of a service to the public or exercise of a public function.

The failure to make reasonable adjustments under the Act is a form of unlawful discrimination which applies only to the protected characteristic of disability.

## Who owes the duty?

Under section 36(1) of the Act, the duty applies to “a controller of let premises” and “a controller of premises to let” (section 36 also imposes the duty on other persons, but not in Scotland). “Controller” means the person by whom the premises are let (or to let) or the person who manages them. It could be a private or social landlord.

## What is “letting”?

A “let”, also called a “tenancy” or a “lease”, is a contract in which a person (the tenant) is allowed by another person (the landlord) to occupy property, in exchange for some kind of return. Usually the return is payment of a rent. Under the Act “letting” includes sub-letting.

Importantly, for the purposes of the Act “letting” also includes any sort of arrangement in which a person is given a right to occupy premises, even if that arrangement is not, strictly speaking, a lease. So, where the term “lease” is used in this leaflet, it means any arrangement in which a person is given a right to occupy premises, and “tenant” means a person who has a right to occupy under some arrangement with the controller.

## Who is the duty owed to?

Schedule 4 of the Act sets out what the duty requires. Under section 20 of the Act, the duty to make reasonable adjustments has three requirements. However, only the first and third requirements are imposed by schedule 4.

A person making reasonable adjustments is not entitled to require a disabled person to pay to any extent for the cost of complying with the duty.

## The first requirement

The first requirement applies where a “provision, criterion or practice” of the controller puts a disabled person at a “substantial disadvantage” in relation to a “relevant matter” in comparison with persons who are not disabled. In that case, the controller’s duty is to take reasonable steps to avoid the disadvantage.

A “provision, criterion or practice” could include a policy or practice or rule that the controller has in relation to the occupation of the premises or his management of them. It includes any term which is included in the lease contract, or which the controller would like to include in the lease of a property that is to let.

“Substantial disadvantage” means “more than minor or trivial”.

The “relevant matter” is the enjoyment of the premises, or the use of a benefit or facility under the lease. “Enjoyment of the premises” does not mean “deriving pleasure from them”.

It means the ability of the tenant to use the property in an ordinary and lawful way, living as any typical tenant would. A benefit or facility could include say, the use of a shared garden.

## The third requirement

This is the requirement, where a disabled person would, but for the provision of an “auxiliary aid”, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled. In that case, the controller has to take reasonable steps to provide the auxiliary aid. In this requirement, “substantial disadvantage” and “relevant matter” mean the same thing as in the first requirement.

An “auxiliary aid” includes an “auxiliary service”. Examples of auxiliary aids and services would be: a special piece of equipment; provision of a sign language interpreter; extra staff assistance for disabled people; audio-visual fire alarms; or special measures for communications between the controller and the tenant.

## The need for a request

The duty to make reasonable adjustments in relation to premises is “reactive”. It is not imposed on the controller, unless a request is made by a person entitled to occupy the premises, such as the tenant.

It is suggested that the request ought to be made in writing, in a way that enables the person sending the request to confirm receipt, again in writing.

## The physical features exception

Schedule 4 only imposes the first and third of the requirements set out in section 20 of the Act. The second requirement, which is not imposed on the controller of let premises, is to make reasonable adjustments where a “physical feature” puts a disabled person at a substantial disadvantage in relation to a relevant matter.

A “physical feature” is a feature arising from the design or construction of a building, or a feature of an approach to, exit from or access to a building, a fixture or fitting or any other physical element or quality.

However, for the purposes of schedule 4, none of the following counts as alteration of a physical feature:

- (a) the replacement or provision of a sign or notice;
- (b) the replacement of a tap or door handle;
- (c) the replacement, provision or adaptation of a door bell or door entry system;
- (d) changes to the colour of a wall, door or any other surface.

Under the legislation, all of these actions are classified as auxiliary aids or services, covered by the third requirement. The same applies to the removal, replacement or provision of any furniture, furnishings, materials, equipment and other moveable property. See: reg 8 of the Equality Act 2010 (Disability) Regulations 2010.

## How the duty applies where premises are “to let”

A disabled person can request that a reasonable adjustment is made, when she is considering taking a let of the premises. In order to do so, the disabled person has to be able to say that she is at a substantial disadvantage in relation to “becoming a tenant” of the subjects, in comparison with persons who are not disabled. This could be the case where the disabled person is concerned that she could not meet the obligations of the tenancy due to her disability, or because she could not occupy the property without some auxiliary aid or service being provided.

**Example:** a disabled person sees a property advertised by a letting agent, applies to become the tenant, and her application is accepted. She goes to the agents’ office to sign the lease. On reading the lease, she finds that there is a clause that she could not fulfil, given her disability. She asks the agent about the clause, and he states that it is the landlord’s practice to include this clause in all of the leases for its properties. The disabled person explains why that would put her at a substantial disadvantage in becoming the tenant, because she could not fulfil the obligation. She asks for an adjustment to be made, to remove that disadvantage. The agent seeks instructions from the landlord, and then tells the disabled person that the offer of the tenancy is withdrawn. It is suggested that in those circumstances, the landlord is in breach of the duty to make reasonable adjustments.

## Examples of reasonable adjustments

The following are examples of adjustments that might be made:

- Relieving the tenant of obligations under the lease that would be imposed on non-disabled persons, for example in relation to redecoration, or the keeping of gardens.
- Providing mentoring or support to assist the tenant in carrying out those obligations.
- Adjusting the way that the controller communicates with tenant, including adapting written communications, or using telephone communication instead, or making arrangements for meetings, such as the provision of an interpreter or supporter.
- Altering door bells or door entry systems, signs and notices.

## When is an adjustment reasonable

In deciding whether it would be reasonable to make an adjustment, the controller can consider:

- Whether it would be effective in removing the disadvantage suffered by the disabled person.
- Whether it is achievable.
- Whether it is affordable, given the controller's resources.
- If the measure is in relation to a private household, the extent to which taking it would disrupt that household, or disturb any person residing there.

## Exceptions – schedule 5 of the Act

Under schedule 5 the duty to make reasonable adjustments does not apply if the premises are, or have been, the only or main home of a person by whom they are let and, since entering into the letting, neither that person nor any other by whom they are let has used a manager for managing the premises.

The duty to make reasonable adjustments also does not apply if the premises in question are “small premises” where parts are shared (like a kitchen or bathroom in a bedsit), and the controller or a relative controller lives there.

## Remedies

The appropriate remedy for breach of the duty to make reasonable adjustment would be civil action in sheriff court. There is a time limit of six months minus a day for raising such proceedings.

**For further information and advice:**

[shelterscotland.org/getadvice](https://shelterscotland.org/getadvice)

[equalityhumanrights.com/en/commission-scotland](https://equalityhumanrights.com/en/commission-scotland)

[shelterscotland.org](https://shelterscotland.org)

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