**Annex A – Consultation Questions**

**Improving disabled people’s access to let residential premises: reasonable adjustments to common parts, a new duty**

**June 2022**

**Your information**

*Your name or the organisation’s name you are answering on behalf of:*

Royal College of Occupational Therapists ([RCOT](https://www.rcot.co.uk/))

*Please state which of these groups do you belong to?*

* organisations representing any of the above groups
* expert in any of the topics covered
* other:

**About us**

We’re the professional body for occupational therapy practitioners in the UK. We’ve championed the profession and the people behind it for over 80 years; and today, we are thriving with over 35,000 members. Then and now, we’re here to help achieve life-changing breakthroughs for our members, for the people they support and for society as a whole.

Occupational therapy helps you live your best life at home, at work – and everywhere else. It’s about being able to do the things you want and have to do. That could mean helping you overcome challenges learning at school, going to work, playing sport or simply doing the dishes. Everything is focused on increasing independence and wellbeing.

It’s a science-based, health and social care profession that’s regulated by the Health and Care Professions Council.

An occupational therapist helps people of all ages overcome challenges completing everyday tasks or activities – what we call ‘occupations’. This includes supporting people to be safe and independent in their homes. Occupational therapists regularly work with people with a wide range of needs to recommend and design home adaptations that maximise their independence, including individuals who require adaptations to common parts.

This consultation response has been authored with input from RCOT members with wide-ranging expertise in the delivery of home adaptations, including members of [RCOT Specialist Section - Housing](https://www.rcot.co.uk/about-us/specialist-sections/housing-rcot-ss), and members of [Foundations](https://www.foundations.uk.com/) community of practice.

*Your email address and phone number*: lauren.walker@rcot.co.uk 020 3141 4664

*Would you be happy to be contacted by the Government Equalities Office about your responses?* Yes

**Consultation Questions**

Please read the consultation document, ‘Improving disabled people’s access to let residential premises: reasonable adjustments to common parts, a new duty’, before answering the following questions. There are 18 questions. You can answer any questions.

**Question 2**

*Do you think that guidance should set out what a “reasonable period” should be for the landlord to complete the tenant consultation process following a reasonable adjustment request?* **Yes**

There needs to be clear expectations about how long the process should take. This is important for timeliness, fairness, consistency and safety. If timescales are not mandated there is likely to be considerable variation and disparity between cases. This is inequitable and places disabled people at a disadvantage.

If a tenancy agreement / leasehold purchase has to be in place before works are agreed, a disabled person may be stuck living in a property that is unsuitable for them while the consultation takes place. This may lead to a deterioration in their condition and increased risk of injury. There are also financial implications for the disabled person if they need to maintain a tenancy/leasehold on two properties whilst a decision is made.

**Question 3**

*Do you have any views to add on how landlord-tenant consultation arrangements should work?* **Yes**

Alongside clear and transparent timescales, there should be a clear and consistent process for dealing with non-respondents. The default position for any tenant who does not respond should be agreement in favour of the adaptation. Disabled people should not be disadvantaged through lack of engagement by other tenants. As noted in response to question 2, the consequences of failing to provide reasonable adaptations can be significant. It may result in injury or deterioration in condition for the disabled person, and may also increase their reliance upon health and social care services.

**Question 4**

*Do you foresee any issues for landlords in operating the new requirements alongside existing lease obligations?* **Yes**

There are a number of new responsibilities for landlords arising from the new requirements, and they will need support and guidance to understand and enact these responsibilities effectively and sensitively. If this isn’t provided there is a risk of non-engagement or of inconsistent and inequitable practices, which will place disabled people at a disadvantage.

Occupational therapists have expertise to contribute to best practice guidance on the importance, impact and delivery of adaptations. We will welcome an onward discussion to explore how RCOT members can support the development of best practice resources that support the enactment of S36.

There is likely to be some complexity around the responsibility for ongoing maintenance of adaptations, especially where they are used by all residents e.g. powered door opening systems. Some adaptations, such as door opening systems, may be at increased risk of damage and misuse. There must be clear and consistent expectations around timescales and responsibilities for maintenance and repair. Failure to do so may result in significant disadvantage and risk for the disabled resident if they are unable to use adaptations that are needed to access the building safely and independently.

**Question 6**

*Who should pay for the costs of adaptations to the communal parts where this is required and reasonable? Please select from the list below.*

* Difficult to say because it will depend on the particular circumstances

Where there is demonstrable benefit to all residents – e.g. provision of ramped access or automated door systems, it may be reasonable for all tenants to contribute. Likewise, if the adaptations will increase the value/marketability of a property, the landlord should contribute. [Inclusive design](https://www.designcouncil.org.uk/fileadmin/uploads/dc/Documents/the-principles-of-inclusive-design.pdf) enables a wide range of people to access buildings easily and equitably, including disabled people, older people and families with small children.

In addition to installation costs, consideration needs to be given to ongoing maintenance and repair. It may not be fair or reasonable to expect these costs to be covered by the disabled person, especially if adaptations are subject to wear and tear or vandalism by other residents. It is sometimes possible to obtain extended warranties as part of a Disabled Facilities Grant (DFG) application, but these may not cover use/damage by other individuals, and only apply for a short period of time.

To ensure that adaptations are carried out in a timely fashion, we suggest that the landlord has a duty to pay for works that could be funded by a DFG – so that they have the duty to apply for the grant. This would also mean that the means test does not apply. Ongoing maintenance costs should be shared between the landlord and all tenants, and removal costs should be paid for by the landlord.

**Question 8**

*Other than possible Disabled Facilities Grant support, what provision should be made to protect the disabled resident where other leaseholders cannot help to pay for the work?*

This issue would be avoided by placing a duty upon the landlord to apply for a DFG, as suggested in our response to question 6.

If this isn’t possible, clear guidance should be given to disabled people on all of the different sources of funding that may be available to them – for example Physical Adaptation Grants in Wales. Advice should also be given to people who are not eligible for funding but are able to self-fund.

**Question 9**

*Do you anticipate any risks with landlords being able to decide how costs should be allocated?* **Yes**

In the interests of fairness, there should be clear national guidance on allocation of costs, which all parties are aware of and must adhere to. Landlords may not appreciate the importance of adaptations for disabled people and may have misconceptions about the impact of adaptations on the value/marketability of the property. The NRLA [Adaptations: good practice guidance](https://www.nrla.org.uk/resources/looking-after-your-property/adaptations) developed in collaboration with the RCOT Specialist Section on Housing, is a helpful resource for addressing this, and an expanded version, covering the new duty, would be valuable.

As noted in response to question 6, consideration and guidance must also be given on allocation of maintenance and removal costs.

**Question 10**

*Do you foresee any risks, to any of the parties concerned, in cases where the landlord deems it appropriate under the lease to pass on the costs of the adjustment to all leaseholders?* **Yes**

As noted in response to question 9, clear guidance on when/why shared costs arise must be provided, which landlords and leaseholders are aware of. It is possible that disabled residents may experience victimisation if they are seen as the cause of the costs. Their anonymity and confidentiality must be respected.

**Question 11**

*What factors should we consider when drafting guidance for the process to consult other tenants?*

Clear timescales must be provided, as well as clear guidance on how to deal with non-respondents. As noted in our answer to question 3, lack of response should be counted in favour of the adaptation, not against it. Clear guidance is also needed on deciding whether responses are discriminatory, as landlords may lack the knowledge and experience to make these judgments.

There needs to be consideration for the health and safety of other residents and how adaptations might impact them e.g. will it be possible for other people to access the proposed adaptations, and will this always be safe and appropriate? It is unclear whose responsibility this will be to ascertain, as they will need the appropriate skills to undertake a risk assessment.

**Question 12**

*There is no power in the Equality Act to set out a mandatory form or template that residents and landlords must use to manage the process, from initial application for an adjustment through to landlord decision, however, the Government could, provide a template for voluntary use. Would you welcome a model form or template, which would be included in the guidance?* **Yes**

This would be helpful in securing some level of consistency and fairness in the way the process is conducted and may help to prevent delays. It would empower the applicant and assist the landlord. We would welcome an onward discussion to consider how RCOT members can support the development of this resource.

**Question 13**

*Are there any other considerations on reasonableness that you think the guidance should cover?* **Yes**

‘Reasonableness’ is a very subjective term, and clear guidance, including worked examples and case studies, will be needed to ensure that decisions are made fairly and equitably. As noted in answers to previous questions, there is significant responsibility and control being given to landlords and they must be supported to understand and enact their responsibilities effectively.

**Question 14**

*Is there any other support that landlords would find useful in helping them to make decisions on reasonableness?* **Yes**

Written guidance, similar to that already produced by the NRLA, will be beneficial, but landlords may also need to seek individual support and advice. It may be appropriate for this to be provided by existing agencies e.g. [Foundations](https://www.foundations.uk.com/)

It is important that recommendations for adaptations are supported by a suitably qualified professional such as an occupational therapist, where appropriate (this is discussed further in our general comments below).

**Question 15**

*After a landlord has agreed to an adjustment, as well as setting out the requirements of a written agreement between the parties, the Government could also set out a mandatory form for this purpose. Would you welcome this?* **Yes**

As noted in previous answers, this may be helpful for the purposes of consistency and fairness. It would be necessary for any such forms to be fit for purpose in all contexts i.e. both England and Wales.

**Question 17**

*If you answered “yes”, to either question 15 or 16, what would you like to see covered in a mandatory or voluntary form?*

* Details of the adaptations being proposed, including plans/drawings where possible
* Details of any other agencies involved e.g. occupational therapist, home improvement agency, local authority
* Details of any risk assessments (as appropriate)
* Expected costs for installation, maintenance and removal
* Details of who is responsible for paying for which costs i.e. landlord, disabled person, other tenants/leaseholders
* Details of agreed funding e.g. DFG
* Expected timescales
* Proposed contractors

**General comments**

We welcome the enactment of S36 and the opportunity to give disabled people greater safety, independence and choice in where they live. There are some complex factors to address so that all disabled people are able to identify solutions that are suitable for them, and that landlords respond to requests fairly, equitably and consistently.

Occupational therapists have a key role in supporting people to identify adaptations that meet their needs, both as part of the DFG process and for those using alternative sources of funding. We are concerned that the current consultation does not address how people will be supported to identify suitable adaptations in the first instance, and feel this needs more consideration.

There appears to be an implicit expectation that people will follow the established DFG route, however this process has some limitations when applied to adaptations in communal areas. There is also no consideration of people who are ineligible for DFG funding, or who wish to self-fund.

We have some specific questions that we feel need to be explored:

***How will people be supported to identify adaptations that meet their needs*?**

Assessment and recommendations may be needed by a suitably skilled professional such as an occupational therapist. This will place additional demands upon an already stretched workforce. Adaptations teams e.g. within local authorities and home improvement agencies must be appropriately resourced to meet demand.

Guidance should be provided on when professional assessment might be needed and by whom, based on the complexity of the situation. The RCOT publication [Adaptations without delay](https://www.rcot.co.uk/adaptations-without-delay) includes a framework to assist decision making.

Information should be given on how to seek support to identify ways of meeting needs effectively e.g. how to contact your local authority to request a needs assessment, and how to identify an independent occupational therapist if you wish to self-fund. There is information on how to find an occupational therapist on the [RCOT website](https://www.rcot.co.uk/about-occupational-therapy/find-occupational-therapist).

***Who will ensure that recommendations are safe and appropriate for the disabled resident and other residents (if applicable)?***

Failure to obtain assessment from a suitably qualified professional may result in adaptations not being fit for purpose. This has implications for cost e.g. if something unsuitable is installed which then needs to be replaced, and also for safety – both for the disabled person and other residents.

Occupational therapists typically only act on behalf of the disabled person, and landlords are unlikely to have the necessary skills to make appropriate recommendations. More consideration is needed on who will carry out risk assessments when adaptations are used by multiple people, and when these might be required.

***Who will be accountable for ensuring that processes and guidance are followed?***

Clear guidance, forms and templates will be helpful, but there doesn’t appear to be a mechanism to hold landlords to account for their responsibilities. This means that, in practice, the process may not be followed effectively. Disabled applicants should be provided with clear information on how to complain or appeal if they feel their application has not been dealt with fairly or in line with the required processes.