

ADAPTATIONS



Wednesday 13 July 2022 | 16:00-17:00

Speakers: John Hobson, Alice Irving

Chair: Martin Westgate QC



JOHN HOBSON

ADAPTATIONS

- Housing Grants, Construction and Regeneration Act 1996
 - Disabled Facilities Grants [DFG]
- Care Act 2014
 - Meeting assessed needs for care and support
- Chronically Ill and Disabled Persons Act 1970, s.2.
- Relief duties under Part 7 Housing Act 1996

HOUSING GRANTS, CONSTRUCTION AND REGENERATION ACT 1996

1 Grants for improvements and repairs

(1) Grants are available from local housing authorities in accordance with this Chapter towards the cost of works required for—

(a).....

(b).....

(c) the provision of facilities for disabled persons

(i) in dwellings, qualifying houseboats
and caravans, and

(ii) in the common parts of buildings containing
one or more flats.

> *In 2019/2020 approx. 1.9 m households in England had one or more person with a health condition that required adaptations to their home*

Definitions are set out in respect of:

(1) “disabled persons”; [s.100]

(2) “dwelling”; [s.101]

(3) “caravan”; [s.58]

(4) “qualifying houseboat” [s.58]

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Eligibility for a disabled facilities grant

Homeowners, housing association tenants and private tenants can all apply for assistance to make a property suitable for a person with disabilities.

Please note that we will only consider applications when an occupational therapist has recommended the work.

What types of works qualify for assistance?

We will aim to provide an effective long-term solution, taking into account your individual circumstances. In some instances, it may not be possible to make an adaptation to your existing home, for reasons such as property layout. With your agreement, we may decide to look at alternative solutions, such as contributing to the costs of a move.

In considering the occupational therapist's recommendations, we will decide what works are necessary, appropriate, reasonable and practicable. The following are examples of types of work, which are eligible for a Mandatory Disabled Facilities Grant:

- Adaptations to aid access to a property
- Providing appropriate bathroom and sleeping facilities
- Making lighting and power useable, such as repositioning light switches
- Appropriate adaptations to enable a person with disabilities to live independently or be cared for in their own home.

If there are a number of suitable options that would meet your needs, we will provide a grant based on the most cost-effective option.

How much assistance is available?

The maximum mandatory grant limit is currently set at £30,000. All applications will involve a 'means test' of the person with disabilities and their partner if applicable. This will determine how much you will

Heatwave

High temperatures are expected for much of this week and into the weekend.
Hot and humid weather can increase your risk of dehydration.

[Get advice on how to stay cool from the NHS.](#)

✕
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Housing adaptations, grants and assistance

We provide support to residents to maintain independence and live comfortably and safely in their own homes.

Guide contents

› [Housing adaptations, grants and assistance](#)

Published on: 30 December 2020

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Disabled facilities grant

Disabled facilities grant

- > Decent homes grant
- > Adaptions assistance grant
- > Emergency works to heating and hot water grant
- > Safe and secure grant
- > Sanctuary Scheme
- > Westminster Home Improvement Agency (WHIA)
- > Eligible benefits and publications
- > Free Handyperson service

This is a mandatory grant by legislation for works to make homes and facilities accessible to you if you are disabled.

The maximum grant is £30,000.

Read more information about the [disabled facilities grant and the eligibility requirements](#) on GOV.UK.

You are eligible to apply if you are a:

- owner
- occupant
- private tenants (who are not council tenants)
- housing association

If the disabled person is in receipt of any benefits (excluding job seekers allowance), they will be eligible for 100% of the grant.

The grant cannot be given until the disabled person's condition has been assessed and it's decided that the home needs to be adapted.

[Enquire online](#)

Contact details

You can contact Social Services on [020 7641 2500](tel:02076412500) for an assessment of the disabled person's needs.

> [Next](#)

Decent homes grant

2 Applications for grants.

- (1) No grant shall be paid unless an application for it is made to the local housing authority in accordance with the provisions of this Chapter and is approved by them.
- (2) An application for a grant shall be in writing and shall specify the premises to which it relates and contain—
- (a) particulars of the works in respect of which the grant is sought (in this Chapter referred to as the “relevant works”);
 - (b) unless the local housing authority otherwise direct in any particular case, at least two estimates from different contractors of the cost of carrying out the relevant works;
 - (c) particulars of any preliminary or ancillary services and charges in respect of the cost of which the grant is also sought; and
 - (d) such other particulars as may be prescribed.

19 Disabled facilities grants: owner's and tenant's applications.

- (1) A local housing authority shall not entertain an application for a grant unless they are satisfied—
 - (a) that the applicant has, or proposes to acquire, an owner's interest in every parcel of land on which the relevant works are to be carried out, or
 - (b) that the applicant is a tenant (alone or jointly with others)—
 - (i) in the case of an application in respect of works to a dwelling, of the dwelling, or
 - (ii) in the case of a common parts application, of a flat in the building, and, in either case, does not have or propose to acquire such an owner's interest as is mentioned in paragraph (a) or
 - (c) that the applicant is an occupier (alone or jointly with others) of a qualifying houseboat or a caravan and, in the case of a caravan, that at the time the application was made the caravan was stationed on land within the authority's area

- (5) In this Chapter “tenant”, in relation to a grant, includes—
- (a) a secure tenant, introductory tenant or statutory tenant,
 - (b) a protected occupier under the Rent (Agriculture) Act 1976 or a person in occupation under an assured agricultural occupancy within the meaning of Part I of the Housing Act 1988,
 - (c) an employee (whether full-time or part-time) who occupies the dwelling or flat concerned for the better performance of his duties, and
 - (d) a person having a licence to occupy the dwelling or flat concerned which satisfies such conditions as may be specified by order of the Secretary of State;
- and other expressions relating to tenancies, in the context of an application for grant, shall be construed accordingly.

SCOPE

- The DFG provides capital funding for the provision of home adaptations
- Typically includes expenditure on non-current assets such as land, buildings and plant and equipment.
- To qualify expenditure must result in either the acquisition/enhancement of an asset with benefits lasting more than one accounting period [ie > one year.

[See: Disabled Facilities Grant (DFG) delivery: Guidance for local authorities in England, March 2022, Appendix A]

20 Disabled facilities grants: the disabled occupant.

In this Chapter the “disabled occupant”, in relation to an application for grant, means the disabled person for whose benefit it is proposed to carry out any of the relevant works.

Disabled facilities grants: certificate required in case of owner's application

- (1) A local housing authority shall not entertain an owner's application for a grant unless it is accompanied by an owner's certificate in respect of the dwelling to which the application relates or, in the case of a common parts application, in respect of each flat in the building occupied or proposed to be occupied by a disabled occupant.
- (2) An "owner's certificate", for the purposes of an application for a grant, certifies that the applicant—
 - (a) has or proposes to acquire a qualifying owner's interest, and
 - (b) intends that the disabled occupant will live in the dwelling or flat as his only or main residence throughout the grant condition period or for such shorter period as his health and other relevant circumstances permit.

22 Disabled facilities grants: certificates required in case of tenant's application.

- (1) A local housing authority shall not entertain a tenant's application for a grant unless it is accompanied by a tenant's certificate.
- (2) A "tenant's certificate", for the purposes of an application for a grant, certifies—
 - (a) that the application is a tenant's application, and
 - (b) that the applicant intends that he (if he is the disabled occupant) or the disabled occupant will live in the dwelling or flat as his only or main residence throughout the grant condition period or for such shorter period as his health and other relevant circumstances permit.
- (3) Except where the authority consider it unreasonable in the circumstances to require such a certificate, they shall not entertain a tenant's application for a grant unless it is also accompanied by an owner's certificate from the person who at the time of the application is the landlord under the tenancy.

- 23 Disabled facilities grants: purposes for which grant must or may be given.
- (1) The purposes for which an application for a grant must be approved, subject to the provisions of this Chapter, are the following—
 - (a) facilitating access by the disabled occupant to and from
 - (i) the dwelling, qualifying houseboat or caravan, or
 - (ii) the building in which the dwelling or, as the case may be, flat is situated;
 - (b) making
 - (i) the dwelling, qualifying houseboat or caravan, or
 - (ii) the building,safe for the disabled occupant and other persons residing with him;

- (c) facilitating access by the disabled occupant to a room used or usable as the principal family room;
- (d) facilitating access by the disabled occupant to, or providing for the disabled occupant, a room used or usable for sleeping;
- (e) facilitating access by the disabled occupant to, or providing for the disabled occupant, a room in which there is a lavatory, or facilitating the use by the disabled occupant of such a facility;
- (f) facilitating access by the disabled occupant to, or providing for the disabled occupant, a room in which there is a bath or shower (or both), or facilitating the use by the disabled occupant of such a facility;

- (g) facilitating access by the disabled occupant to, or providing for the disabled occupant, a room in which there is a wash hand basin, or facilitating the use by the disabled occupant of such a facility;
- (h) facilitating the preparation and cooking of food by the disabled occupant;
- (i) improving any heating system in the dwelling, qualifying houseboat or caravan to meet the needs of the disabled occupant or, if there is no existing heating system there or any such system is unsuitable for use by the disabled occupant, providing a heating system suitable to meet his needs;
- (j) facilitating the use by the disabled occupant of a source of power, light or heat by altering the position of one or more means of access to or control of that source or by providing additional means of control;

- (k) facilitating access and movement by the disabled occupant around the dwelling qualifying houseboat or caravan in order to enable him to care for a person who is normally resident there and is in need of such care;
- (l) such other purposes as may be specified by order of the Secretary of State [access to/from a garden or making safe – Order 2008]
- (2).....
- (3) If in the opinion of the local housing authority the relevant works are more or less extensive than is necessary to achieve any of the purposes set out in subsection (1) they may, with the consent of the applicant, treat the application as varied so that the relevant works are limited to or, as the case may be, include such works as seem to the authority to be necessary for that purpose.

- S.29 – Restriction on grants for works already begun
- S.30 - Means testing in case of application by owner-occupier or tenant
 - > Statutory maximum DFG of £30,000
[Order 2008/1189]

- The application
 - > Guidance, Chapter 5 – eligibility, means test, specifications. planning permission, tendering, service contracts.
- Identifying capital expenditure for DFG purposes
 - > Guidance, Appendix A – examples as to what falls within/without.

Assistive technology

- > 'Products or systems that support and assist individuals with disabilities, restricted mobility or other impairments to perform that might otherwise be difficult or impossible'
- > May be included as part of a DFG award package to maximise benefits of home adaptations.

[Chapter 7 – Disabled Facilities Grant (DFG) delivery: Guidance for local authorities in England, March 2022]

Facilitating access to and movement within the dwelling

- > Automated door openers
- > Stair and platform lifts to navigate steps

Preparation of food

- > Adapted and height adjustable cooking surfaces

Accessing and using the bedroom

- > Ceiling track hoists/transfers from chair/wheelchair to bed

Controlling sources of power, light and heat

- > Smart lighting, smart hubs, automated light switches
- > Infrared controlled power sockets/remote control of devices

[Improvements in digital connectivity may be supported by the DFG if required to support an overall package][Maintenance/support costs not covered – other routes/sources may so support in tandem (Guidance, para.7.10).

Disabled facilities grants: approval of application.

- (1) The local housing authority shall approve an application for a grant for purposes within section 23(1), subject to the following provisions.
- (2) Where an authority entertain an owner's application for a grant made by a person who proposes to acquire a qualifying owner's interest, they shall not approve the application until they are satisfied that he has done so.
- (3) A local housing authority shall not approve an application for a grant unless they are satisfied—
 - (a) that the relevant works are necessary and appropriate to meet the needs of the disabled occupant, and
 - (b) that it is reasonable and practicable to carry out the relevant works having regard to the age and condition of
 - (i) the dwelling, qualifying houseboat or caravan, or
 - (ii) the building.

In considering the matters mentioned in paragraph (a) a local housing authority which is not itself a social services authority shall consult the social services authority.

[see Appendix B, B61-B83]

CASELAW

Regina (B) v Calderdale Metropolitan Borough Council [2004] EWCA Civ 134

- > Consideration of local authority's refusal decision relating to a proposed conversion of a loft into a separate bedroom for a child with a form of autism [s.23(1)(b)].
- > Proposed works must be such as to minimise material risk ie reduce it as far as is reasonably practicable (if not possible to be eliminated).
- > The local authority had conflated s.23(1) and s.24(3).
- > s.23(1) is a gateway provision.
- > s.24(3) - 'necessary and appropriate' - is a control for applications that pass through the gateway

Regina (McKeown) v Islington London Borough Council [2020] EWHC 779

- > Consideration of local authority's decision to refuse an application to finance a lift platform as it failed the "necessary and appropriate to meet the needs of the disabled occupant" test in s.24(3).
- > Held: "necessary and appropriate...." s.24(3) meant necessary and appropriate to meet the purpose set out in the s.23(1) gateway.
- > Not open to the local authority to consider wider matters of suitability.
- > Irrelevant considerations were taken into account.

- Disabled Facilities Grant (DFG) delivery – Guidance for local authorities in England, March 2022
 - > Its aim is ‘...to help local authorities to meet their responsibilities, including legal duties, and tailor local delivery to support their communities and the individual needs of disabled people, their families and carers’.
 - > It ‘..sets out in one place existing policy frameworks, legislative duties and powers, together with recommended best practice to help local authorities provide a best practice adaptation service to disabled tenants and residents in their area’



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Adaptations for tenants



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Research undertaken by the National Residential Landlords Association shows that only 8% of landlords let properties to people with accessibility needs and the biggest barrier to installing adaptations is cost. However, 79% of landlords did not know that funding is available through the DFG.

- DFG Guidance, para 3.16

DFG application requirements for tenants

Sections 21, 22 Housing Grants, Construction and Regeneration Act 1996

- Must submit 'tenant's certificate' certifying that applicant or disabled occupant intends to live in the dwelling or flat as his main residence throughout the grant condition period (normally five years) or such shorter period as his health and other relevant circumstances permit.
- Must submit 'owner's certificate', unless authority consider it unreasonable to require this.

DFG Guidance

- B26: Discretion to dispense with 'owners certificate' may be used where the housing authority considers that the landlord is unreasonably withholding a certificate.
- C2.39: Consider asking the landlord to apply for the DFG.

Landlord's consent to adaptations (I)

Section 190 Equality Act 2010

- Applies where tenant /occupant is disabled person and property is their only and main home.
- Tenant must be entitled, with the consent of the landlord, to make improvements to the premises and must have applied for consent in writing to make a 'relevant improvement'.
- A 'relevant improvement' is:
 - An alteration in or addition to premises, including in relation to fittings and fixtures, the provision of services to the premises...
 - that, having regard to the disabled person's disability, is likely to facilitate that person's enjoyment of the premises.

Landlord's consent to adaptations (II)

Section 190 Equality Act 2010

- If landlord refuses consent, must give written statement of reasons.
 - If consent 'unreasonably withheld' it must be taken to have been given.
 - If landlord fails to respond to request within reasonable time, consent to be taken to have been unreasonably withheld.
 - It is for the landlord to prove that any consent was not unreasonably withheld.
-
- NOTE: Does not apply to all tenancies. In particular, does not apply to secure tenancies, but similar provision in **sections 97-98 Housing Act 1985**.

Failure to make reasonable adjustments (I)

PART 4 PREMISES

Section 35 Equality Act 2010

- A person who manages premises (A) must not discriminate against a person (B) who occupies the premises in the way in which A allows B, or by allowing B to make use of a benefit or facility... or by subjecting B to any other detriment.
- Discrimination includes direct discrimination, indirect discrimination, discrimination arising from disability and failure to make reasonable adjustments (see **section 21 Equality Act 2010**).
- Section 35 prohibits harassment and victimization.

Failure to make reasonable adjustments (II)

Section 36 Equality Act 2010

- A duty to make reasonable adjustments applies to a controller of let premises, a controller of premises to let, a commonhold association, and a person responsible in relation to common parts.
- NOTE: The part of this section relation to 'common parts' is not yet in force. The government intends to bring this into force, to require landlords to make reasonable adjustments to common parts of leasehold homes, including to hallways, entrances and stairs: see **DFG Guide para B58**.
- A Consultation on bringing remainder of section 36 into force currently open:
<https://www.gov.uk/government/consultations/improving-disabled-peoples-access-to-let-residential-premises-reasonable-adjustments-to-common-parts-a-new-duty>

Failure to make reasonable adjustments (III)

Section 20 Equality Act 2010

Duty to make reasonable adjustments comprises three requirements:

1. Where a provision criterion or practice (PCP) of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.
2. Where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with a person who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.
3. 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, to take such steps as it is reasonable to have to take to provide the auxiliary aid.

Failure to make reasonable adjustments (IV)

- Section 20(13) directs us to **Schedule 4** in relation to application of duty to **Part 4 (premises)**.
- A must comply with the first and third requirements: **Schedule 4 para 2(2)**.
- It is never reasonable for A to have to take a step which would involve the removal or alteration of a physical feature: **Schedule 4 para 2(8)**.
- A reference to a physical feature (except in the context of paras 2-4 Schedule 4) is a reference to a feature arising from the design or construction of a building, a feature of an approach to exit from or access to a building, a fixture or fitting, furniture, materials equipment or other chattels in or on premises: **Section 20(10)**.
- For the purposes of para 2 Schedule 4, physical features do not include furniture, furnishing, materials, equipment or other chattels in or on the premises: **Schedule 4 para 2(9)**.

Failure to make reasonable adjustments (IV)

- A PCP includes a reference to a term of the letting: **Schedule 4 para 2(3)**.
- If a term of the letting that prohibits the tenant from making alterations puts the disabled person at the disadvantage referred to in the first requirement, A is required to change the term only so far as is necessary to enable the tenant to make alterations to the let premises so as to avoid the disadvantage: **Schedule 4 para 2(7)**.

Failure to make reasonable adjustments (V)

- Schedule 4 para 5
 - 'Relevant matters' are the enjoyment of the premises, or the use of a benefit or facility, entitlement to which arises as a result of letting.
- Schedule 4 para 6
 - A duty to make reasonable adjustments only arises if A receives a request from or on behalf of the tenant or the person entitled to occupy the premises to take steps to avoid the disadvantage or provide the auxiliary aid.

Failure to make reasonable adjustments (VI)

Smailes v Clewer Court Residents Ltd County Court at Cardiff, 30 January 2019

- A landlord is not required to carry out adaptation works to premises under the duty to make reasonable adjustments.
- However, in deciding whether to consent to the tenant carrying out adaptation works, the landlord had to make reasonable adjustments.
- This fell under the first requirement: a duty to make reasonable adjustments where a provision, criterion or practice is applied.
- Finally, is there a claim under Part 3 (services)? See **Sections 28, 29 Equality Act 2010** and consider **Plummer v Royal Herbert Freehold Ltd** County Court at Central London, 27 May 2018.

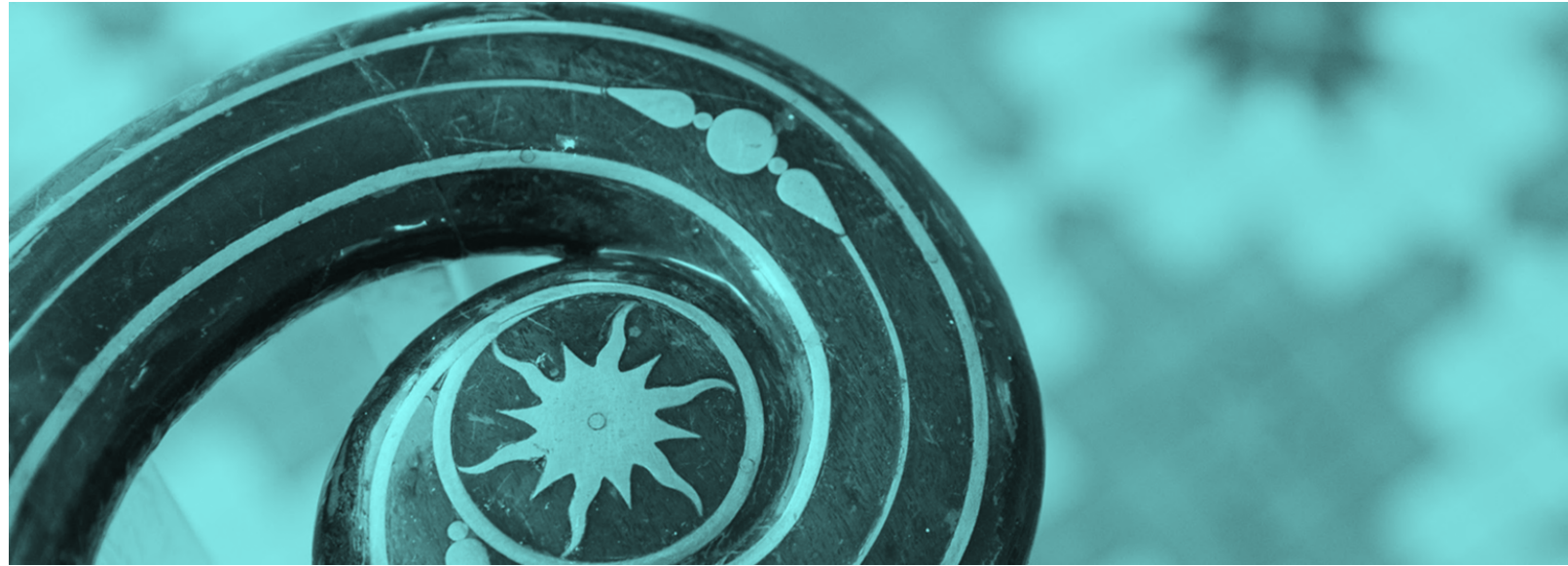


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Questions



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