

Support Notes on Commissioner's Advice Exclusions: Direction 29(b)

1. Introduction

No support notes

2. Mandatory grants from local authorities

There are a variety of local authority grant schemes. The following paragraphs give some brief details of these schemes

England and Wales

Sections 19 to 24 of the, *Housing Grants Construction and Regeneration Act, 1996* contain the statutory criteria according to which Disabled Facilities Grants are awarded. There are two types of grant:

- mandatory grants, which are awarded for one of the purposes specified in section 23(1) (mostly to do with facilitating access for disabled people to their house and the facilities within it);
- discretionary grants, which are awarded under section 23(2) for the purpose of making the dwelling or building suitable for the accommodation, welfare or employment of the disabled occupant in any other respect.

Direction 29(b) will apply if the expense requested by the social fund applicant falls into a category that would attract a mandatory grant. It will not apply if it falls only within the scope of the discretionary grant scheme.

Northern Ireland

In Northern Ireland, Mandatory Disabled Facilities Grants are awarded in accordance with Article 52 of the *Housing (Northern Ireland) Order, 1992* and the *Chronically Sick and Disabled Persons (Northern Ireland) Act 1978*. This covers the approval of applications to provide certain facilities for the disabled and is in parity with the mandatory grants, which are paid in England and Wales. Discretionary Grant legislation, which is currently applicable to Great Britain, is not yet applicable to Northern Ireland.

Note:

- The NI equivalent of the *Housing Grants Construction and Regeneration Act, 1996* is the *Housing (Northern Ireland) Order, 1992*.
- The NI equivalent of the *Chronically Sick and Disabled Persons Act 1970* is the *Chronically Sick and Disabled Persons (Northern Ireland) Act 1978*.

Scotland

There is a separate housing grants scheme for Scotland comprising a variety of types of grant. Most are discretionary, but some are mandatory. Mandatory *standard amenity grants*, for example, are available for the provision of certain standard amenities, such as bath or a shower, a basin, a sink or a toilet. However these grants only cover 50% of the total cost of the work.

It is unlikely that Direction 29(b) would apply in these cases. The local authority has a duty to contribute to the cost of the work, but it does not have a duty to meet the expenses. However in deciding whether to make an award, and especially how much to award, the Inspector should have regard to the possibility that the local authority may partly meet the need.

3. *The Chronically Sick and Disabled Persons Act, 1970*¹

(i) “necessary”

In some cases, local authorities have explicitly said that they are discharging their duty to “make arrangements” by supporting the person’s Social Fund application. In such cases, Inspectors should make explicit in their decision letters the reason why they are applying the exclusion, namely that the local authority is failing to address its duty to take the lead role in meeting the need for community care.

(ii) “not necessary”

The principle that local authorities are entitled to take account of their own resources when assessing a person’s need was established by a 1997 House of Lords ruling in the case of *R – v – Gloucestershire County Council ex parte Barry*. Although subsequent judgements have taken a more robust view of the local authority’s duty to provide, the *Barry* judgement nevertheless remains as a precedent.

(iii) No assessment

Although Direction 29(b) does not apply in these cases, Inspectors should, as one factor in their decision-making, have regard to the possibility that the local authority might wholly or partly meet the need.

¹ Or the *Chronically Sick and Disabled Persons (Northern Ireland) Act, 1978*.

Appendix: The Housing Grants, Construction and Regeneration Act, 1996

Disabled Facilities Grants

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

19. - (1) A local housing authority shall not entertain an application for a disabled facilities 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).

(2) References in this Chapter to an "owner's application" or a "tenant's application", in relation to a disabled facilities grant, shall be construed accordingly.

(3) In accordance with directions given by the Secretary of State, a local housing authority may treat the condition in subsection (1)(a) as met by a person who has, or proposes to acquire, an owner's interest in only part of the land concerned.

(4) In this Chapter, in relation to an application for a disabled facilities grant-

"qualifying owner's interest" means an owner's interest meeting the condition in subsection (1)(a) or treated by virtue of subsection (3) as meeting that condition; and

"qualifying tenant" means a tenant who meets the conditions in subsection (1)(b).

(5) In this Chapter "tenant", in relation to a disabled facilities 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 disabled facilities grant, shall be construed accordingly.

Disabled facilities grants: the disabled occupant.

20. In this Chapter the "disabled occupant", in relation to an application for disabled facilities 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.

21. - (1) A local housing authority shall not entertain an owner's application for a disabled facilities 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 disabled facilities 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.

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

22. - (1) A local housing authority shall not entertain a tenant's application for a disabled facilities grant unless it is accompanied by a tenant's certificate.

(2) A "tenant's certificate", for the purposes of an application for a disabled facilities 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 disabled facilities 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.

Disabled facilities grants: purposes for which grant must or may be given.

23. - (1) The purposes for which an application for a disabled facilities grant must be approved, subject to the provisions of this Chapter, are the following-

- (a) facilitating access by the disabled occupant to and from the dwelling or the building in which the dwelling or, as the case may be, flat is situated;
- (b) making the dwelling or 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 to

meet the needs of the disabled occupant or, if there is no existing heating system in the dwelling 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 in order to enable him to care for a person who is normally resident in the dwelling and is in need of such care;

(l) such other purposes as may be specified by order of the Secretary of State.

(2) An application for a disabled facilities grant may be approved, subject to the provisions of this Chapter, for the purpose of making the dwelling or building suitable for the accommodation, welfare or employment of the disabled occupant in any other respect.

(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) or the purpose mentioned in subsection (2), 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.

Disabled facilities grants: approval of application.

24. - (1) The local housing authority-

(a) shall approve an application for a disabled facilities grant for purposes within section 23(1), and

(b) may if they think fit approve an application for a disabled facilities grant not for a purpose within that provision but for the purpose specified in section 23(2),

subject to the following provisions.

(2) Where an authority entertain an owner's application for a disabled facilities 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 disabled facilities 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 the dwelling or 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.

(4) An authority proposing to approve an application for a disabled facilities grant shall consider-

(a) in the case of an application in respect of works to a dwelling, whether the dwelling is fit for human habitation;

(b) in the case of a common parts application, whether the building meets the requirements in section 604(2) of the Housing Act 1985.

and the authority shall take that into account in deciding whether it is reasonable and practicable to carry out the relevant works.

(5) A local housing authority shall not approve a common parts application for a disabled facilities grant unless they are satisfied that the applicant has a power or is under a duty to carry out the relevant works.