
DRAFT STATUTORY RULES OF NORTHERN IRELAND

2008 No.

**The Special Educational Needs and Disability (2005 Order)
(Amendment) (General Qualifications Bodies) (Alteration of
Premises and Enforcement) Regulations (Northern Ireland) 2008**

PART 3

Leasehold Premises

Interpretation

7. In this Part a “binding obligation” means a legally binding obligation (not contained in a lease) in relation to premises whether arising from an agreement or otherwise.

Lessor withholding consent

8.—(1) For the purposes of Article 37B of, and Schedule 3A to, the 2005 Order, a lessor is to be taken to have withheld his consent for alterations to premises where he has received a written application by or on behalf of a general qualifications body for consent to make the alteration in the circumstances set out in paragraph (2).

(2) Subject to paragraph (3), the circumstances referred to in paragraph (1) are that, within the period of 42 days beginning with the date on which the lessor receives the application for consent, he—

- (a) fails to reply consenting to or refusing the alteration; or
- (b) replies consenting to the alteration subject to obtaining the consent of another person required under a superior lease or pursuant to a binding obligation, but fails to seek that consent.

(3) A lessor is not to be taken to have withheld his consent under paragraph (1) where—

- (a) the applicant fails to submit with the application such plans and specifications as it is reasonable for him to require before consenting to the alteration, and
- (b) within the period of 21 days beginning with the date on which he receives the application, he replies requesting the applicant to submit such plans and specifications.

(4) However, where such plans and specifications are submitted to a lessor in response to a request made in accordance with paragraph (3)(b), he shall be taken to have withheld his consent to the alteration where, within the period of 42 days beginning with the date on which he receives those plans and specifications, he—

- (a) fails to reply consenting to or refusing the alteration; or
- (b) replies consenting to the alteration subject to obtaining the consent of another person required under a superior lease or pursuant to a binding obligation, but fails to seek that consent.

(5) A lessor, who having sought the consent of the other person referred to in paragraphs (2)(b) or (4)(b), receives that consent, shall be taken to have withheld his consent to the alteration where, within the period of 14 days beginning with the day on which he receives the consent, he fails to inform the applicant in writing that he has received it.

(6) A lessor who, but for the requirements as to time, complies with the requirements of paragraphs (2), (4) or (5) shall be taken to have withheld his consent until such time as he so complies.

(7) For the purposes of this regulation—

(a) a lessor is to be treated as not having sought another person’s consent unless—

(i) he has applied in writing to that person indicating that—

(aa) the general qualifications body has applied for consent to the alteration of the premises in order to comply with a duty imposed by Article 37; and

(bb) the lessor has given his consent conditionally upon obtaining the other person’s consent; and

(ii) he submits to that other person any plans and specifications which have been submitted to him;

(b) “to reply” means to reply in writing .

Lessor withholding consent unreasonably

9.—(1) For the purposes of Article 37B of, and Schedule 3A to, the 2005 Order a lessor is to be taken to have acted unreasonably in withholding his consent for alterations to premises in the circumstances set out in paragraph (2).

(2) The circumstances referred to in paragraph (1) are that the lease provides that he shall give his consent to an alteration of the kind in question and he has withheld his consent to that alteration.

Lessor withholding consent reasonably

10.—(1) For the purposes of Article 37B of, and Schedule 3A to, the 2005 Order a lessor is to be taken to have acted reasonably in withholding his consent for alterations to premises in the circumstances set out in paragraph (2).

(2) The circumstances referred to in paragraph (1) are where—

(a) there is a binding obligation which requires the lessor to obtain the consent of another person to the alteration, the lessor has taken steps to seek that consent and that consent has not been given, or has been given subject to a condition making it reasonable for him to withhold his consent; or

(b) the lessor does not know, and could not reasonably be expected to know, that the alteration is one which the general qualifications body proposes to make in order to comply with a duty imposed on it by Article 37.

Lessor’s consent subject to conditions

11.—(1) For the purposes of Article 37B of, and Schedule 3A to, the 2005 Order a condition, subject to which a lessor has given his consent to alterations to premises, is to be taken to be reasonable in the circumstances set out in paragraph (2).

(2) The circumstances referred to in paragraph (1) are where the condition is to the effect that—

(a) the general qualifications body must obtain any necessary planning permission and any other consent or permission required by or under any enactment;

- (b) the work must be carried out in accordance with any plans or specifications approved by the lessor, such approval not to be unreasonably withheld;
- (c) the lessor must be permitted a reasonable opportunity to inspect the work (whether before or after it is completed);
- (d) the consent of another person required under a superior lease or a binding obligation must be obtained; or
- (e) the occupier must repay to the lessor the costs reasonably incurred in connection with the giving of his consent.

Modification of Article 37B and Schedule 3A

12.—(1) This regulation applies where a general qualifications body occupies premises under a sub-lease or sub-tenancy (within the meaning of Article 37B of the 2005 Order).

(2) Article 37B of the 2005 Order has effect as if—

- (a) in sub-paragraphs (a) and (b) of paragraph (2), for “the lessor” there were substituted “its immediate landlord”;
- (b) in sub-paragraphs (c) and (d) of that paragraph, for “the lessor” there were substituted “the immediate landlord”;
- (c) after paragraph (2) there were inserted—

“(2A) Except to the extent to which it expressly so provides, any superior lease in respect of the premises shall have effect in relation to the lessor and lessee who are parties to that superior lease as if it provided—

- (a) for the lessee to be entitled to give his consent to the alteration with the written consent of the lessor;
- (b) for the lessee to have to make a written application to the lessor for consent if he wishes to give his consent to the alteration;
- (c) if such an application is made, for the lessor not to withhold his consent unreasonably; and
- (d) for the lessor to be entitled to make his consent subject to reasonable conditions.”

(3) Schedule 3A to the 2005 Order has effect as if—

- (a) in paragraphs 1 and 2(1), for “the lessor” in each place where it occurs there were substituted “its immediate landlord”;
- (b) after paragraph 2(1) there were inserted—

“(1A) Where the lessee of any superior lease in relation to the premises has applied in writing to his lessor for consent to the alteration and—

- (a) that consent has been refused, or
- (b) the lessor has made his consent subject to one or more conditions,

the general qualifications body, the lessee or a disabled person who has an interest in the proposed alteration to the premises being made may refer the matter to a county court.”; and

- (c) in paragraph 3(1), for “the lessor”, there were substituted “any lessor (including any superior landlord)”.