

SCHEDULES

SCHEDULE 1

Article 12

SCHEDULE SUBSTITUTED FOR SCHEDULE 2 TO THE 1996 ORDER

“SCHEDULE 2

MAKING AND MAINTENANCE OF STATEMENTS UNDER ARTICLE 16

Introductory

1. In this Schedule—

“amendment notice” has the meaning given in paragraph 3,

“statement” means a statement of a child's special educational needs under Article 16,

“periodic review” means a review conducted in accordance with Article 19(1)(b), and

“re-assessment review” means a review conducted in accordance with Article 19(1)(a).

Copy of proposed statement

2.—(1) Before making a statement, a board shall serve on the parent of the child concerned a copy of the proposed statement.

(2) The copy of the proposed statement shall not specify—

(a) any prescribed matter,

(b) any matter in pursuance of Article 16(4).

Amendments to a statement

3.—(1) A board shall not amend a statement except—

(a) in compliance with an order of the Tribunal,

(b) as directed by the Department under paragraph 2(4) of Schedule 13 to the Education and Libraries (Northern Ireland) Order 1986 (NI 3), or

(c) in accordance with the procedure laid down in this Schedule.

(2) If, following a re-assessment review, a board proposes to amend a statement, it shall serve on the parent of the child concerned a copy of the proposed amended statement.

(3) The copy of the proposed amended statement shall not specify—

(a) any prescribed matter,

(b) any matter in pursuance of Article 16(4).

(4) If, following a periodic review, a board proposes to amend a statement, it shall serve on the parent of the child concerned—

(a) a copy of the existing statement, and

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(b) an amendment notice.

(5) If, at any other time, a board proposes to amend a statement, it shall proceed as if the proposed amendment were an amendment proposed after a periodic review.

(6) An amendment notice is a notice in writing giving details of the amendments to the statement proposed by the board.

Provision of additional information

4.—(1) Sub-paragraph (2) applies when a board serves on a parent—

- (a) a copy of a proposed statement under paragraph 2,
- (b) a copy of a proposed amended statement under paragraph 3, or
- (c) an amendment notice under paragraph 3.

(2) The board shall also serve on the parent a written notice explaining (to the extent that they are applicable)—

- (a) the arrangements under paragraph 5,
- (b) the effect of paragraph 6, and
- (c) the right to appeal under Article 18.

(3) A notice under sub-paragraph (2) shall contain such other information as may be prescribed.

Preference as to school

5.—(1) Every board shall make arrangements for enabling a parent—

- (a) on whom a copy of a proposed statement has been served under paragraph 2,
- (b) on whom a copy of a proposed amended statement has been served under paragraph 3, or
- (c) on whom an amendment notice has been served under paragraph 3 which contains a proposed amendment about—
 - (i) the type or name of a school or institution, or
 - (ii) the provision made for the child concerned otherwise than in a school or institution under arrangements made under Article 10(1)(b),to be specified in the statement,

to express a preference as to the grant-aided school at which he wishes education to be provided for his child and to give reasons for his preference.

(2) Any such preference must be expressed or made within the period of fifteen days beginning—

- (a) with the date on which the written notice mentioned in paragraph 4 was served on the parent, or
- (b) if a meeting has (or meetings have) been arranged under paragraph 7(1)(b) or (2), with the date fixed for that meeting (or the last of those meetings).

(3) Where a board makes a statement in a case where the parent of the child concerned has expressed a preference in pursuance of such arrangements as to the grant-aided school at which he wishes education to be provided for his child, the board shall specify the name of that school in the statement unless—

- (a) the school is unsuitable to the child's age, ability or aptitude or to his special educational needs, or

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- (b) the attendance of the child at the school would be incompatible with the provision of efficient education for the children with whom he would be educated or the efficient use of resources.

Consultation on specifying name of school in statement

- 6.—(1) Sub-paragraph (2) applies if a board is considering—
 - (a) specifying the name of a grant-aided school in a statement, or
 - (b) amending a statement—
 - (i) if no school was specified in the statement before the amendment, so that a grant-aided school will be specified in it,
 - (ii) if a school was specified in the statement before the amendment, so that a different school, which is a grant-aided school, will be specified in it.
- (2) The board shall—
 - (a) serve a copy of the proposed statement or amended statement, or of the existing statement and of the amendment notice, on each affected body, and
 - (b) consult each affected body.
- (3) “Affected body” means—
 - (a) the Board of Governors of any school which the board is considering specifying; and
 - (b) if a school which the board is considering specifying is in the area of another board, that board.

Representations

- 7.—(1) A parent on whom a copy of a proposed statement has been served under paragraph 2 or on whom a proposed amended statement or an amendment notice has been served under paragraph 3 may—
 - (a) make representations (or further representations) to the board about the content of the proposed statement or the statement as it will have effect if amended in the way proposed by the board, and
 - (b) require the board to arrange a meeting between him and an officer of the board at which the proposed statement or the statement as it will have effect if amended in the way proposed by the board can be discussed.
- (2) Where a parent, having attended a meeting arranged by a board under sub-paragraph (1) (b) in relation to—
 - (a) a proposed statement, or
 - (b) an amendment proposed following a re-assessment review,disagrees with any part of the assessment in question, he may require the board to arrange such meeting or meetings as it considers will enable him to discuss the relevant advice with the appropriate person or persons.
- (3) In this paragraph—
 - “relevant advice” means such of the advice given to the board in connection with the assessment as it considers to be relevant to that part of the assessment with which the parent disagrees, and
 - “appropriate person” means the person who gave the relevant advice or any other person who, in the opinion of the board, is the appropriate person to discuss it with the parent.

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(4) Any representations under sub-paragraph (1)(a) must be made within the period of fifteen days beginning—

- (a) with the date on which the written notice mentioned in paragraph 4 was served on the parent, or
- (b) if a meeting has (or meetings have) been arranged under sub-paragraph (1)(b) or (2), with the date fixed for that meeting (or the last of those meetings).

(5) A requirement under sub-paragraph (1)(b) must be made within the period of fifteen days beginning with the date on which the written notice mentioned in paragraph 4 was served on the parent.

(6) A requirement under sub-paragraph (2) must be made within the period of fifteen days beginning with the date fixed for the meeting arranged under sub-paragraph (1)(b).

Making the statement

8.—(1) Where representations are made to a board under paragraph 7(1)(a), the board shall not make or amend the statement until it has considered the representations and the period or the last of the periods allowed by paragraph 7 for making requirements or further representations has expired.

(2) If a board makes a statement, it may be in the form originally proposed (except as to the matters required to be excluded from the copy of the proposed statement) or in a form modified in the light of the representations.

(3) If a board amends a statement following service of a proposed amended statement under paragraph 3, the amended statement made may be in the form proposed or in a form modified in the light of the representations.

(4) If a board amends a statement following service of an amendment notice, the amendments may be those proposed in the notice or amendments modified in the light of the representations.

(5) Regulations may provide that, where a board is under a duty (subject to compliance with the preceding requirements of this Schedule) to make a statement, the duty, or any step required to be taken for performance of the duty, must, subject to prescribed exceptions, be performed within the prescribed period.

(6) Such provision shall not relieve the board of the duty to make a statement, or take any step, which has not been performed or taken within that period.

Service of statement

9.—(1) Where a board makes or amends a statement it shall serve a copy of the statement, or the amended statement, on the parent of the child concerned.

(2) It shall, at the same time, give the parent written notice of his right to appeal under Article 18(1) against—

- (a) the description in the statement of the board's assessment of the child's special educational needs,
- (b) the special educational provision specified in the statement (including the name of a school specified in the statement), or
- (c) if no school is named in the statement, that fact.

(3) A notice under sub-paragraph (2) must contain such other information as may be prescribed.

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Keeping, disclosure and transfer of statements

10.—(1) Regulations may make provision as to the keeping and disclosure of statements.

(2) Regulations may make provision, where a board becomes responsible for a child for whom a statement is maintained by another board, for the transfer of the statement to it and for Part II of this Order to have effect as if the duty to maintain the transferred statement were its duty.

Change of named school

11.—(1) Sub-paragraph (2) applies where—

- (a) the parent of a child for whom a statement is maintained which specifies the name of a school or institution asks the board to substitute for that name the name of a grant-aided school specified by the parent, and
- (b) the request is not made less than twelve months after—
 - (i) a request under this paragraph,
 - (ii) the service of a copy of the statement or amended statement under paragraph 9, or
 - (iii) if the parent has appealed to the Tribunal under Article 18 or this paragraph, the date when the appeal is concluded,whichever is the later.

(2) The board shall comply with the request unless—

- (a) the school is unsuitable to the child's age, ability or aptitude or to his special educational needs, or
- (b) the attendance of the child at the school would be incompatible with the provision of efficient education for the children with whom he would be educated or the efficient use of resources.

(3) Where the board decides not to comply with the request—

- (a) it shall give notice in writing of that fact to the child's parent, and
- (b) the parent of the child may appeal to the Tribunal against the decision.

(4) A notice under sub-paragraph (3)(a) must inform the parent of the right of appeal under sub-paragraph (3)(b) and contain such other information as may be prescribed

(5) On the appeal the Tribunal may—

- (a) dismiss the appeal, or
- (b) order the board to substitute for the name of the school or other institution specified in the statement the name of the grant-aided school specified by the parent.

(6) Regulations may provide that, where a board is under a duty to comply with a request under this paragraph, the duty must, subject to prescribed exceptions, be performed within the prescribed period.

(7) Such provision shall not relieve the board of the duty to comply with such a request which has not been complied with within that period.

Procedure for ceasing to maintain a statement

12.—(1) A board may not cease to maintain a statement except in accordance with paragraph 13.

(2) Sub-paragraph (1) does not apply where the board—

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- (a) ceases to maintain a statement for a child who has ceased to be a child for whom it is responsible, or
- (b) is ordered to cease to maintain a statement under Article 18(3)(c).

13.—(1) A board may cease to maintain a statement only if it is no longer necessary to maintain it.

(2) Where the board decides to cease to maintain a statement—

- (a) it shall give notice in writing of that fact to the child's parent, and
- (b) the parent of the child may appeal to the Tribunal against the decision.

(3) A notice under sub-paragraph (2)(a) must inform the parent of the right of appeal under sub-paragraph (2)(b) and contain such other information as may be prescribed.

(4) On an appeal under this paragraph the Tribunal may—

- (a) dismiss the appeal, or
- (b) order the board to continue to maintain the statement in its existing form or with such amendments of the description in the statement of the board's assessment of the child's special educational needs or the special educational provision specified in the statement, and such other consequential amendments, as the Tribunal may determine.

(5) Except where the parent of the child appeals to the Tribunal under this paragraph, a board may only cease to maintain a statement under this paragraph within the prescribed period beginning with the service of the notice under sub-paragraph (2).

(6) A board may not, under this paragraph, cease to maintain a statement if—

- (a) the parent of the child has appealed under this paragraph against the board's determination to cease to maintain the statement; and
- (b) the appeal has not been determined by the Tribunal or withdrawn.” .

SCHEDULE 2

Articles 23(9) and 31(6)

ENFORCEMENT AND PROCEDURE

PART I

DISCRIMINATION IN SCHOOLS

Restriction on proceedings for breach of Chapter I of Part III

1.—(1) Except as provided by Articles 22 and 24, no civil or criminal proceedings may be brought against any person in respect of an act merely because the act is unlawful under Chapter I of Part III of this Order.

(2) Sub-paragraph (1) does not prevent—

- (a) the making of an application for judicial review;
- (b) the bringing of proceedings in respect of an offence under Article 23(7).

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Period within which proceedings must be brought

2.—(1) The Tribunal shall not consider a claim under Article 22 unless proceedings in respect of the claim are instituted before the end of the period of six months beginning when the act complained of was done.

(2) If, in relation to proceedings or prospective proceedings under Article 22, the dispute concerned is referred for conciliation in pursuance of arrangements under Article 42 before the end of the period of six months mentioned in sub-paragraph (1), the period allowed by that sub-paragraph shall be extended by two months.

(3) The Tribunal may consider any claim under Article 22 which is out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so.

(4) But sub-paragraph (3) does not permit the Tribunal to decide to consider a claim if a decision not to consider that claim has previously been taken under that sub-paragraph.

(5) For the purposes of sub-paragraph (1)—

(a) if an unlawful act of discrimination is attributable to a term in a contract, that act is to be treated as extending throughout the duration of the contract;

(b) any act extending over a period shall be treated as done at the end of that period; and

(c) a deliberate omission shall be treated as done when the person in question decided upon it.

(6) In the absence of evidence establishing the contrary, a person shall be taken for the purposes of this paragraph to decide upon an omission—

(a) when he does an act inconsistent with doing the omitted act; or

(b) if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the omitted act if it was to be done.

Evidence

3.—(1) In any proceedings under Article 22 or 24, a certificate signed by or on behalf of a Minister of the Crown or a Northern Ireland department and certifying that any conditions or requirements specified in the certificate—

(a) were imposed by that Minister or that department (as the case may be), and

(b) were in operation at a time or throughout a time so specified,

shall be conclusive evidence of the matters certified.

(2) A document purporting to be such a certificate shall be received in evidence and, unless the contrary is proved, be deemed to be such a certificate.

PART II

DISCRIMINATION IN FURTHER AND HIGHER EDUCATION INSTITUTIONS

Restriction on proceedings for breach of Chapter II of Part III

4.—(1) Except as provided by Article 31, no civil or criminal proceedings may be brought against any person in respect of an act merely because the act is unlawful under Chapter II of Part III of this Order.

(2) Sub-paragraph (1) does not prevent the making of an application for judicial review.

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Period within which proceedings must be brought

5.—(1) A county court shall not consider a claim under Article 31 unless proceedings in respect of the claim are instituted before the end of the period of six months beginning when the act complained of was done.

(2) If, in relation to proceedings or prospective proceedings under Article 31, the dispute concerned is referred for conciliation in pursuance of arrangements under Article 42 before the end of the period of six months mentioned in sub-paragraph (1), the period allowed by that sub-paragraph shall be extended by two months.

(3) A court may consider any claim under Article 31 which is out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so.

(4) For the purposes of sub-paragraph (1)—

- (a) if an unlawful act of discrimination is attributable to a term in a contract, that act is to be treated as extending throughout the duration of the contract;
- (b) any act extending over a period shall be treated as done at the end of that period; and
- (c) a deliberate omission shall be treated as done when the person in question decided upon it.

(5) In the absence of evidence establishing the contrary, a person shall be taken for the purposes of this paragraph to decide upon an omission—

- (a) when he does an act inconsistent with doing the omitted act; or
- (b) if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the omitted act if it was to be done.

Compensation for injury to feelings

6. In any proceedings under Article 31, the amount of any damages awarded as compensation for injury to feelings shall not exceed the prescribed amount.

Evidence

7.—(1) In any proceedings under Article 31, a certificate signed by or on behalf of a Minister of the Crown or a Northern Ireland department and certifying that any conditions or requirements specified in the certificate—

- (a) were imposed by that Minister or that department (as the case may be), and
- (b) were in operation at a time or throughout a time so specified,

is conclusive evidence of the matters certified.

(2) A document purporting to be such a certificate is to be—

- (a) received in evidence; and
- (b) deemed to be such a certificate unless the contrary is proved.

VALID FROM 23/04/2008

[^{F1}Part III

Discrimination in General Qualifications Bodies

F1 Sch. 2 Pt. III inserted (23.4.2008) by Special Educational Needs and Disability (2005 Order) (Amendment) (General Qualifications Bodies) (Alteration of Premises and Enforcement) Regulations (Northern Ireland) 2008 (S.R. 2008/177), reg. 4(3)

Restriction on proceedings for breach of Chapter III of Part III

8.—(1) Except as provided by Article 37A, no civil or criminal proceedings may be brought against any person in respect of an act merely because the act is unlawful under Chapter III of Part III.

(2) Sub-paragraph (1) does not prevent the making of an application for judicial review.

Period within which proceedings must be brought

9.—(1) A county court shall not consider a claim under Article 37A unless proceedings in respect of the claim are instituted before the end of the period of six months beginning when the act complained of was done.

(2) If, in relation to proceedings or prospective proceedings under Article 37A, the dispute concerned is referred for conciliation in pursuance of arrangements under Article 42 before the end of the period of six months mentioned in sub-paragraph (1), the period of six months allowed by that sub-paragraph shall be extended by two months.

(3) A court may consider any claim under Article 37A which is out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so.

(4) For the purposes of sub-paragraph (1)—

- (a) if an unlawful act of discrimination is attributable to a term in a contract, that act is to be treated as extending throughout the duration of the contract;
- (b) any act extending over a period shall be treated as done at the end of that period; and
- (c) a deliberate omission shall be treated as done when the person in question decided upon it.

(5) In the absence of evidence establishing the contrary, a person shall be taken for the purposes of this paragraph to decide upon an omission—

- (a) when he does an act inconsistent with doing the omitted act; or
- (b) if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the omitted act if it was to be done.

Evidence

10.—(1) In any proceedings under Article 37A, a certificate signed by or on behalf of a Minister of the Crown or a Northern Ireland department and certifying that any conditions or requirements specified in the certificate—

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- (a) were imposed by that Minister or that department (as the case may be), and
 (b) were in operation at a time or throughout a time so specified,
 is conclusive evidence of the matters certified.
- (2) A document purporting to be such a certificate is to be—
 (a) received in evidence; and
 (b) deemed to be such a certificate unless the contrary is proved.]

SCHEDULE 3

Article 32(5)

PREMISES OCCUPIED BY EDUCATIONAL INSTITUTIONS UNDER LEASES

Failure to obtain consent

1 ^{F2}. If any question arises as to whether a responsible body has failed to comply with the duty imposed by Article 30, by failing to make a particular alteration to premises, any constraint attributable to the fact that the premises are occupied by the educational institution under a lease is to be ignored unless the responsible body has applied to the lessor in writing for consent to the making of the alteration.

F2 mod. by SR 2005/371

Reference to court

2 ^{F3}.—(1) If the responsible body has applied in writing to the 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,

that body 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.

^{F3}(2) On such a reference the court must determine whether the lessor's refusal was unreasonable or (as the case may be) whether the condition is, or any of the conditions are, unreasonable.

(3) If the court determines—

- (a) that the lessor's refusal was unreasonable, or
 (b) that the condition is, or any of the conditions are, unreasonable,

it may make such declaration as it considers appropriate or an order authorising the responsible body to make the alteration specified in the order.

(4) An order under sub-paragraph (3) may require the responsible body to comply with conditions specified in the order.

F3 mod. by SR 2005/371

Status: Point in time view as at 01/01/2006.

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Joining lessors in proceedings under Article 31

3.—(1 ^{F4} In proceedings on a claim under Article 31, in a case to which this Schedule applies, the claimant or the responsible body concerned may ask the court to direct that the lessor be joined as a party to the proceedings.

(2 ^{F4} The request must be granted if it is made before the hearing of the claim begins.

(3) The court may refuse the request if it is made after the hearing of the claim begins.

(4) The request may not be granted if it is made after the court has determined the claim.

(5) If a lessor has been so joined as a party to the proceedings, the court may determine—

(a) whether the lessor has—

(i) refused consent to the alteration, or

(ii) consented subject to one or more conditions, and

(b) if so, whether the refusal or any of the conditions was unreasonable.

(6) If, under sub-paragraph (5), the court determines that the refusal or any of the conditions was unreasonable it may take one or more of the following steps—

(a) make such a declaration as it considers appropriate;

(b) make an order authorising the responsible body to make the alteration specified in the order;

(c) order the lessor to pay compensation to the complainant.

(7) An order under sub-paragraph (6)(b) may require the responsible body to comply with conditions specified in the order.

(8) If the court orders the lessor to pay compensation it may not order the responsible body to do so.

F4 mod. by SR 2005/371

Regulations

4. Regulations may make provision as to circumstances in which—

(a) a lessor is to be taken for the purposes of Article 32 and this Schedule to have—

(i) withheld his consent;

(ii) withheld his consent unreasonably;

(iii) acted reasonably in withholding his consent;

(b) a condition subject to which a lessor has given his consent is to be taken to be reasonable;

(c) a condition subject to which a lessor has given his consent is to be taken to be unreasonable.

Sub-leases etc.

5. Regulations may make provision supplementing, or modifying, Article 32 or any provision made by or under this Schedule in relation to cases where the premises of the educational institution are occupied under a sub-lease or sub-tenancy.

Status: Point in time view as at 01/01/2006.

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VALID FROM 23/04/2008

[F5] SCHEDULE 3A

Article 37B

PREMISES OCCUPIED BY GENERAL QUALIFICATIONS BODIES UNDER LEASES

F5 Sch. 3A inserted (23.4.2008) by Special Educational Needs and Disability (2005 Order) (Amendment) (General Qualifications Bodies) (Alteration of Premises and Enforcement) Regulations (Northern Ireland) 2008 (S.R. 2008/177), **reg. 6**

Modifications etc. (not altering text)

C1 Sch. 3A modified (23.4.2008) by Special Educational Needs and Disability (2005 Order) (Amendment) (General Qualifications Bodies) (Alteration of Premises and Enforcement) Regulations (Northern Ireland) 2008 (S.R. 2008/177), **reg. 12(3)**

Failure to obtain consent to alteration

1. If any question arises as to whether a general qualifications body has failed to comply with the duty imposed by Article 37 by failing to make a particular alteration to the premises, any constraint attributable to the fact that that general qualifications body occupies the premises under a lease is to be ignored unless that general qualifications body has applied to the lessor in writing for consent to the making of the alteration.

Reference to court

2.—(1) If the general qualifications body has applied in writing to the 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,

that general qualifications body 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.

(2) On such a reference the court must determine whether the lessor's refusal was unreasonable or (as the case may be) whether the condition is, or any of the conditions are, unreasonable.

(3) If the court determines—

- (a) that the lessor's refusal was unreasonable, or
- (b) that the condition is, or any of the conditions are, unreasonable,

it may make such declaration as it considers appropriate or an order authorising the general qualifications body to make the alteration specified in the order.

(4) An order under sub-paragraph (3) may require the general qualifications body to comply with conditions specified in the order.

Joining lessors in proceedings under Article 37A

3.—(1) In any proceedings on a claim under Article 37A, in which a question arises as to whether a general qualifications body has failed to comply with the duty imposed by Article 37 by failing to make an alteration to premises occupied by the general qualifications body under a lease—

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- (a) the claimant, or
 - (b) the general qualifications body concerned,
- may ask the court to direct that the lessor be joined as a party to the proceedings.
- (2) The request shall be granted if it is made before the hearing of the claim begins.
 - (3) The court may refuse the request if it is made after the hearing of the claim begins.
 - (4) The request may not be granted if it is made after the court has determined the claim.
 - (5) If a lessor has been so joined as a party to the proceedings, the court may determine—
 - (a) whether the lessor has—
 - (i) refused consent to the alteration, or
 - (ii) consented subject to one or more conditions, and
 - (b) if so, whether the refusal or any of the conditions was unreasonable.
 - (6) If, under sub-paragraph (5), the court determines that the refusal or any of the conditions was unreasonable, it may take one or more of the following steps—
 - (a) make such declaration as it considers appropriate;
 - (b) make an order authorising the general qualifications body to make the alteration specified in the order;
 - (c) order the lessor to pay compensation to the claimant.
 - (7) An order under sub-paragraph (6)(b) may require the general qualifications body to comply with the conditions specified in the order.
 - (8) If the court orders the lessor to pay compensation it may not order the general qualifications body to do so.]

Schedule 4—Amendments

Schedule 5—Amendments

Schedule 6—Repeals

Status:

Point in time view as at 01/01/2006.

Changes to legislation:

The Special Educational Needs and Disability (Northern Ireland) Order 2005 is up to date with all changes known to be in force on or before 06 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.