

2005 No. 371

DISABLED PERSONS

EDUCATION

The Special Educational Needs and Disability (Educational Institutions) (Alteration of Leasehold Premises) Regulations (Northern Ireland) 2005

Made - - - - - *8th August 2005*

Coming into operation - - *1st September 2005*

The Department for Employment and Learning, in exercise of the powers conferred by Articles 32(3) and (5) and 49(4) of, and paragraphs 4 and 5 of Schedule 3 to, the Special Educational Needs and Disability (Northern Ireland) Order 2005(a) and of all other powers enabling it in that behalf, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Special Educational Needs and Disability (Educational Institutions) (Alteration of Leasehold Premises) Regulations (Northern Ireland) 2005, and shall come into operation on 1st September 2005.

Interpretation

2. In these Regulations—

“binding obligation” means a legally binding obligation (not contained in a lease) in relation to premises whether arising from an agreement or otherwise;

“relevant lessor” means a lessor who has received a written application by or on behalf of the occupier for consent to make an alteration to premises for the purposes of Article 32 of, and Schedule 3 to, the Order;

“the Order” means the Special Educational Needs and Disability (Northern Ireland) Order 2005.

Lessor withholding consent

3.—(1) This regulation prescribes particular circumstances in which a relevant lessor is to be taken, for the purposes of Article 32 of, and Schedule 3 to, the Order, to have withheld his consent for alterations to premises.

(2) Subject to paragraph (3), a relevant lessor is to be taken to have withheld such consent where, within the period of 42 days beginning with the date on which he receives the application for consent, he—

(a) S.I. 2005/1117 (N.I. 6); See Article 27(1) for definitions of “prescribed” and “regulations”

- (a) fails to reply consenting to or refusing the alteration; or
 - (b) (i) 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
 - (ii) fails to seek that consent.
- (3) A relevant lessor is not to be taken to have withheld his consent for the purposes of paragraph (2) 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 relevant 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) (i) 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
 - (ii) fails to seek that consent.
- (5) A relevant lessor, who having sought the consent of the other person referred to in paragraph (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 relevant lessor who, but for the requirements as to time, complies with the requirements of paragraph (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 relevant 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 occupier has applied for consent to the alteration of the premises in order to comply with an Article 30 duty; and
 - (bb) the relevant 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

4.—(1) This regulation prescribes particular circumstances in which a relevant lessor is to be taken, for the purposes of Article 32 of, and Schedule 3 to, the Order to have acted unreasonably in withholding his consent for alterations to premises.

(2) The circumstances so prescribed 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

5.—(1) This regulation prescribes particular circumstances in which a relevant lessor is to be taken, for the purposes of Article 32 of, and Schedule 3 to, the Order to have acted reasonably in withholding his consent for alterations to premises.

(2) The circumstances so prescribed are where—

- (a) (i) there is a binding obligation requiring the consent of any person to the alteration;
- (ii) the relevant lessor has taken steps to seek that consent; and

- (iii) 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 relevant lessor does not know, and could not reasonably be expected to know, that the alteration is one which the occupier proposes to make in order to comply with an Article 30 duty.

Lessor’s consent subject to conditions

6.—(1) This regulation prescribes particular circumstances in which a condition, subject to which a relevant lessor has given his consent to alterations to premises, is to be taken, for the purposes of Article 32 of, and Schedule 3 to, the Order to be reasonable.

- (2) The circumstances so prescribed are where the condition is to the effect that—
 - (a) the occupier must obtain any necessary planning permission and any other consent or permission required by or under any statutory provision;
 - (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 agreement must be obtained;
 - (e) the occupier must repay to the lessor the costs reasonably incurred in connection with the giving of his consent.

Modification of Article 32 and paragraphs 1 to 3 of Schedule 3

7.—(1) In relation to any case where the occupier occupies premises under a sub-lease or sub-tenancy, the provisions of Article 32 of, and Schedule 3 to, the Order shall have effect as if they contained the following modifications.

- (2) In Article 32 after paragraph (2), insert the following paragraph—

“(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) In Article 32(2) for “the lessor” substitute “his immediate landlord” where those words occur in sub-paragraphs (a) and (b) and “the immediate landlord” where they occur in sub-paragraphs (c) and (d).

(4) In paragraphs 1 and 2 of Schedule 3, for “the lessor” in each place where those words occur substitute “his immediate landlord”.

(5) In paragraph 2 of Schedule 3 after sub-paragraph (1), insert the following sub-paragraph—

“(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 occupier, 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.”.

(6) In paragraph 3 of Schedule 3—

(a) in sub-paragraph (1), for the “the lessor”, substitute “any lessor (including any superior landlord)”; and

(b) for sub-paragraph (2), substitute—

“(2) Unless it appears to the court that another lessor should be joined as a party to the proceedings, the request shall be granted if it is made before the hearing of the claim begins.”.

Definition of sub-lease and sub-tenancy

8. For the purposes of Article 32 of, and Schedule 3 to, the Order—

“sub-lease” means any sub-term created out of, or deriving from, a leasehold interest; and

“sub- tenancy” means any tenancy created out of, or deriving from, a superior tenancy.

Sealed with the Official Seal of the Department for Employment and Learning on 8th August 2005.

(L.S.)

Bernie O’Hare

A Senior Officer of the Department for Employment and Learning

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under Article 32(3) and (5) and 49(4) of, and paragraphs 4 and 5 of Schedule 3 to, the Special Educational Needs and Disability (Northern Ireland) Order 2005 and contain provisions in respect of consents required under the terms of leases and sub-leases occupied by educational institutions whose governing bodies are subject to the duty of reasonable adjustment set out in Article 30 of that Order.

Regulations 3 to 5 set out circumstances for the purposes of Article 32 of, and Schedule 3 to, the Order, where a lessor will be taken to have withheld his consent or to have reasonably or unreasonably withheld his consent to an application to make an alteration to premises made by or on behalf of the service provider.

Regulation 6 sets out conditions for the purposes of Article 32 of, and Schedule 3 to, the Order, that it is reasonable for a lessor to attach to a grant of consent to an alteration of premises.

Regulation 7 modifies certain provisions of Article 32 of, and Schedule 3 to, the Order, that apply to a landlord who is the service provider's immediate landlord so that they apply to a landlord who is a service provider's superior landlord.

Regulation 8 defines the terms "sub-lease" and "sub-tenancy".

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Published by The Stationery Office Limited

ISBN 0-337-96120-4



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