

2008 No. 177

EDUCATION

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

Laid before the Assembly in draft

Made - - - - 16th April 2008

Coming into operation - 23rd April 2008

The Department of Education, in exercise of the powers conferred by Articles 38(1), (2), (5) and (6) and 49(4) of the Special Educational Needs and Disability (Northern Ireland) Order 2005^(a), after consultation with such persons as appear to the Department to be appropriate in accordance with Article 39(2) of that Order, makes the following Regulations:

PART 1

Introductory

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Special Educational Needs and Disability (2005 Order) (Amendment) (General Qualifications Bodies) (Alteration of Premises and Enforcement) Regulations (Northern Ireland) 2008 and shall come into operation on 23rd April 2008.

(2) In these Regulations—

“the 1995 Act” means the Disability Discrimination Act 1995^(b); and

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

Amendments to the 2005 Order

2. The 2005 Order is amended as provided in Part 2.

^(a) S.I. 2005/1117 (N.I. 6). See Article 39(1) for definition of “prescribed” and “regulations”.
^(b) 1995 c.50

PART 2

Amendments to the Special Educational Needs and Disability (Northern Ireland) Order 2005

Enforcement, remedies and procedures

3. After Article 37 of the 2005 Order (general qualifications bodies: duty to make adjustments) insert—

“Enforcement, remedies and procedures

37A.—(1) A claim by a person—

- (a) that a general qualifications body has discriminated against him, or subjected him to harassment, in a way which is unlawful under this Chapter,
- (b) that a general qualifications body is by virtue of Article 44 or 45 to be treated as having done so, or
- (c) that a person is by virtue of Article 44 to be treated as having done so,

may be made the subject of civil proceedings in the same way as any other claim in tort for breach of statutory duty.

(2) Damages in respect of discrimination in a way which is unlawful under this Chapter may include compensation for injury to feelings whether or not they include compensation under any other head.

(3) Proceedings may be brought only in a county court.

(4) The remedies available in such proceedings are those which are available in the High Court.

(5) The fact that a person who brings proceedings under this Chapter against a general qualifications body may also be entitled to bring proceedings against that body under Part II of the 1995 Act is not to affect proceedings under this Chapter.

(6) Part III of Schedule 2 makes further provision about the enforcement of this Part and about procedure and evidence.”.

Further provision about enforcement etc

4.—(1) Schedule 2 to the 2005 Order (enforcement and procedure) is amended as follows.

(2) In the side note, after “31(6)” insert “, 37A(6)”.

(3) After Part II (discrimination in further and higher education institutions) insert—

“Part III

Discrimination in General Qualifications Bodies

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—

- (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.”.

Alterations to premises occupied under leases

5. After Article 37A of the 2005 Order (enforcement, remedies and procedures) (inserted by regulation 3) insert—

“Alterations to premises occupied under leases

37B.—(1) This Article applies where—

- (a) a general qualifications body occupies premises under a lease;
- (b) but for this Article, the general qualifications body would not be entitled to make a particular alteration to the premises; and
- (c) the alteration is one which the general qualifications body proposes to make in order to comply with the duty imposed by Article 37(3).

(2) Except to the extent to which it expressly so provides, the lease shall have effect by virtue of this paragraph as if it provided—

- (a) for the general qualifications body to be entitled to make the alteration with the written consent of the lessor;

- (b) for the general qualifications body to have to make a written application to the lessor for consent if it wishes to make 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 this Article and in Schedule 3A—

“lease” includes a tenancy, sub-lease or sub-tenancy and an agreement for a lease, tenancy, sub-lease or sub-tenancy;

“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.

(4) For the purposes of paragraph (1), the general qualifications body is to be treated as not being entitled to make the alteration, if the terms and conditions of a lease—

- (a) impose conditions which are to apply if the general qualifications body alters the premises, or
- (b) entitle the lessor to impose conditions when consenting to the general qualification’s body altering the premises.

(5) Schedule 3A supplements the provisions of this Article.”.

Premises occupied under leases

6. The following Schedule is inserted after Schedule 3 to the 2005 Order (premises occupied by educational institutions under leases)—

“SCHEDULE 3A

Article 37B

PREMISES OCCUPIED BY GENERAL QUALIFICATIONS BODIES UNDER LEASES

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—

- (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.”.

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)”.

Sealed with the Official Seal of the Department of Education on 16th April 2008.



Katrina Godfrey

A senior officer of the Department of Education

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations insert new provisions into Part III of and Schedule 2 to the Special Educational Needs and Disability (Northern Ireland) Order 2005 in relation to the enforcement of the duties placed on general qualifications bodies.

They provide for claims that a general qualifications body has discriminated against a person to be heard as a claim in tort in the county court.

Claims must be brought within 6 months of the act complained of, unless the matter is referred for conciliation, in which case the time allowed is extended by 2 months.

They also make provision for cases in which premises that are required to be altered are occupied by a general qualifications body under a lease, including joining the lessor as a party to any court proceedings, and in relation to consent from the lessor to alterations that the general qualifications body is required to make to the premises for the purposes of Article 37.