SCHEDULES

SCHEDULE 6

Section 31(2).

AMENDMENT OF SCHEDULE 4 TO THE 1995 ACT

The following provisions are inserted in Schedule 4 to the 1995 Act as Part 3.

"PART 3

OCCUPATION BY EDUCATIONAL INSTITUTIONS

Failure to obtain consent

10 If any question arises as to whether a responsible body has failed to comply with the duty imposed by section 28T, 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.

Reference to court

11 (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 or, in Scotland, to the sheriff.

(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.

Joining lessors in proceedings under section 28V

12 (1) In proceedings on a claim under section 28V, in a case to which this Part of this Schedule applies, the claimant, the pursuer or the responsible body concerned may ask the court to direct that the lessor be joined or sisted as a party to the proceedings.

(2) 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 or sisted 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.

Regulations

13 Regulations may make provision as to circumstances in which—

(a) a lessor is to be taken, for the purposes of section 28W and this Part of 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.

14 Regulations may make provision supplementing, or modifying, section 28W or any provision made by or under this Part of this Schedule in relation to cases where the premises of the educational institution are occupied under a sub-lease or sub-tenancy.”