STATUTORY RULES OF NORTHERN IRELAND

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(**1**), 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(**2**); 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.

(**1**) S.I. 2005/1117 (N.I. 6). See Article 39(1) for definition of "prescribed" and "regulations".
(**2**) 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—