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STATUTORY INSTRUMENTS

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**1996 No. 274 (N.I. 1)**

**The Education (Northern Ireland) Order 1996**

- - - - - 14th February 1996

**PART I**  
**INTRODUCTORY**

**Title and commencement**

1.—(1) This Order may be cited as the Education (Northern Ireland) Order 1996.

(2) Except as provided by paragraph (3), this Order shall come into operation on the expiration of two months from the day on which it is made.

(3) The following provisions, namely —

- (a) Part II and Schedules 1 and 2;
- (b) Articles 31 and 34;
- (c) Article 35(1) to (5) and Schedule 3;
- (d) Articles 40 and 41 and Schedule 4;
- (e) Part I of Schedule 5 and so much of, Article 43 as relates thereto;
- (f) Part I of Schedule 6 and so much of Article 44 as relates thereto;

shall come into operation on such day or days as the Department may by order appoint<sup>F1</sup>.

(4) An order under paragraph (3) may make such transitional provision as appears to the Department to be necessary or expedient in connection with the provisions brought into operation by the order.

<b>F1</b> partly exercised by SRs. 1996/329;1997/307;1998/205
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**Interpretation**

2.—(1) The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

“the 1986 Order” means the Education and Libraries (Northern Ireland) Order 1986;

“the 1989 Order” means the Education Reform (Northern Ireland) Order 1989.

*Status: Point in time view as at 03/04/2006.*

*Changes to legislation: The Education (Northern Ireland) Order 1996 is up to date with all changes known to be in force on or before 10 August 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. (See end of Document for details)*

(3) This Order shall be construed as one with the 1986 Order, the 1989 Order and the Education and Libraries (Northern Ireland) Order 1993; and accordingly Article 2(2) of the 1986 Order, in so far as it relates to the definition of words or expressions used in that Order and in this Order, shall apply for the purposes of this Order as it applies for the purposes of that Order.

## PART II

### CHILDREN WITH SPECIAL EDUCATIONAL NEEDS

#### *Introductory*

#### **Meaning of “special educational needs” and “special educational provision” etc.**

3.—(1) For the purposes of the Education Orders, a child has “special educational needs” if he has a learning difficulty which calls for special educational provision to be made for him.

(2) For the purposes of this Part, subject to paragraph (3), a child has a “learning difficulty” if—

- (a) he has a significantly greater difficulty in learning than the majority of children of his age,
- (b) he has a disability which either prevents or hinders him from making use of educational facilities of a kind generally provided for children of his age in ordinary schools, or
- (c) he has not attained the lower limit of compulsory school age and is, or would be if special educational provision were not made for him, likely to fall within sub-paragraph (a) or (b) when he is of compulsory school age.

(3) A child is not to be taken as having a learning difficulty solely because the language (or form of, the language) in which he is, or will be, taught is different from a language (or form of a language) which has at any time been spoken in his home.

(4) In the Education Orders, “special educational provision” means—

- (a) in relation to a child who has attained the age of two years, educational provision which is additional to, or otherwise different from, the educational provision made generally for children of his age in ordinary schools, and
- (b) in relation to a child under that age, educational provision of any kind.

(5) In the Education Orders, “special school” means a controlled or voluntary school which is specially organised to make special educational provision for pupils with special educational needs and is recognised by the Department as a special school.

(6) In this Part, “ordinary school” means a grant-aided school which is not a special school.

(7) In this Part, “child” includes any person who has not attained the age of nineteen years and is a registered pupil at a school.

(8) For the purposes of paragraph (7) a person who attains the age of nineteen years at any time during a school term at any school shall be deemed not to have attained that age until the day after the end of that school term.

(9) In this Part, “the Tribunal” has the meaning assigned to it by Article 22(1).

## *Code of practice*

### **Code of practice**

4.—(1) The Department shall issue, and may from time to time amend, a code of practice giving practical guidance in respect of the discharge by boards and the Boards of Governors of grant-aided schools of their functions under this Part.

(2) It shall be the duty of—

- (a) boards and Boards of Governors of grant-aided schools exercising functions under this Part, and
- (b) any other person exercising any function for the purpose of the discharge by boards and Boards of Governors of grant-aided schools of functions under this Part,

to have regard to the provisions of the code.

(3) On any appeal, the Tribunal shall have regard to any provision of the code which appears to the Tribunal to be relevant to any question arising on the appeal.

(4) The Department shall publish the code as for the time being in force.

### **Making and amendment of code**

5.—(1) Where the Department proposes to issue or amend a code of practice, it shall prepare a draft of the code (or amendment).

(2) The Department shall consult such persons about the draft as the Department thinks fit and shall consider any representations made by them.

(3) If the Department determines to proceed with the draft (either in its original form or with such modifications as the Department thinks fit), the Department shall issue the code or amendment to the code in the form of the draft and the code or amendment shall come into force on such day as the Department may by order appoint.

## *Special educational provision: general*

### **Review of arrangements**

6.—(1) A board shall—

- (a) determine, and keep under review, its policy in relation to special educational provision; and
- (b) keep under review the arrangements made by it for special educational provision.

(2) In exercising its functions under paragraph (1)(a), a board shall consult—

- (a) the Boards of Governors of grant-aided schools in its area;
- (b) other boards;
- (c) the Council for Catholic Maintained Schools; and
- (d) such other persons as it thinks fit.

### **[<sup>F2</sup>Duty to educate children with special educational needs in ordinary schools**

7.—(1) This Article applies to a child with special educational needs who should be educated in a grant-aided school.

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(2) If no statement is maintained under Article 16 for the child, he shall be educated in an ordinary school.

(3) If a statement is maintained under Article 16 for the child, he shall be educated in an ordinary school unless that is incompatible with—

- (a) the wishes of his parent, or
- (b) the provision of efficient education for other children.]

F2 2005 NI 6

### Education otherwise than in ordinary schools

**7A.**—(1) Article 7(2) does not require a child to be educated in an ordinary school during any period in which—

- (a) he is admitted to a special school for the purposes of an assessment under Article 15 of his educational needs and his admission to that school is with the agreement of—
  - (i) the board;
  - (ii) the Board of Governors of the school;
  - (iii) his parent; and
  - (iv) any person whose advice is to be sought in accordance with regulations made under paragraph 2 of Schedule 1;
- (b) he remains admitted to a special school, in prescribed circumstances, following an assessment under Article 15 at that school;
- (c) he is admitted to a special school, following a change in his circumstances, with the agreement of—
  - (i) the board;
  - (ii) the Board of Governors of the school; and
  - (iii) his parent.

(2) Article 7 does not affect the operation of—

- (a) Article 10; or
- (b) paragraph 5 of Schedule 2.

(3) If a board decides—

- (a) to make a statement for a child under Article 16, but
- (b) not to name in the statement the school for which a parent has expressed a preference under paragraph 5 of Schedule 2,

it shall, in making the statement, comply with Article 7(3).

(4) A board may, in relation to its ordinary controlled schools taken as a whole, rely on the exception in Article 7(3)(b) only if it shows that there are no reasonable steps that it could take to prevent the incompatibility.

(5) A board or a Board of Governors may, in relation to a particular ordinary school, rely on the exception in Article 7(3)(b) only if it shows that there are no reasonable steps that either of them could take to prevent the incompatibility.

(6) The exception in Article 7(3)(b) does not permit a Board of Governors to fail to comply with the duty imposed by Article 16(5)(b).

(7) Boards and Boards of Governors of grant-aided schools shall have regard to guidance about Article 7 and this Article issued by the Department.

(8) That guidance shall, in particular, relate to steps which may, or may not, be regarded as reasonable for the purposes of paragraphs (4) and (5).

### **Duties in relation to pupils with special educational needs in ordinary schools**

8.—(1) The Board of Governors of an ordinary school shall—

- (a) use its best endeavours, in exercising its functions in relation to the school, to secure that if any registered pupil has special educational needs the special educational provision which his learning difficulty calls for is made,
- (b) secure that, where a registered pupil has special educational needs, those needs are made known to all who are likely to teach him, and
- (c) secure that the teachers in the school are aware of the importance of identifying, and providing for, those registered pupils who have special educational needs.

(2) Where a child who has special educational needs is being educated in an ordinary school, those concerned with making special educational provision for the child shall secure, so far as is reasonably practicable and is compatible with—

- (a) the child receiving the special educational provision which his learning difficulty calls for,
- (b) the provision of efficient education for the children with whom he will be educated, and
- (c) the efficient use of resources,

that the child engages in the activities of the school together with children who do not have special educational needs.

(3) The annual report for an ordinary school prepared under Article 125 of the 1989 Order shall describe—

- (a) any special arrangements made for the admission of pupils to whom paragraph (4) applies;
- (b) the steps taken to prevent pupils with special educational needs from being treated less favourably than other pupils;
- (c) the facilities provided to assist access to the school by pupils with special educational needs.

(4) This paragraph applies to a pupil if—

- (a) he has special educational needs; but
- (b) no statement is maintained in respect of him under Article 16.

### **[<sup>F3</sup>Duty to inform parent where special educational provision made**

8A. If—

- (a) a child for whom no statement is maintained under Article 16 is a registered pupil at an ordinary grant-aided school;
- (b) special educational provision is made for him at the school because it is considered that he has special educational needs; and
- (c) his parent has not previously been informed under this Article of special educational provision made for him at the school,

the Board of Governors of the school shall inform the child's parent that special educational provision is being made for him at the school because it is considered that he has special educational needs.]

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F3 2005 NI 6

### **Determination by Boards of Governors of policy in relation to provision of education for children with special educational needs**

9.—(1) The Board of Governors of a grant-aided school shall determine, and keep under review, its policy in relation to the provision of education for children with special educational needs.

(2) In exercising its functions under paragraph (1), a Board of Governors of a school shall, to the extent that it may appear necessary or desirable for the purpose of co-ordinating provision for children with special educational needs, consult with—

- (a) the board for the area in which the school is situated;
- (b) the Boards of Governors of other grant-aided schools; and
- (c) the Council for Catholic Maintained Schools (in the case of a Catholic maintained school).

(3) The policy determined by a Board of Governors under paragraph (1) shall be compatible with the statutory provisions relating to education (including, in particular, those relating to children with special educational needs).

(4) In carrying out its functions under the Education Orders in relation to a school under its management, a Board of Governors shall have regard to its policy in relation to the provision of education for children with special educational needs.

(5) The annual report for a grant-aided school prepared under Article 125 of the 1989 Order shall describe what steps have been taken by the Board of Governors to secure the implementation of its policy in relation to the provision of education for children with special educational needs.

#### *Special educational provision otherwise than in a grant-aided school*

### **Special educational provision otherwise than in a grant-aided school**

10.—(1) Subject to paragraphs (2) and (3) and to Articles 11 and 12, a board may arrange for the special educational provision (or any part of it) which any learning difficulty of a child in its area calls for to be made—

- (a) in an institution outside Northern Ireland, or
- (b) in Northern Ireland otherwise than in a grant-aided school.

(2) A board shall not make any arrangements under paragraph (1) unless it is satisfied that—

- (a) the interests of the child require such arrangements to be made; and
- (b) those arrangements are compatible with the efficient use of resources.

(3) Before making any arrangements under this Article, a board shall consult the child's parent.

(4) This Article is without prejudice to any other powers of a board.

### **Special educational provision in institutions outside Northern Ireland**

11.—(1) No person shall so exercise his functions under this Part that the special educational provision (or any part of it) which any learning difficulty of a child calls for is made in an institution outside Northern Ireland unless the institution is one which specialises in providing for children with special needs.

(2) In paragraph (1), “children with special needs” means children who have particular needs which would be special educational needs if those children were in Northern Ireland.

(3) Where a board arranges under Article 10(1)(a) for special educational provision in respect of a child to be made in an institution outside Northern Ireland, the board shall pay—

- (a) the fees charged by the institution;
- (b) the expenses reasonably incurred in maintaining him while he is at the institution or travelling to or from it;
- (c) his reasonable travelling expenses; and
- (d) the expenses reasonably incurred by any person accompanying him while he is travelling or staying at the institution.

### **Special educational provision in institutions in Northern Ireland other than grant-aided schools**

**12.**—(1) No person shall so exercise his functions under this Part that the special educational provision (or any part of it) which any learning difficulty of a child calls for is made in an institution in Northern Ireland other than a grant-aided school unless—

- (a) the institution is for the time being approved by the Department under Article 26 as suitable for the admission of children with special educational needs, or
- (b) the Department consents to the child being educated there.

[<sup>F4</sup>(1A) But that does not apply to a board deciding, for the purposes of Article 16(5), whether a parent has made suitable arrangements.]

(2) Where a board arranges under Article 10(1)(b) for special educational provision in respect of a child to be made at an independent school in Northern Ireland, the board—

- (a) shall pay the fees payable in respect of the education provided for the child at the school;
- (b) may pay any fees payable in respect of board and lodging provided for the child at the school; and
- (c) may provide transport for the child to facilitate his attendance at the school.

(3) Where a board arranges under Article 10(1)(b) for special education provision in respect of a child to be made at an institution in Northern Ireland other than a school, the board may contribute to the costs of providing education to the child at the institution or assist the institution in the provision of that education, and may in particular—

- (a) pay the fees payable in respect of the education provided for the child at the institution;
- (b) pay any fees payable in respect of board and lodging provided for the child at the institution;
- (c) provide transport for the child to facilitate his attendance at the institution; and
- (d) provide equipment and services to the institution.

**F4** 2005 NI 6

### *Identification and assessment of children with special educational needs*

#### **General duty of board towards children for whom it is responsible**

**13.**—(1) A board shall exercise its powers with a view to securing that, of the children for whom it is responsible, it identifies those to whom paragraph (2) applies.

(2) This paragraph applies to a child if—

- (a) he has special educational needs, and

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- (b) it is necessary for the board to determine the special educational provision which any learning difficulty he may have calls for.
- (3) For the purposes of this Part a board is responsible for a child if he is in the area of the board and—
  - (a) he is a registered pupil at a grant-aided school, or
  - (b) he has attained the age of two years, is not over compulsory school age and has been brought to the attention of the board as having, or probably having, special educational needs.

### **Duties of health and social services boards and health and social services trusts**

**14.**—(1) If a health and social services authority, in the course of exercising any of its functions in relation to a child who has not attained the lower limit of compulsory school age, forms the opinion that he has, or probably has, special educational needs, that authority shall—

- (a) inform the child's parent of its opinion and of its duty under this paragraph and paragraph (2); and
- (b) after giving the parent an opportunity to discuss that opinion with an officer of the authority, bring it to the attention of the appropriate board.

(2) If, in a case falling within paragraph (1), the health and social services authority is of the opinion that a particular voluntary organisation is likely to be able to give the parent advice or assistance in connection with any special educational needs that the child may have, that authority shall inform the parent accordingly.

(3) Where it appears to a board that any health and social services authority could, by taking any specified action, help in the exercise of any of the board's functions under this Part, the board may request the help of the authority, specifying the action in question.

(4) A health and social services authority whose help is so requested shall comply with the request unless it considers that—

- (a) the help requested is not necessary for the purpose of the exercise by the board of those functions, or
- (b) having regard to the resources available to it for the purpose of the exercise of its functions, it is not reasonable for it to comply with the request, or
- (c) compliance with the request is not compatible with its own statutory or other duties or obligations or unduly prejudices the discharge of any of its functions.

(5) Regulations may provide that, where a health and social services authority is under a duty by virtue of paragraph (4) to comply with a request to help a board in the making of an assessment under Article 15 or a statement under Article 16, it must, subject to prescribed exceptions, comply with the request within the prescribed period.

(6) In this Article “health and social services authority” means—

- (a) a health and social services board; or
- (b) a Health and Social Services trust established under the Health and Personal Social Services (Northern Ireland) Order 1991.

### **Assessment of educational needs**

**15.**—(1) Where a board is of the opinion that a child for whom it is responsible falls, or probably falls, within paragraph (2), it shall serve a notice on the child's parent informing him—

- (a) that the board<sup>F5</sup> is considering whether] to make an assessment of the child's educational needs,



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- (b) of the procedure to be followed in making the assessment,
  - (c) of the name of the officer of the board from whom further information may be obtained, and
  - (d) of the parent's right to make representations, and submit written evidence, to the board within such period (which shall not be less than twenty-nine days beginning with the date on which the notice is served) as may be specified in the notice.
- (2) A child falls within this paragraph if—
- (a) he has special educational needs, and
  - (b) it is necessary for the board to determine the special educational provision which any learning difficulty he may have calls for.
- (3) Where—
- (a) a board has served a notice under paragraph (1) and the period specified in the notice in accordance with paragraph (1)(d) has expired, and
  - (b) the board remains of the opinion, after taking into account any representations made and any evidence submitted to it in response to the notice, that the child falls, or probably falls, within paragraph (2),

the board shall make an assessment of his educational needs.

(4) Where a board decides to make an assessment under this Article, it shall give notice in writing to the child's parent of that decision and of the board's reasons for making it.

(5) Schedule 1 (which makes provision in relation to the making of assessments under this Article) shall have effect.

(6) Where, at any time after serving a notice under paragraph (1), a board decides not to assess the educational needs of the child concerned it shall give notice in writing to the child's parent of the board's decision and the reasons for making it.

F5 2005 NI 6

### Statement of special educational needs

**16.**—(1) If, in the light of an assessment under Article 15 of any child's educational needs and of any representations made by the child's parent, it is necessary for the board to determine the special educational provision which any learning difficulty he may have calls for, the board shall make and maintain a statement of his special educational needs.

- (2) The statement shall be in such form and contain such information as may be prescribed.
- (3) In particular, the statement shall—
  - (a) give details of the board's assessment of the child's special educational needs, and
  - (b) specify the special educational provision to be made for the purpose of meeting those needs, including the particulars required by paragraph (4).
- (4) The statement shall—
  - (a) specify the type of school or other institution which the board considers would be appropriate for the child,
  - (b) if the board is not required under Schedule 2 to specify the name of any grant-aided school in the statement, specify the name of any school or institution (whether in Northern Ireland or elsewhere) which it considers would be appropriate for the child and should be specified in the statement, and

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- (c) indicate any provision for the child for which it makes arrangements under Article 10(1) (b) otherwise than in a school or institution and which it considers should be indicated in the statement.

[<sup>F6</sup>(4A) Paragraph (4)(b) does not require the name of a school or institution to be specified if the child's parent has made suitable arrangements for the special educational provision specified in the statement to be made for the child.]

- (5) Where a board maintains a statement under this Article—
- (a) unless the child's parent has made suitable arrangements, the board—
- (i) shall arrange that the special educational provision indicated in the statement is made for the child, and
- (ii) may arrange that any non-educational provision indicated in the statement is made for him in such manner as it considers appropriate, and
- (b) if the name of a grant-aided school is specified in the statement, the Board of Governors of the school shall admit the child to the school.

(6) Paragraph (5)(b) does not affect any power to suspend or expel from a school a pupil who is already a registered pupil there.

(7) Schedule 2 (which makes provision in relation to the making and maintenance of statements under this Article) shall have effect.

**F6** 2005 NI 6

### Appeal against decision not to make statement

17.—(1) If, after making an assessment under Article 15 of the educational needs of any child for whom no statement is maintained under Article 16, the board does not propose to make such a statement, it shall give notice in writing of its decision, of the reasons for making it<sup>F7</sup>. . . to the child's parent.

- (2) In such a case, the child's parent—
- (a) shall have the right to receive, on request, a copy of any advice given to the board on which the decision is based; and
- (b) may appeal to the Tribunal against the decision.

[<sup>F7</sup>(2A) A notice under paragraph (1) shall inform the parent of the right of appeal under paragraph (2) and contain such other information as may be prescribed.

(2B) Regulations may provide that where a board is under a duty under this Article to serve any notice, the duty must be performed within the prescribed period.]

- (3) On an appeal under this Article, the Tribunal may—
- (a) dismiss the appeal,
- (b) order the board to make and maintain such a statement, or
- (c) remit the case to the board for it to reconsider whether, having regard to any observations made by the Tribunal, it is necessary for the board to determine the special educational provision which any learning difficulty the child may have calls for.

**F7** 2005 NI 6

## Appeal against contents of statement

**18.**—<sup>[F8]</sup>(1) The parent of a child for whom a board maintains a statement under Article 16 may appeal to the Tribunal—

- (a) when the statement is first made,
- (b) if an amendment is made to the statement, or
- (c) if, after conducting an assessment under Article 15, the board determines not to amend the statement.

(1A) An appeal under this Article may be against any of the following—

- (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 so specified),
- (c) if no school is specified in the statement, that fact.

(2) Paragraph (1)(b) does not apply where the amendment is made in pursuance of—

- (a) paragraph 11 (change of named school at request of parent) or 13(4)(b) (amendment ordered by Tribunal) of Schedule 2; or
- (b) directions under paragraph 2 of Schedule 13 to the 1986 Order (revocation of school attendance order);

and paragraph (1)(c) does not apply to a determination made following the service of notice under paragraph 3 (amendment by board) of Schedule 2.]

(3) On an appeal under this Article, the Tribunal may—

- (a) dismiss the appeal,
- (b) order the board to amend the statement, so far as it describes the board's assessment of the child's special educational needs or specifies the special educational provision, and make such other consequential amendments to the statement as the Tribunal thinks fit, or
- (c) order the board to cease to maintain the statement.

(4) On an appeal under this Article the Tribunal shall not order the board to specify the name of any school in the statement (either in substitution for an existing name or in a case where no school is named) unless—

- (a) the parent has expressed a preference for the school in pursuance of arrangements under<sup>[F8]</sup> paragraph 5] of Schedule 2, or
- (b) in the proceedings the parent, the board or both have proposed the school.

(5) Before determining any appeal under this Article the Tribunal may, with the agreement of the parties, correct any deficiency in the statement.

**F8** [2005 NI 6](#)

## <sup>[F9]</sup>Unopposed appeals

**18A.**—(1) This Article applies if—

- (a) the parent of a child has appealed to the Tribunal under Article 17, 20 or 20A or paragraph 11(3) of Schedule 2 against a decision of a board, and
- (b) the board notifies the Tribunal that it has determined that it will not, or will no longer, oppose the appeal.

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- (2) The appeal is to be treated as having been determined in favour of the appellant.
- (3) If an appeal is treated as determined in favour of the appellant as a result of paragraph (2), the Tribunal is not required to make any order.
- (4) Before the end of the prescribed period, the board shall—
  - (a) in the case of an appeal under Article 17, make a statement under Article 16 of the child's educational needs,
  - (b) in the case of an appeal under Article 20 or 20A, make an assessment of the child's educational needs,
  - (c) in the case of an appeal under paragraph 11(3) of Schedule 2 against a determination of the board not to comply with the parent's request, comply with the request.
- (5) A board required by paragraph (4)(a) to make a statement under Article 16 shall maintain the statement under that Article.]

**F9** 2005 NI 6

### Reviews of statements

- 19.**—(1) A statement under Article 16 shall be reviewed by the board—
- (a) on the making of an assessment in respect of the child concerned under Article 15, and
  - (b) in any event, within the period of twelve months beginning with the making of the statement or, as the case may be, with the previous review.
- (2) Regulations may make provision—
- (a) as to the manner in which reviews of such statements are to be conducted,
  - (b) as to the participation in such reviews of such persons as may be prescribed, and
  - (c) in connection with such other matters relating to such reviews as the Department considers appropriate.

### Assessment of educational needs at request of child's parent

- 20.**—(1) Where—
- (a) the parent of a child for whom a board is responsible asks the board to arrange for an assessment to be made in respect of the child under Article 15,
  - (b) such an assessment has not been made within the period of six months ending with the date on which the request is made, and
  - (c) it is necessary for the board to make an assessment under that Article,
- the board shall comply with that request.
- (2) Paragraph (1) applies whether or not the board is maintaining a statement under Article 16 for the child.
- (3) If in any case where paragraph (1)(a) and (b) applies the board decides not to comply with the request—
- (a) it shall give<sup>F10</sup> notice in writing of that decision and of the reasons for making it to the parent of the child], and
  - (b) the parent may appeal to the Tribunal against the decision.
- <sup>F10</sup>(3A) A notice under paragraph (3)(a) shall inform the parent of the right of appeal under paragraph (3)(b) and contain such other information as may be prescribed.]

- (4) On an appeal under paragraph (3) the Tribunal may—
- (a) dismiss the appeal, or
  - (b) order the board to arrange for an assessment to be made in respect of the child under Article 15.

**F10** 2005 NI 6

**[F11] Review or assessment of educational needs at request of responsible body**

**20A.**—(1) This Article applies if—

- (a) a child is a registered pupil at a school (whether or not he is a child in respect of whom a statement is maintained under Article 16),
- (b) the responsible body asks the board to arrange for an assessment to be made in respect of him under Article 15, and
- (c) such an assessment has not been made within the period of six months ending with the date on which the request is made.

(2) If it is necessary for the board to make an assessment or further assessment under Article 15, it shall comply with the request.

(3) Before deciding whether to comply with the request, the board shall serve on the child's parent a notice informing him—

- (a) that it is considering whether to make an assessment of the child's educational needs,
- (b) of the procedure to be followed in making the assessment,
- (c) of the name of an officer of the board from whom further information may be obtained, and
- (d) of the parent's right to make representations, and submit written evidence, to the board before the end of the period specified in the notice (“the specified period”).

(4) The specified period shall not be less than 29 days beginning with the date on which the notice is served.

(5) The board may not decide whether to comply with the request until the specified period has expired.

(6) The board shall take into account any representations made, and any evidence submitted, to it in response to the notice under paragraph (3).

(7) If, as a result of this Article, a board decides to make an assessment under Article 15, it shall give written notice to the child's parent and to the responsible body which made the request, of the decision and of the board's reasons for making it.

(8) If, after serving a notice under paragraph (3), the board decides not to assess the educational needs of the child—

- (a) it shall give written notice of the decision and of the board's reasons for making it to his parent and to the responsible body which made the request, and
- (b) the parent may appeal to the Tribunal against the decision.

(9) A notice given under paragraph (8)(a) to the child's parent shall—

- (a) inform the parent of his right to appeal, and
- (b) contain such other information (if any) as may be prescribed.

(10) On an appeal under paragraph (8) the Tribunal may—

- (a) dismiss it, or

**Status:** Point in time view as at 03/04/2006.

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- (b) order the board to arrange for an assessment to be made in respect of the child under Article 15.
- (11) In this Article “the responsible body” means—
  - (a) in relation to a grant-aided school, the Board of Governors,
  - (b) in relation to an independent school, the proprietor.]

**F11** 2005 NI 6

### Assessment of educational needs of children under two

**21.**—(1) Where a board is of the opinion that a child in its area who is under the age of two years falls, or probably falls, within paragraph (2)—

- (a) it may, with the consent of his parent, make an assessment of the child's educational needs, and
- (b) it shall make such an assessment at the request of his parent.

(2) A child falls within this paragraph if—

- (a) he has special educational needs, and
- (b) it is necessary for the board to determine the special educational provision which any learning difficulty he may have calls for.

(3) An assessment under this Article shall be made in such manner as the board considers appropriate.

(4) After making an assessment under this Article, the board—

- (a) may make a statement of the child's special educational needs, and
- (b) may maintain that statement,

in such manner as it considers appropriate.

*[<sup>F12</sup>General duties of boards]*

**F12** 2005 NI 6

### <sup>F13</sup>Advice and information for parents

**21A.**—(1) A board shall arrange for the parent of any child in its area with special educational needs to be provided with advice and information about matters relating to those needs.

(2) In making the arrangements, the board shall have regard to any guidance given by the Department.

(3) The board shall take such steps as it considers appropriate for making the services provided under paragraph (1) known to—

- (a) the parents of children in its area;
- (b) the principals and Boards of Governors of grant-aided schools in its area;
- (c) the principals and proprietors of independent schools in its area; and
- (d) such other persons as it considers appropriate.]

**F13** 2005 NI 6

## [<sup>F14</sup>Resolution of disputes

**21B.**—(1) A board shall make arrangements with a view to avoiding or resolving disagreements between boards or Boards of Governors of grant-aided schools (on the one hand) and parents of children in its area (on the other) about the exercise by boards or Boards of Governors of functions under this Part.

(2) A board shall also make arrangements with a view to avoiding or resolving, in each relevant school, disagreements between the parents of a child who is a registered pupil at the school and has special educational needs and the Board of Governors or proprietor of the school about the special educational provision made for that child.

(3) In paragraph (2) “relevant school” means—

- (a) a grant-aided school;
- (b) an independent school which is named in the statement maintained for the child under Article 16.

(4) The arrangements under paragraphs (1) and (2) shall provide for the appointment of independent persons with the function of facilitating the avoidance or resolution of such disagreements.

(5) In making the arrangements, the board shall have regard to any guidance given by the Department.

(6) The board shall take such steps as it considers appropriate for making the arrangements made under paragraphs (1) and (2) known to—

- (a) the parents of children in its area;
- (b) the principals and Boards of Governors of grant-aided schools in its area;
- (c) the principals and proprietors of independent schools in its area; and
- (d) such other persons as it considers appropriate.

(7) The arrangements do not affect the entitlement of a parent to appeal to the Tribunal.]

**F14** 2005 NI 6

### *Special Educational Needs Tribunal for Northern Ireland*

## **Constitution of Tribunal**

**22.**—[<sup>F15</sup>(1) The Special Educational Needs and Disability Tribunal for Northern Ireland (referred to in this Part as “the Tribunal”) shall exercise the jurisdiction conferred on it by this Part.]

(2) There shall be—

- (a) a President of the Tribunal appointed by the Lord Chancellor;
- (b) a panel appointed by the Lord Chancellor of persons who may serve as chairman of the Tribunal; and
- (c) a panel appointed by the Department of persons who may serve as the other two members of the Tribunal apart from the chairman.

(3) No person may be appointed—

- (a) President or member of the panel mentioned in paragraph (2)(b) unless he possesses such legal qualifications as the Lord Chancellor considers suitable[<sup>F16</sup> after consultation with the Lord Chief Justice];

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- (b) member of the panel mentioned in paragraph (2)(c) unless he satisfies such requirements as may be prescribed.
- [<sup>F17</sup>(3A) The Lord Chief Justice may nominate any of the following to exercise his functions under paragraph (3)—
- (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;
- (b) a Lord Justice of Appeal (as defined in section 88 of that Act).]
- (4) The President—
- (a) <sup>F18</sup> .....
- (b) may resign office by notice in writing to the Lord Chancellor; and
- (c) is eligible for re-appointment if he ceases to hold office.
- (5) A person appointed member of either panel shall hold office subject to such conditions as to the period of his appointment and otherwise as may be determined by the person or body appointing him, but may resign office by notice in writing to that person or body.
- (6) The Department may—
- (a) pay to the President, and to any other person in respect of his service as a member of the Tribunal, such remuneration and expenses as it may, with the approval of the Department of Finance and Personnel, determine;
- (b) defray the expenses of the Tribunal to such amount as the Department may, with the approval of the Department of Finance and Personnel, determine;
- (c) provide for the Tribunal such staff and accommodation as the Tribunal may require.
- (7) The jurisdiction of the Tribunal shall be exercised by such number of tribunals as may be determined from time to time by the President.

**F15** 2005 NI 6

**F16** Words in art. 22(3)(a) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(2), 148(1), Sch. 5 para. 102(2); S.I. 2006/1014, art. 2(a), Sch. 1 paras. 10, 12(b)

**F17** Art. 22(3A) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(2), 148(1), Sch. 5 para. 102(3); S.I. 2006/1014, art. 2(a), Sch. 1 paras. 10, 12(b)

**F18** Art. 22(4)(a) repealed (3.4.2006) by Justice (Northern Ireland) Act 2002 (c. 26), ss. 86, 87(1), Sch. 13; S.R. 2006/124, art. 2, Sch. paras. 9, 11(j)

## Tribunal procedure

**23.**—(1) Regulations may make provision about the proceedings of the Tribunal on an appeal under this Part and the initiation of such an appeal.

(2) The regulations may, in particular, include provision—

- (a) as to the period within which, and the manner in which, appeals are to be instituted,
- (b) where the jurisdiction of the Tribunal is being exercised by more than one tribunal—
- (i) for determining by which tribunal any appeal is to be heard, and
- (ii) for the transfer of proceedings from one tribunal to another,
- (c) for enabling any functions which relate to matters preliminary or incidental to an appeal to be performed by the President, or by the chairman,

*Sub#para. (d) rep. by 2005 NI 6*

- (e) for hearings to be conducted in the absence of any member, other than the chairman,



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- (f) as to the persons who may appear on behalf of the parties,
- (g) for granting any person such discovery or inspection of documents or right to further particulars as might be granted by a county court,
- (h) requiring persons to attend to give evidence and produce documents,
- (i) for authorising the administration of oaths to witnesses,
- (j) for the determination of appeals without a hearing in prescribed circumstances,
- (k) as to the withdrawal of appeals,
- (l) for the award of costs or expenses,
- (m) for taxing or otherwise settling any such costs or expenses (and, in particular, for enabling such costs to be taxed in the county court),
- (n) for the registration and proof of decisions and orders, and
- (o) for enabling the Tribunal to review its decisions, or revoke or vary its orders, in such circumstances as may be determined in accordance with the regulations.

[<sup>F19</sup>(2A) Proceeding before the Tribunal shall be held in private, except in prescribed circumstances.]

(3) The Department may pay such allowances for the purpose of or in connection with the attendance of persons at the Tribunal as it may with the approval of the Department of Finance and Personnel determine.

[<sup>F19</sup>(4) Part I of the Arbitration Act 1996 shall not apply to any proceedings before the Tribunal, but regulations may make provision corresponding to any provision of that Part.]

[<sup>F19</sup>(4A) The regulations may make provision for an appeal under this Part to be heard, in prescribed circumstances, with a claim under Chapter I of Part III of the Special Educational Needs and Disability (Northern Ireland) Order 2004.]

- (5) Any person who without reasonable excuse fails to comply with—
- (a) any requirement in respect of the discovery or inspection of documents imposed by the regulations by virtue of paragraph (2)(g), or
  - (b) any requirement imposed by the regulations by virtue of paragraph (2)(h),

is guilty of an offence.

(6) A person guilty of an offence under paragraph (5) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**F19** 2005 NI 6

**Modifications etc. (not altering text)**

**C1** Art. 23 functions transferred from Department of Education to Department of Justice (1.4.2011) by Departments (Transfer of Functions) Order (Northern Ireland) 2011 (S.R. 2011/44), arts. 1(2), 3 (with art. 8(2))

[<sup>F20</sup>**Compliance with orders**

**23A.** If the Tribunal makes an order, the board concerned must comply with the order before the end of the prescribed period beginning with the date on which it is made.]

**F20** 2005 NI 6

*Status: Point in time view as at 03/04/2006.*

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## Appeals from Tribunal

24. [F21 Where a party to an appeal to the Tribunal is dissatisfied in point of law with a decision of the Tribunal, that party] may, according as rules of court may provide, either appeal therefrom to the High Court or require the Tribunal to state and sign a case for the opinion of the High Court.

F21 1997 NI 5

## *Special schools and other institutions*

### Religious education in special schools

25.—(1) Article 21 of the 1986 Order (religious education in grant-aided schools other than nursery or special schools) shall apply in relation to special schools as it applies in relation to ordinary schools.

(2) Accordingly—

- (a) in paragraphs (1) and (7) of that Article the words “or special” and in paragraph (9) of that Article the words “and special” shall cease to have effect;
- (b) in Article 22(1) of the 1986 Order the words “or special” shall cease to have effect; and
- (c) in Article 12 of the 1989 Order (which provides for the kind of religious education to be included in the curriculum of a school) for paragraph (1) there shall be substituted—

“(1) The religious education for which provision is required by Article 5(1)(a) to be included in the curriculum for any particular grant-aided school shall be religious education of the kind required by such of the provisions of Article 21 of the 1986 Order as apply in the case of that school.”.

### Approval of institutions in Northern Ireland other than grant-aided schools

26.—(1) The Department may approve an institution in Northern Ireland other than a grant-aided school as suitable for the admission of children with special educational needs.

(2) An approval under this Article may be given subject to such conditions as the Department sees fit to impose.

(3) In any case where there is a failure to comply with such a condition imposed under paragraph (2), the Department may withdraw its approval.

## *School attendance orders*

### School attendance orders

27. For paragraphs 1 and 2 of Schedule 13 to the 1986 Order (school attendance orders) there shall be substituted—

“1.—(1) If it appears to a board that a parent of a child of compulsory school age in its area is failing to perform the duty imposed on him by Article 45, it shall serve a notice in writing on the parent requiring him to satisfy the board, within such period (not being less than fourteen days beginning with the day on which the notice is served) as is specified in the notice, that the child is, by regular attendance at school or otherwise, receiving suitable education.

(2) If—

(a) a parent on whom a notice has been served under sub-paragraph (1) fails to satisfy the board, within the period specified in the notice, that the child is receiving suitable education, and

(b) in the opinion of the board it is expedient that the child should attend school, the board shall serve in the prescribed manner on the parent an order (referred to in this Order as a “school attendance order”), in the prescribed form, requiring him to cause the child to become a registered pupil at a school named in the order.

(3) Unless it is revoked by the board or a direction is made in respect of it by a court under paragraph 6, a school attendance order shall (subject to any amendment made by the board) continue in force—

(a) where the school named in the order provides education for pupils up to the upper limit of compulsory school age or beyond, for so long as the child is of compulsory school age;

(b) where the school does not provide education up to or beyond that age, until the pupil has reached the age at which he would normally leave that school.

(4) Where a grant-aided school is named in a school attendance order the Board of Governors of the school shall admit the child to the school.

(5) Sub-paragraph (4) does not affect any power to suspend or expel from a school a pupil who is already a registered pupil there.

(6) In this Part “suitable education”, in relation to a child, means efficient full-time education suitable to his age, ability and aptitude and to any special educational needs he may have.

**1A.—**(1) Sub-paragraphs (2) to (5) apply where a board is required by virtue of paragraph 1(2) to serve a school attendance order in respect of a child, other than a child for whom it maintains a statement under Article 16 of the Education (Northern Ireland) Order 1996.

(2) Before serving the order, the board shall serve on the parent a notice in writing—

(a) informing him of its intention to serve the order,

(b) specifying the school which the board intends to name in the order and, if it thinks fit, one or more other schools which it regards as suitable alternatives, and

(c) stating the effect of sub-paragraphs (4) and (5).

(3) A voluntary or grant-maintained integrated school shall not be specified in a notice under sub-paragraph (2) unless the board has consulted the managers of the school.

(4) If the notice specifies one or more alternative schools and the parent selects one of them and notifies the board accordingly before the expiration of the period of fourteen days beginning with the day on which the notice is served, the school selected by him shall be named in the order.

(5) If before the expiration of the period mentioned in sub-paragraph (4) the parent—

(a) applies for the child to be admitted to a school other than the school or schools specified in the notice; and

(b) notifies the board accordingly,

then, if as a result of the application the child is offered a place at that school, that school shall, subject to sub-paragraph (7), be named in the order.

*Status: Point in time view as at 03/04/2006.*

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(6) If at any time while a school attendance order is in force with respect to a child, other than a child for whom the board maintains a statement under Article 16 of the Education (Northern Ireland) Order 1996.

(a) the parent applies for the child to be admitted to a school other than the school named in the order; and

(b) as a result of the application the child is offered a place at a school,

the board shall, subject to sub-paragraph (7), at the request of the parent amend the order by substituting that school for the one previously named.

(7) Sub-paragraphs (5) and (6) do not apply where the school at which the child is offered a place is an independent school unless, in the opinion of the board, the school is suitable to his age, ability and aptitude and to any special educational needs he may have.

**1B.**—(1) Sub-paragraphs (2) and (3) apply where a board is required by virtue of paragraph 1(2) to serve a school attendance order in respect of a child for whom it maintains a statement under Article 16 of the Education (Northern Ireland) Order 1996.

(2) Where the statement specifies the name of a School that school shall be named in the order.

(3) Where the statement does not specify the name of a school—

(a) the board shall, in accordance with paragraph 10 of Schedule 2 to the Education (Northern Ireland) Order 1996, amend the statement so that it specifies the name of a school, and

(b) that school shall then be named in the order.

(4) Where—

(a) a school attendance order is in force in respect of a child for whom the board maintains a statement under Article 16 of the Education (Northern Ireland) Order 1996, and

(b) the name of the school specified in the statement differs (for whatever reason) from that specified in the order,

the board shall amend the order so that it names the school specified in the statement.

**2.**—(1) This paragraph applies where a school attendance order is in force in respect of a child.

(2) If at any time the parent applies to the board requesting that the order be revoked on the ground that arrangements have been made for the child to receive suitable education otherwise than at school, the board shall comply with the request, unless it is of the opinion that no satisfactory arrangements have been made for the education of the child otherwise than at school.

(3) If a parent is aggrieved by a refusal of the board to comply with a request under sub-paragraph (2), he may refer the question to the Department.

(4) Where a question is referred to the Department under sub-paragraph (3), it shall give such direction determining the question as it thinks fit.

(5) Where the child in question is one for whom the board maintains a statement under Article 16 of the Education (Northern Ireland) Order 1996.

(a) sub-paragraphs (2) to (4) do not apply if the name of a school is specified in the statement, and

- (b) in any other case a direction under sub-paragraph (4) may require the board to make such amendments in the statement as the Department considers necessary or expedient in consequence of its determination.”.

### *Supplementary*

#### **Regulations and orders**

**28.**—(1) Regulations and orders made by the Department under this Part (other than orders under Article 5(3)) shall be subject to negative resolution.

(2) Regulations and orders made by the Department under this Part may contain such incidental, supplementary and transitional provisions as the Department thinks fit.

## **PART III**

### **MISCELLANEOUS**

#### **Withdrawal of school from maintained status**

**29.** The following provisions of the 1986 Order (which provide for the withdrawal of a school from maintained status) shall cease to have effect, namely—

- (a) in Article 11(2) the words from “and may be withdrawn” to the end;
- (b) Article 11(6);
- (c) Part II of Schedule 5;
- (d) Schedule 8.

#### **Independent schools**

**30.**—(1) In Article 2(2) of the 1986 Order for the definition of “independent school” there shall be substituted—

““independent school” means a school at which full-time education is provided for pupils of compulsory school age (whether or not such education is also provided for pupils under or over that age), not being a grant-aided school;” .

(2) In Article 39(1)(c) of the 1986 Order (complaints in relation to independent schools) for the words “ages and sex” there shall be substituted the words “ages, sex and abilities”.

(3) In Article 40 of the 1986 Order (appeals against complaints)—

- (a) in paragraph (1) for the words from “appeal” to the end there shall be substituted the words “appeal therefrom to the Independent Schools Tribunal constituted in accordance with regulations under paragraph (8)”;
- (b) after paragraph (7) there shall be added—

“(8) The Department shall by regulations provide for the constitution and procedure of the Independent Schools Tribunal, and without prejudice to the generality of the foregoing such regulations—

- (a) shall provide for the membership of the tribunal and may provide for disqualifying prescribed persons or descriptions of persons for membership of the tribunal;

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- (b) may provide that all matters relating to the procedure on appeals which are not specifically regulated by the regulations shall be determined by the tribunal.
- (9) The Department may—
  - (a) pay to members of the Independent Schools Tribunal such remuneration and expenses as it may, with the approval of the Department of Finance and Personnel, determine;
  - (b) defray the expenses of the tribunal to such amount as the Department may, with the approval of the Department of Finance and Personnel, determine;
  - (c) provide for the tribunal such staff and accommodation as the tribunal may require.” .

### **Date of commencement of secondary education**

**31.**—(1) Article 46A of the 1986 Order (commencement of secondary education) shall be amended as follows.

(2) For the words “Unless the Department otherwise directs in a particular case” there shall be substituted the words “(1) Except as provided by paragraph (2), (3) or (4)”.

(3) At the end there shall be added—

“(2) A child shall commence secondary education on 1st August next before his normal date of commencement where—

- (a) the appropriate Board of Governors is of the opinion that it is in the best interests of the child to commence secondary education on that earlier date; and
- (b) the parent of the child agrees with that opinion.

(3) A child shall commence secondary education on 1st August next after his normal date of commencement where—

- (a) the appropriate Board of Governors is of the opinion that it is in the best interests of the child to commence secondary education on that later date; and
- (b) the parent of the child agrees with that opinion.

(4) A child shall commence secondary education on 1st August next before or after his normal date of commencement where—

- (a) the board for the area in which he resides so directs; and
- (b) at the time the direction is given the child is not a registered pupil at any school.

(5) In forming an opinion for the purposes of paragraph (2) or (3) the Board of Governors of a school shall comply with the guidance issued under paragraph (6) and in particular—

- (a) shall take into account such matters or matters of such description as may be specified in such guidance;
- (b) shall not take into account such matters or matters of such description as may be so specified; and
- (c) shall follow such administrative procedures as may be so specified.

(6) The Department shall issue such guidance as it thinks fit as to the exercise by a Board of Governors of its functions under this Article and such guidance shall in particular—

- (a) require the Board of Governors of a school in forming an opinion for the purposes of paragraph (2) or (3) to take into account the advice of the principal of the school (or, in the case of a grammar school providing both primary and secondary education, the teacher in charge of that part of the school in which primary education is provided);

- (b) require the Board of Governors of a school in forming an opinion for the purposes of paragraph (3) to take into account the advice of the relevant board;
  - (c) specify the matters or descriptions of matters which are, or are not, to be taken into account by a Board of Governors in forming an opinion for the purposes of paragraph (2) or (3);
  - (d) specify the administrative procedures to be followed by a Board of Governors in exercising its functions under this Article; and
  - (e) prohibit the delegation by the Board of Governors (notwithstanding anything in the scheme of management of the school) of such functions under this Article as are specified in the guidance.
- (7) The Department shall issue such guidance as it thinks fit as to—
- (a) the exercise by a board of its functions under paragraph (4); and
  - (b) the giving by a board of advice for the purposes of paragraph (6)(b).
- (8) The Department shall publish the guidance issued by it under paragraphs (6) and (7) in such manner as it thinks fit.
- (9) In this Article—

“appropriate Board of Governors”, in relation to a child, means the Board of Governors of the school at which the child is a registered pupil;

“normal date of commencement”, in relation to a child, means the date on which, but for any provision made under paragraph (2), (3) or (4), the child would commence secondary education;

“relevant board”, in relation to the Board of Governors of a school, means—

- (a) in the case of a controlled school, the board by which the school is managed;
- (b) in the case of a maintained school, the board by which the school is maintained; and
- (c) in the case of any other school, the board for the area in which the school is situated.

(10) This Article does not apply in relation to—

- (a) children in respect of whom statements are maintained under Article 16 of the Education (Northern Ireland) Order 1996; or
- (b) children in independent schools.” .

*Art. 32 rep. by 2003 NI 12*

### **School inspections**

**33.** For Article 102 of the 1986 Order there shall be substituted the following Articles—

#### **“Inspection of educational and other establishments by Department**

**102.**—(1) Every relevant establishment shall be open at all reasonable times to inspection under this Article.

(2) In this Article and Article 102A “relevant establishment” means—

- (a) a school;
- (b) a college of education;
- (c) a grant-aided institution or establishment; or
- (d) an institution or establishment which is established, maintained or managed by a board or the activities of which are organised by a board.

(3) Inspections under this Article shall be conducted by—

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- (a) inspectors appointed by the Department; or
- (b) other officers of the Department.

(4) Inspectors conducting the inspection of an establishment under this Article may be accompanied and assisted in the inspection by a lay person assigned for the purposes of that inspection under Article 102A.

(5) It shall be the duty of inspectors to promote the highest standards of education and of professional practice among teachers in relevant establishments which provide education by—

- (a) monitoring, inspecting and reporting on the standard of education being provided in those establishments and the standards of professional practice among teachers on the staff of such establishments;
- (b) advising the Department on any aspect of the curriculum of any of those establishments which the Department may refer to them or on which they think advice is appropriate.

(6) It shall be the duty of inspectors to monitor, inspect and report on the nature, scope and effect of advisory and support services provided by boards under Article 29 of the 1989 Order in relation to the curricula and staff of grant-aided schools.

(7) The functions conferred by this Article on inspectors shall not be exercisable in relation to any provision for religious education included in the curriculum of a school under Article 5(1)(a) of the 1989 Order except with the agreement of the Board of Governors of the school.

(8) The Department may give directions under Article 101 for the purpose of remedying any matter referred to in a report under this Article.

### **Lay persons**

**102A.**—(1) The Department may appoint a panel of persons to act as lay persons in inspections conducted under Article 102.

(2) A person shall not be appointed to the panel unless he is, in the opinion of the Department, without significant personal experience in the management of relevant establishments and the provision of education (otherwise than as a member of the managing body of such an establishment or in any other voluntary capacity).

(3) The Department may remove a person from the panel at any time.

(4) The Department may assign a member of the panel to be a lay person for the purposes of an inspection of any relevant establishment to be conducted under Article 102 but shall ensure that no person is so assigned if he has, or at any time had, any connection with—

- (a) the establishment in question;
- (b) any person who is employed at that establishment;
- (c) any person who is a member of the managing body of that establishment;
- (d) where the establishment is an independent school, the proprietor of the school,

of a kind which might reasonably be taken to raise doubts about his ability to act impartially in relation to that establishment.

(5) The Department may, with the approval of the Department of Finance and Personnel, pay to members of the panel such allowances and expenses as the Department may determine.

(6) In this Article “managing body” means—

- (a) in relation to a school, the Board of Governors;



- (b) in relation to an institution of further education, the governing body;
- (c) in relation to any other relevant establishment, the body responsible for its management.”.

### **Key stages**

**34.** In Article 5 of the 1989 Order for paragraph (6) (definition of “key stages”) there shall be substituted the following paragraphs—

- “(6) For the purpose of this Part the key stages in relation to a pupil are as follows—
- (a) the period beginning with his becoming of compulsory school age and ending at the same time as the school year in which the majority of pupils in his class complete four school years in that key stage;
  - (b) the period beginning at the same time as the next school year after the end of the first key stage and ending at the same time as the school year in which the majority of pupils in his class complete three school years in that key stage;
  - (c) the period beginning at the same time as the next school year after the end of the second key stage and ending at the same time as the school year in which the majority of pupils in his class complete three school years in that key stage;
  - (d) the period beginning at the same time as the next school year after the end of the third key stage and ending at the same time as he ceases to be of compulsory school age.

(6A) In paragraph (6) “class”, in relation to a particular pupil and a particular subject, means the teaching group in which he is regularly taught that subject or, where there are two or more such groups, such one of them as may be designated by the principal of the school.”.

### **Compulsory contributory subjects in key stage 4**

#### *Para. (1)—Amendments*

(2) In Article 7(2) of the 1989 Order in sub-paragraph (a) after the word “practicable” there shall be inserted “in relation to key stages 1,2 and 3” and after that sub-paragraph there shall be inserted—

- “(aa) to set in place as soon as is practicable in relation to key stage 4—
- (i) programmes of study in relation to all the compulsory contributory subjects;
  - (ii) assessment arrangements in relation to all the compulsory contributory subjects in which pupils are required under Article 6(3) to be assessed;”.

(3) In Article 7(3) of the 1989 Order for the definition of “assessment arrangements” there shall be substituted—

““assessment arrangements”

- (i) in relation to subjects taught to pupils in key stage 1,2 or 3, means the arrangements for assessing pupils at or near the end of each key stage for the purpose of ascertaining what they have achieved in relation to the attainment targets for that key stage;
- (ii) in relation to subjects taught to pupils in key stage 4, means the arrangements for assessing pupils at or near the end of key stage 4 for the purpose of ascertaining what they have achieved in that key stage.”.

#### *Para. (4) rep. by 1998 NI 13*

(5) In column 2 of Schedule 1 to the 1989 Order—

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- (a) the entry “Home Economics” shall be omitted from the list of subjects against the area of study called Science and Technology; and
- (b) at the end of the list of subjects against the area of study called the Environment and Society there shall be added the following entries—
  - “Home Economics
  - Economics
  - Social and Environmental Studies”.

(6) This Article has effect in place of Article 45 of the Education and Libraries (Northern Ireland) Order 1993 (which has not come into operation) and accordingly that Article is hereby repealed.

### **Initiation of procedure for acquisition by school of grant-maintained integrated or controlled integrated status**

**36.**—(1) Article 69 of the 1989 Order (including that Article as applied by Article 91 of that Order) shall be amended as follows.

(2) For paragraph (1)(a) (initiation of procedure by two resolutions of Board of Governors) there shall be substituted—

- “(a) the Board of Governors decides by a resolution passed at a meeting of that Board to hold such a ballot; or”.

(3) Paragraph (3) (notice of first resolution) shall cease to have effect.

(4) In paragraph (4) for the words “the second resolution required for the purposes of” there shall be substituted the words “a resolution under”, in sub-paragraph (a) the word “second” shall cease to have effect and in sub-paragraph (b) for the words from “to the bodies” to the end there shall be substituted

“to—

- (i) the relevant board;
- (ii) if the school is a voluntary school, the trustees of the school;
- (iii) if the school is a Catholic maintained school, the Council for Catholic Maintained Schools.”.

(5) In paragraph (5) for the words “the second resolution” there shall be substituted the words “the resolution under paragraph (1)(a)”.

(6) Nothing in this Article affects the procedure for the acquisition of grant-maintained integrated status or controlled integrated status in a case where that procedure has been initiated before the coming into operation of this Article.

### **Proposals for acquisition of grant-maintained integrated status**

**37.**—(1) Article 71 of the 1989 Order (procedure for acquisition of grant-maintained integrated status) shall be amended as follows.

(2) In paragraph (3) for the words from “and a proposal” to the end there shall be substituted “and shall be submitted to the relevant board—

- (a) in the case of a proposal under paragraph (1), within such period as may be so required; and
- (b) in the case of a proposal under paragraph (2), not later than the beginning of such period immediately before the proposed date of implementation as the Department may specify”.

(3) Paragraph (4) shall cease to have effect.

(4) For paragraphs (6) and (7) there shall be substituted—

“(6) The relevant board shall, within 21 days of receiving a proposal under paragraph (1) or (2)—

- (a) submit the proposal to the Department; and then
- (b) publish, by advertisement in one or more newspapers circulating in the area affected by the proposal, a notice stating—
  - (i) such particulars of the nature of the proposal as may be required by the Department;
  - (ii) that the proposal has been submitted to the Department;
  - (iii) that a copy of the proposal can be inspected at a specified place; and
  - (iv) that objections to the proposal can be made to the Department within two months of the date specified in the advertisement being the date on which the advertisement first appears.

(6A) The relevant board shall furnish a copy of the proposal to any person, on application and payment of such reasonable sum as the board may determine.

(6B) The relevant board may, before the expiry of the period specified in the notice under paragraph (6)(b)(iv), submit its views on the proposal to the Department.

(7) Subject to paragraphs (8), (9) and (10), the Department after—

- (a) considering any objections to a proposal made to it within the period specified in the notice under paragraph (6)(b)(iv);
- (b) considering any views of the relevant board submitted to it under paragraph (6B); and
- (c) making such modifications, if any, in the proposal as, after consultation with the Board of Governors or person making the proposal, it considers necessary or expedient,

may approve the proposal and inform that Board of Governors or person accordingly.” .

(5) Nothing in this Article applies in relation to a proposal under Article 71 of the 1989 Order submitted to a board before the coming into operation of this Article.

*Art. 38 rep. by 1997 NI 15*

### **Powers of trustees of voluntary schools in relation to proceeds of disposal of school premises**

**39.**—(1) This Article applies where, at any time after it comes into operation—

- (a) any premises (“the relevant premises”) of a voluntary school—
  - (i) cease to be used for approved purposes of the school; and
  - (ii) are disposed of by the trustees of the school; and
- (b) no provision is made by any trust deed executed in relation to the relevant premises for the application of the residual proceeds of the disposal of those premises.

(2) Where this Article applies, any trust deed executed in relation to the relevant premises shall have effect as if it authorised the trustees of the school to apply any residual proceeds of the disposal of the relevant premises for general educational purposes.

(3) In the case of the trustees of a Catholic maintained school, the reference in paragraph (2) to general educational purposes shall be construed as a reference to general educational purposes in the Roman Catholic diocese in which the school is situated.

(4) In paragraph (2) “residual proceeds of the disposal of the relevant premises” means the amount of the proceeds of the disposal of the relevant premises less the amount of any liabilities or expenses

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of the trustees arising in respect of, or in connection with, the relevant premises or the disposal thereof, including in particular (but without prejudice to the generality of the foregoing)—

- (a) the amount of any expenses of the trustees in respect of the disposal; and
- (b) any amounts payable or repayable to the Department under<sup>F22</sup> Article 116 of the 1986 Order in consequence of the disposal of the relevant premises.

(5) This Article applies to a trust deed whether executed before or after the coming into operation of this Article.

**F22** prosp. subst. by 1998 NI 13

### **Incorporation of Boards of Governors**

**40.**—(1) A Board of Governors constituted in pursuance of Part III of the 1986 Order on or after the appointed day shall be constituted as a body corporate.

(2) A Board of Governors so constituted before that day which is not constituted as a body corporate shall, as constituted on that day, become on that day a body corporate.

(3) On the incorporation of a Board of Governors by virtue of paragraph (2), any property, rights or liabilities attributable to the Board of Governors immediately before incorporation shall be transferred to, and by virtue of this Article vest in, the body corporate.

(4) For the purposes of paragraph (3), property, rights or liabilities are attributable to a Board of Governors if—

- (a) in the case of any property, it was held by or on behalf of any persons as members or former members of the Board of Governors, and
- (b) in the case of rights or liabilities, they were acquired or incurred by or on behalf of any such persons,

and are so held or, as the case may be, they subsist immediately before the incorporation of the Board of Governors.

(5) Subject to any provision made by or under the Education Orders, section 19 of the Interpretation Act (Northern Ireland) 1954 shall apply to a Board of Governors incorporated by virtue of this Article.

(6) A Board of Governors incorporated by virtue of this Article shall be known as “The Board of Governors of” with the addition of—

- (a) in a case where two or more schools are grouped under the management of a Board of Governors, the names of each of those schools in alphabetical order; and
- (b) in any other case, the name of the school under its management.

(7) The application of the seal of any such Board of Governors must be authenticated by the signature—

- (a) of the chairman of the Board of Governors, or
- (b) of some other member authorised either generally or specially by the Board of Governors to act for that purpose,

together with the signature of any other member.

(8) Schedule 4 (which supplements the provisions of this Article) shall have effect.

(9) In this Article and Schedule 4 “appointed day” means the day appointed under Article 1(3) for the coming into operation of this Article.

*Art. 41 rep. by 1997 NI 15*

### **Direction to admit child to specified school**

**42.**—(1) A board may give a direction under this Article if, in the case of any child in its area, one or both of the following conditions is satisfied in relation to each school which is a reasonable distance from his home and provides suitable education, that is—

- (a) he has been refused admission to the school; or
- (b) he has been expelled from the school.

(2) A direction given under this Article by a board shall specify a grant-aided school—

- (a) which is a reasonable distance from the child's home, and
- (b) from which the child has not been expelled.

(3) Where a grant-aided school is specified in a direction under this Article, the Board of Governors shall admit the child to the school.

(4) Paragraph (3) does not affect any power to suspend or expel from a school a pupil who is already a registered pupil there.

(5) Before giving a direction under this Article, a board shall consult—

- (a) the parent of the child,
- (b) the Board of Governors of the school it proposes to specify in the direction,
- (c) if that school is in the area of another board, the board for that area, and
- (d) if that school is a Catholic maintained school, the Council for Catholic Maintained Schools.

(6) Where a board gives a direction under this Article specifying a school, it shall give notice in writing of that fact to the Board of Governors of the school.

(7) In this Article—

“school” does not include a special school;

“suitable education”, in relation to a child, means efficient full-time education suitable to his age, ability and aptitude and to any special educational needs he may have.

## **PART IV**

### **AMENDMENTS AND REPEALS**

*Article 43—Amendments*

*Article 44—Repeals*

**Status:** Point in time view as at 03/04/2006.

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## SCHEDULES

### SCHEDULE 1

Article 15.

#### MAKING OF ASSESSMENTS UNDER ARTICLE 15

##### *Introductory*

1. In this Schedule, “assessment” means an assessment of a child's educational needs under Article 15.

##### *Medical and other advice*

2.—(1) Regulations shall make provision as to the advice which a board is to seek in making assessments.

(2) Without prejudice to the generality of sub-paragraph (1), the regulations shall, except in such circumstances as may be prescribed, require the board to seek medical, psychological and educational advice and such other advice as may be prescribed.

##### *Manner, and timing, of assessments, etc.*

3.—(1) Regulations may make provision—

- (a) as to the manner in which assessments are to be conducted,
- (b) requiring the board, where, after conducting an assessment in respect of a child for whom a statement is maintained under Article 16, it determines not to amend the statement, to serve on the parent of the child notice giving the prescribed information, and
- (c) in connection with such other matters relating to the making of assessments as the Department considers appropriate.

(2) Sub-paragraph (1)(b) does not apply to a determination made following the service of notice under<sup>F23</sup> paragraph 3 of Schedule 2 of a proposal to amend the statement.

[  
<sup>F24</sup>(3) Regulations may provide—

- (a) that where a board is under a duty under Article 15, 20 or 20A to serve any notice, the duty must be performed within the prescribed period,
- (b) that where a board has served a notice under Article 15(1) or 20A(3) on a child's parent, it must decide within the prescribed period whether or not to make an assessment of the child's educational needs,
- (c) that where a request has been made to a board under Article 20(1), it must decide within the prescribed period whether or not to comply with the request, and
- (d) that where a board is under a duty to make an assessment, the duty must be performed within the prescribed period.

(4) Provision made under sub-paragraph (3)—

- (a) may be subject to prescribed exceptions, and
- (b) does not relieve the board of the duty to serve a notice, or make a decision or assessment, which has not been served or made within the prescribed period.]]

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**F23** 2005 NI 6

**F24** 2005 NI 6

### *Attendance at examinations*

4.—(1) Where a board<sup>F25</sup> is considering whether to make an assessment, it may serve a notice on the parent of the child concerned requiring the child's attendance for examination in accordance with the provisions of the notice.

(2) The parent of a child examined under this paragraph maybe present at the examination if he so desires.

(3) A notice under this paragraph shall—

- (a) state the purpose of the examination,
- (b) state the time and place at which the examination will be held,
- (c) name an officer of the board from whom further information may be obtained,
- (d) inform the parent that he may submit such information to the board as he may wish, and
- (e) inform the parent of his right to be present at the examination.]

**F25** 2005 NI 6

### *Offence*

5.—(1) Any parent who fails without reasonable excuse to comply with any requirements of a notice served on him under paragraph 4 commits an offence if the notice relates to a child who is not over compulsory school age at the time stated in it as the time for holding the examination.

(2) A person guilty of an offence under this paragraph is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

## <sup>F26</sup>SCHEDULE 2

### MAKING AND MAINTENANCE OF STATEMENTS UNDER ARTICLE 16

**F26** 2005 NI 6

### *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.

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- (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
  - (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—



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- (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
- (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—

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- (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.
- (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

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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.

#### *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.

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- (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—
- (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 4

Article 40.

### INCORPORATION OF BOARDS OF GOVERNORS

#### *Contracts of employment*

1. Where Article 40 effects a transfer of rights and liabilities under a contract of employment—
  - (a) the contract shall have effect from the date of incorporation as if originally made between the employee and the incorporated Board of Governors; and
  - (b) without prejudice to sub-paragraph (a), anything done before that date by or in relation to the former employer in respect of that contract or the employee shall be deemed from that date to have been done by or in relation to the incorporated Board of Governors,

but no right of the employee to terminate his contract of employment if a substantial change is made to his detriment in his working conditions shall arise by reason only of the change of employer effected by that Article.

#### *Dissolution of Board of Governors*

- 2.—(1) A Board of Governors incorporated under Article 40 is dissolved by virtue of this paragraph—
  - (a) if the school under its management is discontinued; or
  - (b) where the school becomes a grant-maintained integrated school, when a new Board of Governors for the school is incorporated under Part VI of the 1989 Order.
- (2) Where two or more schools are grouped under the management of one Board of Governors, sub-paragraph (1) applies when, in relation to each of the schools, head (a) or (b) is satisfied.

#### *Directions as to transfer of property, rights and liabilities of dissolved Board of Governors*

3.—(1) Where it appears to the Department that a Board of Governors is to be dissolved by virtue of paragraph 2(1)(a), the Department may give such directions as it thinks fit with respect to the winding up of the Board of Governors and in particular with respect to the transfer of any property, rights or liabilities of the Board of Governors.

(2) Before giving any directions under this paragraph in relation to the Board of Governors of a school the Department shall consult—

- (a) the Board of Governors of the school,
- (b) in the case of a controlled school, the board responsible for the management of the school,
- (c) in the case of a voluntary school, the trustees and (where the school is a Catholic maintained school) the Council for Catholic Maintained Schools.

(3) Where directions under this paragraph provide for the transfer of any property, right or liability to any person or body, that property, right or liability shall, by virtue of this paragraph, vest in that person or body on such date as is specified in relation thereto in the directions.

#### *Division of property, rights and liabilities of Board of Governors of group of schools*

- 4.—(1) This paragraph applies where—
  - (a) a Board of Governors ( “the existing Board of Governors”) is responsible for the management of two or more schools; and

**Status:** Point in time view as at 03/04/2006.

**Changes to legislation:** The Education (Northern Ireland) Order 1996 is up to date with all changes known to be in force on or before 10 August 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. (See end of Document for details)

- (b) one of those schools ceases to be under the management of that Board of Governors and comes under the management of another Board of Governors ( “the new Board of Governors”).
- (2) Where this paragraph applies, the Department may give such directions as it thinks fit with respect to the transfer of such property, rights or liabilities of the existing Board of Governors as it thinks appropriate to the new Board of Governors.
- (3) Before giving any directions under this paragraph, the Department shall consult—
  - (a) the existing Board of Governors,
  - (b) the new Board of Governors,
  - (c) the board responsible for the management of the schools in question, and
  - (d) where the schools in question are maintained schools, the trustees of the schools and (where the schools are Catholic maintained schools) the Council for Catholic Maintained schools.
- (4) Where directions under this paragraph provide for the transfer of any property, right or liability to the new Board of Governors, that property, right or liability shall, by virtue of this paragraph, vest in that Board of Governors on such date as is specified in relation thereto in the directions.

#### *Data protection*

- 5.—(1) Where personal data are transferred under Article 40(3) to a Board of Governors incorporated by virtue of that Article—
- (a) any entry made in respect of the Board of Governors constituted immediately before the appointed day as a data user in the register maintained under section 4 of the Data Protection Act 1984 , or
  - (b) any application for registration as a data user made by that body under section 6 of that Act, shall have effect as if it were made in respect of or, as the case may be, by the Board of Governors so incorporated.
- (2) Expressions used in this paragraph and in that Act shall have the same meaning in this paragraph as in that Act.

#### *Schedule 5—Amendments*

#### *Schedule 6—Repeals*

**Status:**

Point in time view as at 03/04/2006.

**Changes to legislation:**

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