
STATUTORY INSTRUMENTS

1993 No. 2810 (N.I. 12)

The Education and Libraries (Northern Ireland) Order 1993

- - - - - 16th November 1993

PART I
INTRODUCTORY

Title and commencement

- 1.—(1) This Order may be cited as the Education and Libraries (Northern Ireland) Order 1993.
- (2) Except as provided by paragraphs (3) and (4), this Order shall come into operation on the expiration of two months from the day on which it is made.
- (3) The following provisions of this Order shall come into operation forthwith—
- This Part;
 - Article 28 and Schedule 2;F
 - Article 42;
 - Article 48;
 - Article 50(1) and Part II of Schedule 4 so far as relating to—
the definition of “maintained school” in Article 2(2) of the 1986 Order and Articles 9(1), 15(3), 16(4) and 106(2) of, and Schedules 4, 7 and 8 to, that Order;
 - Articles 60(1), 126(4) and 127(2) and (3) of the 1989 Order;
 - Article 50(2) and Schedule 5 so far as relating to—
Article 70(1) and (3) of, and Schedule 19 to, the 1986 Order;
 - Articles 141(5) and 146(5) and (6) of the 1989 Order and the amendments in Schedule 9 to the 1989 Order to Articles 11 and 116(1) of, and Schedules 5 and 6 to, the 1986 Order.
- (4) The following provisions of this Order shall come into operation on such day or days as the Department may by order appoint^{F1}
- ^{F2} . . .
 - Article 34 and Part I of Schedule 4;
 - Article 41;
 - Article 45;
 - Article 50(2) and Schedule 5 so far as relating to—
Articles 2(2), 65, 69A, 70(4) and 72 of the 1986 Order;

Status: Point in time view as at 01/10/2009.

Changes to legislation: The Education and Libraries (Northern Ireland) Order 1993 is up to date with all changes known to be in force on or before 28 May 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)

Articles 18, 20, 23 to 28, 59, 143, 151, 153, 163 and 164 of, and Schedules 2 and 3 to, the 1989 Order and the amendment in Schedule 9 to the 1989 Order to the definition of “supply teacher” in Article 2(2) of the 1986 Order.

(5) An order under paragraph (4) 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.

F1 partly exercised by SR 1994/127
F2 1997 NI 15

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954^{F3} 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^{F4};

“the 1989 Order” means the Education Reform (Northern Ireland) Order 1989^{F5}.

(3) This Order shall be construed as one with the 1986 Order and the 1989 Order; 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.

F3 1954 c. 33 (N.I.)
F4 1986 NI 3
F5 1989 NI 20

Part II (arts. 3#18) rep. by 2003 NI 12

PART III

PUBLIC SUPPLY OR WORKS CONTRACTS

Interpretation of Part III

19. In this Part—

“the Act of 1989” means the Fair Employment (Northern Ireland) Act 1989^{F6};

“approved list” means such a list as is mentioned in Article 20(3)(a);

“associated body”, in relation to a contractor, means any company which^{F7} . . . is the contractor's holding company or subsidiary or is a subsidiary of the contractor's holding company;

“business” includes any trade or profession;

“business activities” and “business interests”, in relation to a contractor or other person, mean respectively any activities comprised in, or any investments employed in or attributable to, the carrying on of his business and “activity” includes receiving the benefit of the performance of any contract;

“contractor”, except in relation to a subsisting contract, means a “potential contractor”, that is to say—

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(a) in relation to functions as respects an approved list, any person who is or seeks to be included in the list; and

(b) in relation to functions as respects a proposed public supply or works contract, any person who is or seeks to be included in the group of persons from whom tenders are invited or who seeks to submit a tender for or enter into the proposed contract, as the case may be;

“employers' association” has the meaning assigned to it by Article 4(1) and (2) of the Industrial Relations (Northern Ireland) Order 1992^{F8};

“exclusion” includes removal;

“Government policy” falls within “irrelevant fields” for the purposes of Article 20 if it concerns matters of defence or foreign or Commonwealth policy and “involve”, as regards business activities and any such field of policy, includes the supply of goods or materials or services to, or the execution of works for, any authority or person having functions or carrying on business in that field and, as regards business interests and any such field of policy, includes investment in any authority or person whose business activities are so involved;

[^{F9}“holding company” and “subsidiary” have the same meaning as in the Companies Acts (see section 1159 of the Companies Act 2006);]

“political, industrial or sectarian affiliations or interests” means actual or potential membership of, or actual or potential support for, respectively, any political party, any employers' association or trade union or any society, fraternity or other association;

“suppliers or customers” and “sub-contractors” includes prospective suppliers or customers and sub-contractors; and “supplier”, in relation to a contractor, includes any person who, in the course of business, supplies him with services or facilities of any description for the purposes of his business;

“trade dispute” has the meaning assigned to it by [^{F10} Article 127 of the Trade Union and Labour Relations (Northern Ireland) Order 1995] and “involve”, as regards business activities and a trade dispute, includes the supply of goods, materials or services to or by, or the execution of works for or by, any party to the dispute, any other person affected by the dispute, or any authority concerned with the enforcement of law and order in relation to the dispute;

“trade union” has the meaning assigned to it by Article 3(1) of the Industrial Relations (Northern Ireland) Order 1992.

F6 1989 c. 32

F7 Art. 19: words in the definition of "associated body" omitted (1.10.2009) by virtue of [Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 2(1), [Sch. 1 para. 146\(a\)](#) (with art. 10)

F8 1992 NI 5

F9 Art. 19: definitions of "holding company" and "subsidiary" inserted (1.10.2009) by [Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 2(1), [Sch. 1 para. 146\(b\)](#) (with art. 10)

F10 1995 NI 12

Board contracts: exclusion of non-commercial considerations

20.—(1) Every board shall, in exercising, in relation to its public supply or works contracts, any proposed or any subsisting such contract, as the case may be, any function regulated by this Article, exercise that function without reference to matters which are non-commercial matters for the purposes of this Article.

Status: Point in time view as at 01/10/2009.

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(2) The contracts which are public supply or works contracts of a board for the purposes of this Article are contracts for the supply of goods or materials to the board, for the supply of services to the board or for the execution of works for the board; but this Article does not apply in relation to contracts entered into before the coming into operation of this Article and does not authorise a board to enter into any contract which it would not be authorised to enter into apart from this Article.

(3) The functions regulated by this Article are—

- (a) the inclusion of persons in or the exclusion of persons from—
 - (i) any list of persons approved for the purposes of public supply or works contracts with the board; or
 - (ii) any list of persons from whom tenders for such contracts may be invited;
- (b) in relation to a proposed public supply or works contract with the board—
 - (i) the inclusion of persons in or the exclusion of persons from the group of persons from whom tenders are invited;
 - (ii) the accepting or not accepting the submission of tenders for the contract;
 - (iii) the selecting of the person with whom to enter into the contract; or
 - (iv) the giving or withholding approval for, or the selecting or nominating, persons to be sub-contractors for the purposes of the contract; and
- (c) in relation to a subsisting public supply or works contract with the board—
 - (i) the giving or withholding approval for, or the selecting or nominating, persons to be sub-contractors for the purposes of the contract; or
 - (ii) the termination of the contract.

(4) The following matters are non-commercial matters as regards the public supply or works contracts of a board, any proposed or any subsisting such contract, as the case may be, that is to say—

- (a) the terms and conditions of employment by contractors of their workers or the composition of, the arrangements for the promotion, transfer or training of or the other opportunities afforded to, their workforces;
- (b) whether the terms on which contractors contract with their sub-contractors constitute, in the case of contracts with individuals, contracts for the provision by them as self-employed persons of their services only;
- (c) any involvement of the business activities or interests of contractors with irrelevant fields of Government policy;
- (d) the conduct of contractors or workers in trade disputes between them or any involvement of the business activities of contractors in trade disputes between other persons;
- (e) the country or territory of origin of supplies to, or the location in any country or territory of the business activities or interests of, contractors;
- (f) any political, industrial or sectarian affiliations or interests of contractors or their directors, partners or employees;
- (g) financial support or lack of financial support by contractors for any institution to or from which the board gives or withholds support.

(5) The matters specified in paragraph (4) include matters which have occurred in the past as well as matters which subsist when the function in question falls to be exercised.

(6) Where any matter referable to a contractor would, as a matter specified in paragraph (4), be a non-commercial matter in relation to him, the corresponding matter referable to—

- (a) a supplier or customer of the contractor;
- (b) a sub-contractor of the contractor or his supplier or customer;

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- (c) an associated body of the contractor or his supplier or customer; or
 - (d) a sub-contractor of an associated body of the contractor or his supplier or customer;
- is also, in relation to the contractor, a non-commercial matter for the purposes of this Article.
- (7) This Article is subject to Article 21.

Exceptions for fair employment matters and matters specified by Department

21.—(1) A board which takes any action reasonably necessary to secure compliance with^[F11] Article 64 of the Fair Employment and Treatment (Northern Ireland) Order 1998] (restriction on execution of works, etc., by unqualified persons) does not exercise any function regulated by Article 20 by reference to a non-commercial matter.

- (2) Subject to paragraph (3), nothing in Article 20 shall preclude a board from—
- (a) asking questions seeking information or undertakings of any person relating to whether any person is or is not an unqualified person for the purposes of^[F11] Article 64 of the Fair Employment and Treatment (Northern Ireland) Order 1998] and considering the responses to them; or
 - (b) including in a draft contract or draft tender for a contract terms or provisions requiring that the persons who are to carry out work or supply goods or services for the purposes of the contract are not to be unqualified persons for the purposes of^[F11] that Article] and considering the responses to them,

if, as the case may be, consideration of the information, the giving of the undertaking or the inclusion of the terms or provisions is reasonably necessary to secure compliance with^[F11] that Article].

(3) Paragraph (2) does not apply to the function of terminating a subsisting contract and, in relation to functions as respects approved lists or proposed contracts, does not authorise questions in other than written form.

(4) Where it is permissible under paragraph (2) to ask a question it is also permissible to make, if it is in writing, a request for evidence in support of an answer to the question.

- (5) Nothing in Article 20 shall preclude a board from—
- (a) applying the criteria specified in an order under Article 22(1)(b) in including persons in or excluding persons from an approved list; or
 - (b) asking questions specified in an order under Article 22(1)(c) in questionnaires circulated by the board to potential contractors in cases so specified and considering the responses to them.

F11 1998 NI 21

Provisions supplementary to or consequential on Article 20

- 22.**—(1) The Department may by order—
- (a) specify as a non-commercial matter for the purposes of Article 20 any other matter which appears to the Department to be irrelevant to the commercial purposes of public supply or works contracts of any description;
 - (b) specify the criteria to be applied by a board in including persons in or excluding persons from an approved list;
 - (c) specify questions relating to non-commercial matters which may be included in questionnaires circulated by boards to potential contractors in such cases as may be specified in the order.

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(2) The power conferred by paragraph (1)(a) includes power to apply Article 20(5) and (6) to any matter specified in the order and to amend any definition in Article 19 of an expression used in any sub-paragraph of Article 20(4) without making any other provision.

(3) An order under paragraph (1) may include such consequential and transitional provisions as appear to the Department to be necessary or expedient.

(4) No order under paragraph (1) shall be made unless a draft of it has been laid before and approved by a resolution of the Assembly.

(5) The duty imposed by Article 20(1) does not create a criminal offence but—

- (a) in proceedings for judicial review, the persons who have a sufficient interest in the matter shall include any potential contractor or, in the case of a contract which has been made, former potential contractor (or, in any case, any body representing contractors), as such; and
- (b) a failure to comply with it is actionable by any person who, in consequence, suffers loss or damage.

(6) In any action under Article 20(1) by a person who has submitted a tender for a proposed public supply or works contract arising out of the exercise of functions in relation to the proposed contract the damages shall be limited to damages in respect of expenditure reasonably incurred by him for the purpose of submitting the tender.

(7) Nothing in paragraph (1)(a) or Article 20 implies that the exercise of any function regulated by that Article may not be impugned, in proceedings for judicial review, on the ground that it was exercised by reference to other matters than those which are non-commercial matters for the purposes of that Article.

(8) If a board, in relation to public supply or works contracts or any proposed such contract, as the case may be—

- (a) asks any question of any potential contractor relating to any non-commercial matter other than a question consideration of the answer to which is permitted by Article 21; or
- (b) submits to any potential contractor a draft contract or draft tender for a contract which includes terms or provisions relating to any non-commercial matter other than a term or provision the inclusion of which in the contract is permitted by Article 21,

the board shall be treated, for the purposes of Article 20, as exercising functions regulated by that Article by reference to non-commercial matters.

Duty of boards to give reasons for certain decisions within Article 20

23.—(1) Where a board exercises a function regulated by Article 20 by making, in relation to any person, a decision to which this Article applies, the board shall forthwith notify that person of the decision and, if that person so requests in writing within 15 days from the date of the notice, furnish him with a written statement of the reasons for the decision within 15 days from the date of the request.

(2) This Article applies to the following decisions in relation to any person, namely—

- (a) in relation to an approved list, a decision to exclude him from the list;
- (b) in relation to a proposed public supply or works contract—
 - (i) where he has asked to be invited to tender for the contract, a decision not to invite him to tender;
 - (ii) a decision not to accept the submission by him of a tender for the contract;
 - (iii) where he has submitted a tender for the contract, a decision not to enter into the contract with him; or

- (iv) a decision to withhold approval for, or to select or nominate, persons to be sub-contractors for the purposes of the contract; or
- (c) in relation to a subsisting public supply or works contract with him—
 - (i) a decision to withhold approval for, or to select or nominate, persons to be sub-contractors for the purposes of the contract; or
 - (ii) a decision to terminate the contract.
- (3) The Department may by order subject to negative resolution amend paragraph (1) so as to substitute for any period specified in that paragraph such other period as the Department thinks fit.

Transitional duty of boards as regards existing lists

24.—(1) Subject to paragraph (3), a board which, at the coming into operation of this Article, maintains an approved list shall—

- (a) consider whether persons have been included in or excluded from the list by reference to non-commercial matters; and
 - (b) if it appears to the board that that is the case, compile the list afresh in accordance with paragraphs (4) to (6).
- (2) Persons shall be treated by a board as having been excluded from a list by reference to non-commercial matters if, in relation to the list, the board has—
- (a) notified potential contractors of its intention to have regard to non-commercial matters; or
 - (b) issued statements of policy framed by reference to non-commercial matters.
- (3) Inclusion or exclusion by a board from any approved list by reference to a non-commercial matter does not give rise to the duty to compile the list afresh under paragraph (1) if that matter relates only to the question as to whether or not any person is unqualified for the purpose of section 41 of the Act of 1989 and the board's action was reasonably necessary to secure compliance with that section.
- (4) The duty of a board to compile afresh an approved list shall be discharged as follows—
- (a) the board shall publish notice of its intention to compile the list afresh and (by the notice) invite persons to apply, within a specified period, to be included in the list; and
 - (b) at the end of that period the board shall proceed to compile the list afresh from among the applicants in accordance with the duty imposed by Article 20.
- (5) Publication by a board of the notice required by paragraph (4) shall be effected by causing the notice to be published—
- (a) in at least 2 newspapers circulating in the area of the board; and
 - (b) in at least one publication circulating among such persons as undertake contracts of the description to which the list relates.
- (6) The period specified in the notice under paragraph (4) as the period within which applications are to be made shall not be shorter than the period of 28 days from the date of publication of the notice.
- (7) The duty imposed by this Article shall be discharged by a board as soon as is reasonably practicable after this Article comes into operation and in any event before the expiration of 3 months from the day on which this Article comes into operation.
- (8) This Article does not create a criminal offence but sub-paragraph (a) of Article 22(5) applies for the purposes of the duty imposed by this Article as it applies for the purposes of the duty imposed by Article 20(1).

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Exclusion of charges for inclusion in approved list

25.—(1) A board which maintains an approved list shall not require a person to pay any sum as a condition of his inclusion or continued inclusion in the list or of his being considered for such inclusion.

(2) Paragraph (1) does not create a criminal offence but a contravention of it is actionable by the person seeking to be included or retained in the list.

**PART IV
MISCELLANEOUS**

Arts. 26, 27 rep. by 1997 NI 15

Finance

Capital grants to, and management of, maintained schools and voluntary grammar schools

28.—(1) ^{F12}

(2) For Article 11 of the 1986 Order (management of voluntary schools) there shall be substituted the Article set out in Part I of Schedule 2.

(3) For Schedule 5 to the 1986 Order (management of maintained schools) there shall be substituted the Schedule set out in Part II of Schedule 2.

(4) For Schedule 6 to the 1986 Order (management of certain voluntary grammar schools) there shall be substituted the Schedule set out in Part III of Schedule 2.

(5) ^{F13}

(6) ^{F14}

(7) Any agreement in force immediately before the coming into operation of this Article in relation to a school under Schedule 6 to the 1986 Order shall—

(a) if made, or having effect as if made, under paragraph 1(1) of that Schedule, continue to have effect as if made under paragraph 1(1)(b) of that Schedule, as substituted by this Article;

(b) if made, or having effect as if made, under paragraph 1(2) of that Schedule, continue to have effect as if made under paragraph 2(1) of that Schedule, as substituted by this Article.

F12 Art. 28(1) repealed (31.5.2009) by Education (Northern Ireland) Order 1998 (S.I. 1998/1759 (N.I. 13)), arts. 1(3), 91(2), **Sch. 6 Pt. II** (with art. 91(3)); S.R. 2009/183, **art. 3(e)(iv)**
F13 Art. 28(5) repealed (31.5.2009) by Education (Northern Ireland) Order 1998 (S.I. 1998/1759 (N.I. 13)), arts. 1(3), 91(2), **Sch. 6 Pt. II** (with art. 91(3)); S.R. 2009/183, **art. 3(e)(iv)**
F14 Art. 28(6) repealed (31.5.2009) by Education (Northern Ireland) Order 1998 (S.I. 1998/1759 (N.I. 13)), arts. 1(3), 91(2), **Sch. 6 Pt. II** (with art. 91(3)); S.R. 2009/183, **art. 3(e)(iv)**

Art. 29 rep. by 2003 NI 12

Funding by Department of higher education

30 ^{F15}.—(1) The Department may, on such terms and conditions as it may determine, make grants—

- (a) to the governing body of any higher education institution in Northern Ireland in respect of expenditure incurred or to be incurred by it for the purposes of—
 - (i) the provision of education and the undertaking of research by that institution; or
 - (ii) the provision of any facilities, and the carrying on of any other activities, by that institution which the governing body of that institution considers it necessary or desirable to provide or carry on for the purposes of, or in connection with, education or research;
- (b) to the governing body of any other prescribed institution in respect of expenditure incurred or to be incurred by it for the purposes of the provision of prescribed higher education courses;
- (c) to any body or person in respect of expenditure incurred or to be incurred by that body or person for the purposes of the provision of services for the purposes of, or in connection with, the provision of education and the undertaking of research by higher education institutions in Northern Ireland.

(2) For the purposes of the exercise of its functions under this Article, the Department may obtain such advice and other services as it considers necessary or desirable from any other body or person on such terms and conditions as may be agreed between the Department and that other body or person.

(3) In this Article—

“governing body”, in relation to an institution means—

- (a) in the case of a university, the executive governing body which has responsibility for the management and administration of its revenue and property and the conduct of its affairs;
Sub#para. (b) rep. by 1997 NI 15
- (c) in the case of any other institution, the body which has responsibility for the conduct of its affairs;

“higher education course” means a course of a description for the time being mentioned in^[F16] Schedule 1 to the Further Education (Northern Ireland) Order 1997];

“higher education institution” means—

- (a) a university; and
- (aa) ^[F17]a college of education;]
- (b) any other institution which provides higher education courses and is designated by regulations as a higher education institution for the purposes of this Article;

and references to a higher education institution in Northern Ireland include references to the Open University;

“university” includes a university college and any college, or institution in the nature of a college, in a university.

(4) Regulations under this Article shall be subject to negative resolution.

F15 functions transf. by SR 1999/481

F16 1997 NI 15

F17 2005 NI 13

Modifications etc. (not altering text)

C1 Art. 30(1) modified (13.2.2006) by Higher Education (Northern Ireland) Order 2005 (S.I. 2005/1116 (N.I. 5)), arts. 1(3), 4(1)(b); S.R. 2006/30, art. 2

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Premature retirement compensation costs

- 31.—(1) ^{F18}
- (2) ^{F19}
- (3) ^{F20}

Para. (4) rep. by 1997 NI 15

(5) After Article 119 of the 1986 Order there shall be inserted the following Article—

“Recovery by Department of certain premature retirement compensation costs

119A.—(1) Where the Department becomes liable to pay premature retirement compensation in relation to a member of the staff of a special school, the Department may, where there appears to the Department to be good reason to do so, direct that—

- (a) a specified amount shall be charged to the responsible board in any single specified financial year; or
- (b) a specified amount shall be charged to the responsible board in each financial year for such period (not exceeding 10 years) as may be specified,

in respect of premature retirement compensation costs of the Department in relation to that member of staff.

(2) In paragraph (1)—

“responsible board” means—

- (a) in relation to a member of the staff of a controlled school, the board responsible for the management of the school;
- (b) in relation to a member of the staff of a maintained school, the board by which the school is maintained;

“specified” means specified in directions under that paragraph.

(3) The amount or (in a case falling within sub-paragraph (b) of that paragraph) the total amount charged to a board in pursuance of a direction given under paragraph (1) in relation to a member of the staff of a special school shall not exceed such amount as appears to the Department to represent the cost, capitalised as of the date on which the direction is given, of discharging the Department's liability to pay premature retirement compensation to, or in respect of, that member of staff.

(4) Where a board becomes liable to pay premature retirement compensation in relation to a member of the staff of—

- (a) a controlled school which does not have a delegated budget under Part V of the 1989 Order; or
- (b) an institution of further education which does not have a delegated budget under Part VII of that Order,

the Department may, where there appears to the Department to be good reason to do so, direct that—

- (i) a specified amount shall be charged to that board in any single specified financial year; or
- (ii) a specified amount shall be charged to the board in each financial year for such period (not exceeding 10 years) as may be specified,

in respect of premature retirement compensation costs of the board in relation to that member of staff.

(5) In paragraph (4) “specified” means specified in directions under that paragraph.

(6) For the purposes of paragraph (4)—

- (a) a controlled school does not have a delegated budget during any period when the right of the Board of Governors of that school to such a budget is suspended under Article 53 of the 1989 Order;
- (b) an institution of further education does not have a delegated budget during any period when the right of the governing body of that institution to such a budget is subject to any suspension, limitation or restriction under Article 117 of that Order.

(7) The amount or (in a case falling within sub-paragraph (ii) of that paragraph) the total amount charged to a board in pursuance of a direction given under paragraph (4) in relation to a member of the staff of a school or institution of further education shall not exceed such amount as appears to the Department to represent the cost, capitalised as of the date on which the direction is given, of discharging the board's liability to pay premature retirement compensation to, or in respect of, that member of staff.

(8) Where the Department becomes liable to pay premature retirement compensation in relation to a person employed otherwise than at a grant-aided school or institution of further education, the Department may, where there appears to the Department to be good reason to do so, direct that—

- (a) a specified amount shall be charged to the employer of that person in any single specified financial year; or
- (b) a specified amount shall be charged to the employer of that person in each financial year for such period (not exceeding 10 years) as may be specified,

in respect of premature retirement compensation costs of the Department in relation to that employee.

(9) In paragraph (8) “specified” means specified in directions under that paragraph.

(10) The amount or (in a case falling within sub-paragraph (b) of that paragraph), the total amount charged to an employer in pursuance of a direction given under paragraph (8) in relation to an employee shall not exceed such amount as appears to the Department to represent the cost, capitalised as of the date on which the direction is given, of discharging the Department's liability to pay premature retirement compensation to, or in respect of, that employee.

(11) Any amount charged by the Department to a board or an employer under this Article in any financial year shall be payable by the board or employer to the Department at such time or times and in such manner as the Department may direct.

(12) In this Article—

“member of staff” includes former member of staff;

“premature retirement compensation” means compensation under Parts III and IV of the Teachers' (Compensation for Redundancy and Premature Retirement) Regulations (Northern Ireland) 1991^{F21};

“premature retirement compensation costs of the board”, in relation to any person, means the costs incurred or to be incurred by the board in paying premature retirement compensation to, or in respect of, that person;

“premature retirement compensation costs of the Department”, in relation to any person, means the costs incurred or to be incurred by the Department in paying premature retirement compensation to, or in respect of, that person.”.

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- F18** Art. 31(1) repealed (31.5.2009) by Education (Northern Ireland) Order 1998 (S.I. 1998/1759 (N.I. 13)), arts. 1(3), 91(2), **Sch. 6 Pt. II** (with art. 91(3)); S.R. 2009/183, **art. 3(e)(iv)**
- F19** Art. 31(2) repealed (31.5.2009) by Education (Northern Ireland) Order 1998 (S.I. 1998/1759 (N.I. 13)), arts. 1(3), 91(2), **Sch. 6 Pt. II** (with art. 91(3)); S.R. 2009/183, **art. 3(e)(iv)**
- F20** Art. 31(3) repealed (31.5.2009) by Education (Northern Ireland) Order 1998 (S.I. 1998/1759 (N.I. 13)), arts. 1(3), 91(2), **Sch. 6 Pt. II** (with art. 91(3)); S.R. 2009/183, **art. 3(e)(iv)**
- F21** SR 1991 No. 132

Commercial activities

Power of certain bodies to undertake commercial activities

32^{F22}.—(1) Subject to the following provisions of this Article, a relevant body shall have power, with the approval of the Department, to undertake commercial activities which, apart from this Article, it would not have power to undertake.

- (2) An approval granted to a relevant body under this Article—
- (a) shall specify the particular commercial activities which the body has power to undertake under this Article in pursuance of the approval;
 - (b) shall be subject to the general conditions for the time being specified in directions under paragraph (3); and
 - (c) shall be subject to such other conditions as may be specified by the Department in the approval.

(3) The Department shall issue directions specifying the general conditions regulating the undertaking by a relevant body of commercial activities in pursuance of an approval under this Article.

(4) The Department shall consult all relevant bodies before issuing any directions under paragraph (3).

- (5) Subject to any conditions applying under this Article, a relevant body shall have power—
- (a) to do anything whatsoever which appears to the body to be calculated to facilitate, or to be conducive or incidental to, the exercise of any power conferred under this Article; and
 - (b) to make such charge as the body considers appropriate for anything that it does in the exercise of any such power and to calculate any such charge on any basis that it considers to be the appropriate commercial basis.

- (6) Nothing in this Article authorises a relevant body—
- (a) to undertake any commercial activities which are detrimental to—
 - (i) the performance by that body of any duty imposed on it by the Education Orders; or
 - (ii) the interests of pupils or persons seeking to be provided with education under the Education Orders; or
 - (b) to disregard any statutory provision or rule of law or to override any person's contractual or property rights.

- (7) Where it appears to the Department that a relevant body—
- (a) has failed to comply with any conditions subject to which an approval under this Article has been granted; or
 - (b) has in undertaking any commercial activity in pursuance of such an approval contravened paragraph (6),

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the Department may, by notice served on that body,—

- (i) revoke the approval; or
- (ii) modify the approval, whether by modifying the particular commercial activities or any conditions specified therein.

(8) The revocation or modification of an approval under this Article shall not affect the power of a relevant body to meet any contractual commitments outstanding at the date on which the notice under paragraph (7) is served on the body.

(9) Any approval, directions or notice under this Article shall be in writing.

(10) In this Article—

“commercial activity” includes—

- (a) the carrying out of work for any other body or person;
- (b) the supplying of goods and services to any other body or person; and
- (c) the developing and exploiting of ideas and the exploiting of intellectual property;

“relevant body” means—

- (a) a board; or
- (b) the Northern Ireland Council for the Curriculum, Examinations and Assessment.

Para. (11) rep. by 1998 NI 13

F22 functions transf. by SR 2001/229

Art. 33 rep. by 1997 NI 15

Art. 34 rep. by 1998 NI 13

Schools established in hospitals

Schools established in hospitals

35.—(1) The 1989 Order shall have effect subject to the amendments in paragraphs (2) to (8) which exempt schools established in hospitals from certain provisions of that Order.

(2) ^{F23}.....

Para. (3) rep. by 1997 NI 5

Para. (4) rep. by 1997 NI 15

(5) In Articles 68(2) and 90(2) (schools not eligible for grant-maintained integrated status and controlled integrated status, respectively) at the end there shall be added the following sub-paragraph—

“(d) a school established in a hospital.” .

(6) The following paragraph, namely—

“(0) This Article does not apply to a school established in a hospital.” shall be added—

Sub#para. (a) rep. by 1998 NI 13

(b) in Article 125 (annual report of Board of Governors), as paragraph (7);

(c) ^{F24}.....

Status: Point in time view as at 01/10/2009.

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(7) In Article 127 (application of provisions regulating charges in schools) in paragraph (1) after the words “paragraphs (2) to (5)” there shall be inserted the words “and Article 137(7)” and at the end of Article 137 there shall be added the following paragraph—

“(7) Nothing in this Chapter shall apply in relation to a school established in a hospital; but no charge shall be made in respect of admission to, or education or equipment provided to a pupil at, any such school.”.

(8) In Article 139(8) (schools ineligible to become community schools) for the words from “a voluntary school” to the end there shall be substituted the words “a school established in a hospital.”.

(9) In Article 13 of the 1986 Order (Boards of Governors)—

(a) after paragraph (3A) there shall be inserted the following paragraph—

“(3AA) Where in the opinion of the board responsible for the management of a school established in a hospital it is likely to be impracticable for there to be elections of parent members at the school, the required number of parent members may be made up by persons appointed by the voting members of the Board of Governors of the school.” ;

(b) in paragraphs (3B), (3C) and (3D) after the words “paragraph (3A)” there shall be inserted the words “or (3AA)”;

(c) in paragraph (3E) after the words “paragraph (3A)” there shall be inserted “, (3AA)”.

(10) After Article 131 of the 1986 Order there shall be inserted the following Article—

“Exceptions for schools established in hospitals

131A.—(1) The provisions of this Order listed in paragraph (2) shall not apply in relation to a school established in a hospital.

(2) The provisions referred to in paragraph (1) are Articles 18, 21, 22, 48, 49, 58, 60 and 61.”.

F23 Art. 35(2) repealed (1.8.2006) by Education (Northern Ireland) Order 2006 (S.I. 2006/1915 (N.I. 11)), arts. 1(2), 44(2), **Sch. 3 Pt. I**

F24 Art. 35(6)(c) repealed (1.8.2006) by Education (Northern Ireland) Order 2006 (S.I. 2006/1915 (N.I. 11)), arts. 1(2), 44(2), **Sch. 3 Pt. I**

Miscellaneous amendments to the 1986 Order

Art. 36 rep. by 1998 NI 13

Limitation on membership of Boards of Governors

37. For Article 12 of the 1986 Order there shall be substituted the following Article—

“Limitation on membership of Boards of Governors

12. Except with the approval of the Department, no person shall at the same time hold office as a member of more than three Boards of Governors of grant-aided schools.”.

Standard of school premises

38. For Article 18 of the 1986 Order there shall be substituted the following Article—

“Standard of school premises

18.—(1) The Department shall issue directions specifying the standards to which premises of grant-aided schools shall conform.

- (2) Subject to paragraph (3), it shall be the duty of—
- (a) the board responsible for the management of a controlled school;
 - (b) the Board of Governors of a grant-maintained integrated school; and
 - (c) the trustees of a voluntary school,

to secure that the premises of the school conform to the standards specified under this Article for schools of the description to which the school belongs.

(3) Where the Department is satisfied that it would be unreasonable to expect the premises of a particular school to conform to the standards specified under this Article, it may exempt the school premises from conforming with such standards to such extent and for such time as it thinks appropriate.

- (4) Directions given under this Article by the Department—
- (a) shall be given in writing; and
 - (b) shall be published by the Department in such manner as it thinks fit.”.

Appeals against expulsion of pupils

39. For Article 49 of the 1986 Order there shall be substituted the following Article—

“Suspension and expulsion of pupils

49.—(1) Each board shall prepare a scheme specifying the procedure to be followed in relation to the suspension or expulsion of pupils from schools under its management.

(2) The Council for Catholic Maintained Schools shall prepare a scheme specifying the procedure to be followed in relation to the suspension or expulsion of pupils from Catholic maintained schools.

- (3) The Board of Governors of—
- (a) a voluntary school (other than a Catholic maintained school);
 - (b) a grant-maintained integrated school,

shall prepare a scheme specifying the procedure to be followed in relation to the suspension or expulsion of pupils from the school.

(4) A scheme prepared under paragraph (1), (2) or (3) shall provide that a pupil may be expelled from a school only by the expelling authority and shall include provision for such other matters as may be prescribed.

- (5) In this Article “the expelling authority” means—
- (a) in relation to a pupil in a controlled school, the board responsible for the management of the school; and
 - (b) in relation to a pupil in any other grant-aided school, the Board of Governors of the school.
- (6) Every board shall make arrangements for enabling—
- (a) the parent of a pupil at a grant-aided school situated in the area of the board; or
 - (b) if the pupil has attained the age of 18 years, the pupil himself,

to appeal against any decision of an expelling authority to expel the pupil from the school.

Status: Point in time view as at 01/10/2009.

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(7) Any appeal by virtue of paragraph (6) shall be to an appeal tribunal constituted in accordance with regulations under paragraph (10).

(8) On the hearing of an appeal under this Article the appeal tribunal may—

- (a) allow the appeal and direct that the pupil be re-admitted to the school; or
- (b) dismiss the appeal.

(9) It shall be the duty of the expelling authority and, in the case of a pupil expelled from a controlled school, the Board of Governors of the school to comply with any direction given under paragraph (8)(a).

(10) The Department shall by regulations provide for the constitution and procedure of appeal tribunals and, without prejudice to the generality of the foregoing, such regulations—

- (a) shall provide for an appeal tribunal to consist of a prescribed number of persons selected in the prescribed manner from a panel of persons appointed by the board to act as members of appeal tribunals under this Article;
- (b) may provide for disqualifying prescribed persons or descriptions of person for membership of an appeal tribunal;
- (c) may contain provision requiring an appeal tribunal to hear and determine an appeal within such period as may be specified in, or determined in accordance with, the regulations;
- (d) may provide for two or more appeal tribunals to sit at the same time;
- (e) may provide that all matters relating to the procedure on appeals which are not specifically regulated by the regulations shall be determined by the board.

(11) An appeal tribunal shall not be regarded as a committee of the board.

(12) Article 79(1) shall apply to members of an appeal tribunal in like manner as it applies to members of a board.”.

Arts. 40, 41 rep. by 1998 NI 13

Salaries and other terms and conditions of employment of teachers

42.—(1) In the 1986 Order for Article 69 there shall be substituted the following Article—

“Salaries and other terms and conditions of employment of teachers

69.—(1) Except as provided by paragraph (3)—

- (a) the rates of salaries and the allowances which are to be paid to teachers to whom this Article applies; and
- (b) the other terms and conditions of employment of such teachers,

shall be determined by the Department.

(2) This Article applies to—

- (a) teachers employed in grant-aided schools;
- (b) teachers employed in institutions of further education; and
- (c) peripatetic teachers.

(3) In such circumstances and subject to such conditions as the Department may direct, the rates of salaries and the allowances which are to be paid to teachers of a class or description specified by the Department in the directions shall be determined by a body or person so specified.

(4) Before giving any directions under paragraph (3), the Department shall consult—

- (a) such representatives of employing authorities and such representatives of teachers as appear to it to be concerned; and
 - (b) any other person with whom consultation appears to it to be desirable.
- (5) In paragraph (4) “employing authority” means—
- (a) in relation to teachers employed in controlled schools and institutions of further education, the board by which they are employed;
 - (b) in relation to teachers employed by the Council for Catholic Maintained Schools, that Council;
 - (c) in relation to teachers employed in a voluntary school (other than a Catholic maintained school), the Board of Governors of that school;
 - (d) in relation to teachers employed in a grant-maintained integrated school, the Board of Governors of the school;
 - (e) in relation to peripatetic teachers, the board by which they are employed.
- (6) A determination under paragraph (1) or (3)—
- (a) shall be made in writing;
 - (b) shall be published in such manner as the Department or, as the case may be, the body or person making the determination thinks fit;
 - (c) may contain such transitional and supplementary provisions as the Department or, as the case may be, that body or person thinks fit; and
 - (d) may have effect from a date earlier than the date on which it is made.
- (7) Where any question arises as to the rate of salary or allowance to be paid under this Article to a teacher—
- (a) where that rate of salary or allowance falls in accordance with directions under paragraph (3) to be determined by a body or person specified in those directions, the decision of that body or person shall, except on a question of law, be final;
 - (b) in any other case, the decision of the Department shall, except on a question of law, be final.
- (8) The terms and conditions upon which a teacher (other than a temporary or part-time teacher) is employed shall be set out in an agreement entered into between the teacher and the employer and the agreement shall be in such form as may be approved by the Department.”.
- (2) In Article 70 of the 1986 Order the following provisions (which relate to terms and conditions of employment of teachers and are superseded by paragraph (1)) shall cease to have effect, namely—
- (a) paragraph (1)(b);
 - (b) paragraph (3).
- (3) Subject to paragraph (4), any regulations which—
- (a) were made under Article 69 or 70(1)(b) of the 1986 Order; and
 - (b) were in operation immediately before the coming into operation of this Article,
- shall, in so far as they relate to teachers to whom Article 69 of the 1986 Order (as substituted by paragraph (1)) applies, have effect as from the coming into operation of this Article as if they were determinations made by the Department under Article 69(1) of the 1986 Order (as so substituted).
- (4) Any provisions included in any regulations mentioned in paragraph (3) by virtue of Article 69(3) of the 1986 Order shall, in so far as they relate to teachers so mentioned, have effect as from the coming into operation of this Article as if they were directions given by the Department under Article 69(3) of the 1986 Order (as substituted by paragraph (1)).

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(5) Until the day appointed for the coming into operation of Article 41, Article 69 of the 1986 Order (as substituted by paragraph (1)) shall apply to supply teachers as it applies to the teachers listed in paragraph (2) of that Article; and for the purposes of paragraph (4) of that Article as so applying the “employing authority” in relation to supply teachers means the body by which they are employed.

Charges for library services

43. ^{F25}

F25 Art. 43 repealed (1.4.2009) by Libraries Act (Northern Ireland) 2008 (c. 8), ss. 10(2), 12(2), Sch. 4; S.R. 2009/123, art. 2(g)

Insurance by boards

44. Article 86 of the 1986 Order (insurance by boards) shall be renumbered as paragraph (1) of that Article and after that paragraph there shall be added the following paragraphs—

“(2) A board may insure, or meet the cost of insuring, against such risks in connection with any of the functions to which this paragraph applies as the board considers necessary.

(3) Paragraph (2) applies to the functions of—

- (a) the Board of Governors of a grant-aided school, other than a voluntary grammar school or a grant-maintained integrated school; and
- (b) the governing body of an institution of further education,

and so applies whether or not those functions are carried out on behalf of, and in the name of, the board.” .

Miscellaneous amendments to the 1989 Order

Art. 45 rep. by 1996 NI 1

Art. 46 rep. by 1998 NI 13

Complaints relating to religious education and collective worship

47. ^{F26}

F26 Art. 47 repealed (1.8.2006) by Education (Northern Ireland) Order 2006 (S.I. 2006/1915 (N.I. 11)), arts. 1(2), 44(2), Sch. 3 Pt. I

Capital charges in voluntary grammar schools

48. For Article 132 of the 1989 Order there shall be substituted the following Articles—

“Capital charges in voluntary grammar schools to which Articles 128 to 131 apply where agreement under paragraph 1(1)(b) of Schedule 6 to the principal Order is, or has been, in force

132.—(1) This Article applies to a voluntary grammar school to which Articles 128 to 131 apply if—

- (a) an agreement with the Department under paragraph 1(1)(b) of Schedule 6 to the principal Order is in force in relation to the school; or

- (b) such an agreement was in force in relation to the school at any time on or after 1 April 1992.
- (2) Notwithstanding anything in Articles 128 to 131, the Board of Governors of such a school may make a charge in respect of any pupil registered at the school for the purpose of meeting expenditure incurred or to be incurred—
 - (a) for the provision or alteration of the premises of the school;
 - (b) for the provision of equipment provided in connection with the provision or alteration of the premises of the school.
- (3) A charge under paragraph (2) shall, in the case of pupils of a prescribed description, not exceed such amount as may be prescribed.
- (4) References in paragraph (2) to the premises of the school do not include premises used wholly or mainly for boarding purposes.

Capital charges in voluntary grammar schools to which Articles 128 to 131 apply where agreement is in force under paragraph 1(1)(a) of Schedule 6 to the principal Order

- 132A.**—(1) This Article applies to a voluntary grammar school to which Articles 128 to 131 apply if—
- (a) an agreement with the Department under paragraph 1(1)(a) of Schedule 6 to the 1986 Order is in force in relation to the school; and
 - (b) immediately before the coming into force of that agreement, an agreement with the Department was in force under paragraph 1(1)(b) of Schedule 6 to the 1986 Order.
- (2) Notwithstanding anything in Articles 128 to 131, the Board of Governors of such a school may, for such period after the date on which the agreement mentioned in paragraph (1)(a) comes into force as the Department may direct, make a charge in respect of any pupil registered at the school for the purpose of meeting expenditure incurred—
- (a) for the provision or alteration of the premises of the school;
 - (b) for the provision of equipment provided in connection with the provision or alteration of the premises of the school.
- (3) Paragraphs (3) and (4) of Article 132 shall apply for the purposes of paragraph (2) of this Article as they apply for the purposes of paragraph (2) of that Article.”.

Appointment of foundation governors of grant-maintained integrated schools

49. In Schedule 5 to the 1989 Order in paragraph 2(2) in the definition of “foundation governors” for paragraph (b) there shall be substituted the following paragraph—

- “(b) on any subsequent appointment to the Board of Governors—
 - (i) where the instrument of government of the school makes provision for the appointment of foundation governors for the purposes of this Schedule, in accordance with that instrument; and
 - (ii) in any other case, by the persons holding office as foundation governors,” .

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SCHEDULES

Schedule 1 rep. by 2003 NI 12

SCHEDULE 2

Article 28(2) to (4).

MANAGEMENT OF MAINTAINED SCHOOLS AND VOLUNTARY GRAMMAR SCHOOLS

PART I

ARTICLE 11 OF THE 1986 ORDER, AS SUBSTITUTED

Management of voluntary schools

11.—(1) Subject to paragraph (3), each voluntary school shall be under the control and management of a Board of Governors.

(2) Subject to paragraph (3), each maintained school shall be under the control and management of a Board of Governors constituted in accordance with the provisions of Part I of Schedule 5 and may be withdrawn from the control and management of that Board of Governors in accordance with the provisions of Part II of that Schedule.

(3) Two or more maintained primary schools, other than nursery schools, may be grouped under one Board of Governors where the trustees or Board of Governors of each school so requests and—

- (a) in the case of Catholic maintained schools, the Council for Catholic Maintained Schools, with the approval of the Department, so determines; and
- (b) in the case of other maintained schools, the board, with the approval of the Department, so determines.

(4) Each voluntary grammar school in relation to which an agreement under paragraph 1 of Schedule 6 is in force shall be under the control and management of a Board of Governors constituted in accordance with the provisions of Schedule 6.

(5) Each voluntary grammar school in relation to which no agreement under paragraph 1 of Schedule 6 is in force shall be under the control and management of a Board of Governors constituted in accordance with the provisions of Schedule 7.

(6) Each voluntary school which has, under Part II of Schedule 5, ceased to be a maintained school shall be under the control and management of a Board of Governors constituted in accordance with the provisions of Schedule 8.

PART II

SCHEDULE 5 TO THE 1986 ORDER, AS SUBSTITUTED

“SCHEDULE 5

Article 11(2).

MAINTAINED SCHOOLS

PART I

MEMBERSHIP OF BOARD OF GOVERNORS OF MAINTAINED SCHOOL

1.—(1) The trustees of a maintained school shall, notwithstanding anything in any instrument of government of the school, have power to enter into an agreement with the Department that paragraph 2 shall apply in relation to the membership of the Board of Governors of the school; and—

- (a) where an agreement under this paragraph is in force in relation to a school, paragraph 2 shall apply in relation to the membership of the Board of Governors of the school; and
- (b) in any other case, paragraph 3 shall apply in relation to the membership of the Board of Governors of the school.

(2) An agreement under this paragraph shall provide that the Head of the Department, before making an appointment to the Board of Governors of the school under paragraph 2 shall consult—

- (a) in the case of a Catholic maintained school, the Council for Catholic Maintained Schools; and
- (b) in any other case, the Board of Governors of the school.

2.—(1) Where this paragraph applies in relation to the membership of the Board of Governors of a maintained school, the Board of Governors shall, notwithstanding anything in any instrument of government of the school, consist of—

- (a) 9, 18 or 27 persons (in this paragraph referred to as voting members);
- (b) the principal of the school who, subject to sub-paragraph (3), shall be entitled to attend and take part in meetings of the Board of Governors but not to vote on any question; and
- (c) persons co-opted under Articles 122 and 139 of the 1989 Order who shall be entitled to attend and take part in meetings of the Board of Governors but not to vote on any question.

(2) Of the voting members of the Board of Governors—

- (a) four-ninths shall be nominated by the nominating trustees in such manner as the scheme of management of the school may provide, and at least one of the persons so nominated shall, at the time of his nomination, be a parent of a pupil attending the school;
- (b) two-ninths shall be nominated by the board;
- (c) one-ninth shall be nominated by the Head of the Department;

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- (d) one-ninth shall be elected by parents of pupils attending the school from amongst the parents of such pupils;
- (e) one-ninth shall be elected by assistant teachers at the school from amongst such assistant teachers.

(3) Where two or more schools are grouped under one Board of Governors, the principal of a school shall not be entitled to attend or take part in any meeting of the Board of Governors whenever a matter relating exclusively to one or more of the other schools is being discussed.

(4) The Board of Governors shall, with the approval of the Department, make arrangements for the election of persons under sub-paragraph (2)(d) and (e) and such arrangements shall ensure that any vote taken for the purpose of any such election shall be by secret ballot.

3.—(1) Where this paragraph applies in relation to the membership of the Board of Governors of a maintained school, the Board of Governors shall, notwithstanding anything in any instrument of government of the school, consist of—

- (a) 10, 18 or 27 persons (in this paragraph referred to as voting members);
- (b) the principal of the school who, subject to sub-paragraph (4), shall be entitled to attend and take part in meetings of the Board of Governors but not to vote on any question; and
- (c) persons co-opted under Articles 122 and 139 of the 1989 Order who shall be entitled to attend and take part in meetings of the Board of Governors but not to vote on any question.

(2) Where there are 10 voting members of the Board of Governors of a maintained school, then of those members—

- (a) six shall be nominated by the nominating trustees in such manner as the scheme of management of the school may provide, and at least one of the persons so nominated shall, at the time of his nomination, be a parent of a pupil attending the school;
- (b) two shall be nominated by the board;
- (c) one shall be elected by parents of pupils attending the school from amongst the parents of such pupils;
- (d) one shall be elected by assistant teachers at the school from amongst such assistant teachers.

(3) Where there are 18 or 27 voting members of the Board of Governors of a maintained school, sub-paragraph (2) shall apply as if for the numbers mentioned in heads (a), (b), (c) and (d) of that sub-paragraph there were substituted the fractions five-ninths, two-ninths, one-ninth and one-ninth respectively.

(4) Where two or more schools are grouped under one Board of Governors, the principal of a school shall not be entitled to attend or take part in any meeting of the Board of Governors whenever a matter relating exclusively to one or more of the other schools is being discussed.

(5) The Board of Governors shall, with the approval of the Department, make arrangements for the election of persons under sub-paragraph (2)(c) and (d) and such arrangements shall ensure that any vote taken for the purpose of any such election shall be by secret ballot.

4.—(1) The coming into force, or termination, of any agreement under paragraph 1 and any consequential change in the membership of the Board of Governors of a school shall not—

- (a) constitute a change for the purposes of Article 14(2)(d) or (e); or
- (b) break, or otherwise affect, the continuity of employment of persons employed by the Board of Governors.

Status: Point in time view as at 01/10/2009.

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(2) Where an agreement under paragraph 1 in relation to a school is terminated, the voting members of the Board of Governors of the school nominated under paragraph 2(2)(a) and (c) shall cease to hold office and such nominations to the Board of Governors shall be made by the nominating trustees as are necessary to ensure that the membership of the Board of Governors complies with paragraph 3.

(3) Where an agreement under paragraph 1 comes into force in relation to a school, the voting members of the Board of Governors of the school nominated under paragraph 3(2)(a) shall cease to hold office and such nominations to the Board of Governors shall be made by the nominating trustees and the Head of the Department as are necessary to ensure that the membership of the Board of Governors complies with paragraph 2.

(4) Persons nominated to the Board of Governors under sub-paragraph (2) or (3) shall hold office for the remainder of the original term of office of those ceasing to hold office under that provision.

(5) The coming into force, or termination, of an agreement under paragraph 1 does not affect the membership of the Board of Governors of any persons other than those mentioned in sub-paragraph (2) or (3).

PART II

WITHDRAWAL OF MAINTAINED SCHOOL FROM MAINTAINED SCHOOL STATUS

5.—(1) The nominating trustees of a maintained school to which this paragraph applies may at any time give notice to the board requesting that the school should cease to be a maintained school but should continue to be a voluntary school and, where they do so, the school shall, subject to paragraph 6, continue to be a voluntary school but shall cease to be a maintained school—

- (a) on the date specified in the notice but only if on or before that date the nominating trustees have complied with the requirements mentioned in paragraph 6; or
- (b) if those trustees have not complied with those requirements on or before that date, on the date on which they so comply.

(2) The date specified in a notice under sub-paragraph (1) shall not, unless the nominating trustees and the board otherwise agree, be less than two years from the date on which the notice is given.

(3) This paragraph applies only to a school—

- (a) which was recognised as a grant-aided school before 19th October 1967; or
- (b) which the Department is satisfied replaces a school or schools (not being a school which was, or schools one or more than one of which was, a maintained school) so recognised before that date; or
- (c) the proposal to establish which was submitted to the Ministry of Education for Northern Ireland before that date for approval.

6. The requirements mentioned in paragraph 5 are—

- (a) that the nominating trustees have repaid to the Department so much of any grant under Article 116 as, in accordance with regulations under paragraph (1) of that Article, is repayable where a school ceases to be a maintained school; and
- (b) that the nominating trustees have paid to the board such amount as may be agreed between those trustees and the board or, in default of agreement, as may be

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determined by the Department as representing thirty-five per cent. of the value, at the date on which the school ceases to be a maintained school, of—

- (i) any works of external maintenance of the school carried out by the board or, before 1st October 1973, by a former local education authority; and
- (ii) any equipment provided by the board or, before 1st October 1973, by a former local education authority.

PART III

INTERPRETATION

7.—(1) In this Schedule—

“assistant teacher” has the meaning assigned to it by paragraph 7 of Schedule 4;

“board”, in relation to a school, means the board for the area in which the school is situated or such other board as the Department may determine;

“nominating trustees”, in relation to a school, means such persons as the scheme of management may provide.

(2) Where two or more schools are grouped under one Board of Governors this Schedule shall apply to those schools with such modifications as may be necessary and in particular—

- (a) references to the Board of Governors of a school shall be construed as references to the Board of Governors of the group of schools;
- (b) references to a pupil attending, or an assistant teacher at, a school shall be construed as references to a pupil attending, or an assistant teacher at, one of the schools in the group;
- (c) references to the principal or the instrument of government of a school shall be construed as references to the principal or the instrument of government of each of the schools in the group;
- (d) references to the trustees of a school shall be construed as references to the trustees of each of the schools in the group, acting jointly;
- (e) any other references to a school shall be construed as references to the group of schools.

PART III

SCHEDULE 6 TO THE 1986 ORDER, AS SUBSTITUTED

SCHEDULE 6

Article 11(4).

MEMBERSHIP OF BOARD OF GOVERNORS OF VOLUNTARY GRAMMAR SCHOOL ENTERING INTO AGREEMENT WITH DEPARTMENT

1.—(1) The trustees of a voluntary grammar school shall, notwithstanding anything in any instrument of government of the school, have power to enter into—

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- (a) an agreement with the Department that paragraph 4 shall apply in relation to the membership of the Board of Governors of the school; or
- (b) an agreement with the Department that paragraph 5 shall apply in relation to the membership of the Board of Governors of the school.

(2) An agreement under sub-paragraph (1)(a) or (b) shall provide that the Head of the Department, before making an appointment to the Board of Governors of the school under paragraph 4 or 5 (as the case may be), shall consult the Board of Governors of the school and the board for the area in which the school is situated and may consult any other board which he considers appropriate.

(3) An agreement under sub-paragraph (1) shall have effect to terminate any prior agreement in force under that sub-paragraph.

2.—(1) The trustees of a voluntary grammar school in relation to which an agreement is in force under paragraph 1(1) shall, notwithstanding anything in any instrument of government of the school, have power to enter into an agreement, approved by the Department, with one or more than one board conferring on the board or boards concerned the right to appoint members to the Board of Governors of the school—

- (a) in accordance with paragraph 4(2)(b)(i), where an agreement under paragraph 1(1) (a) is in force in relation to the school;
- (b) in accordance with paragraph 5(2)(b)(i), where an agreement under paragraph 1(1) (b) is in force in relation to the school.

(2) The termination (otherwise than under paragraph 1(3)) of an agreement under paragraph 1(1) in relation to a school shall have effect to terminate any agreement under this paragraph then in force in relation to the school.

3.—(1) Where an agreement under paragraph 1(1)(a) is in force in relation to a school, paragraph 4 shall apply in relation to the membership of the Board of Governors of the school.

(2) Where an agreement under paragraph 1(1)(b) is in force in relation to a school, paragraph 5 shall apply in relation to the membership of the Board of Governors of the school.

4.—(1) Where this paragraph applies in relation to the membership of the Board of Governors of a voluntary grammar school, the Board of Governors shall, notwithstanding anything in any instrument of government of the school, consist of—

- (a) 9, 18, 27 or 36 persons (in this paragraph referred to as voting members);
- (b) the principal of the school who shall be entitled to attend and take part in meetings of the Board of Governors but not to vote on any question; and
- (c) persons co-opted under Articles 122 and 139 of the 1989 Order who shall be entitled to attend and take part in meetings of the Board of Governors but not to vote on any question.

(2) Of the voting members of the Board of Governors—

- (a) four-ninths shall be appointed as provided by the scheme of management and at least one of the persons so appointed shall, at the time of his appointment, be a parent of a pupil attending the school;
- (b) one-third shall be appointed—
 - (i) where an agreement under paragraph 2 is in force in relation to the school, by the Head of the Department and the board or boards concerned in accordance with an agreement made between the Head of the Department and the board or boards concerned;

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- (ii) in any other case, by the Head of the Department;
 - (c) one-ninth shall be elected by parents of pupils attending the school from amongst parents of such pupils;
 - (d) one-ninth shall be elected by assistant teachers at the school from amongst such assistant teachers.
 - (3) Subject to sub-paragraph (4), persons elected to the Board of Governors under sub-paragraph (2)(c) and (d) shall hold office for a period of four years from the date on which they were elected.
 - (4) If a person referred to in sub-paragraph (3) ceases to hold office before the end of the period referred to in that sub-paragraph, any person elected to replace him shall hold office only for the remainder of that period.
 - (5) The Board of Governors shall, with the approval of the Department, make arrangements for the election of persons under sub-paragraph (2)(c) and (d) and such arrangements shall ensure that any vote taken for the purpose of any such election shall be by secret ballot.
 - (6) Where under any instrument of government of a school assets of a capital nature held for the purposes of or in connection with the school are vested in the Board of Governors of the school, the persons elected to the Board of Governors of the school under sub-paragraph (2)(c) and (d) shall, unless the other members of the Board of Governors otherwise determine, not be entitled to attend or take part in any meeting of the Board of Governors whenever a matter relating to the acquisition, disposal or management of such assets is being discussed or to vote on any question relating to such a matter.
- 5.—(1)** Where this paragraph applies in relation to the membership of the Board of Governors of a voluntary grammar school, the Board of Governors shall, notwithstanding anything in any instrument of government of the school, consist of—
- (a) 10, 18, 27 or 36 persons (in this paragraph referred to as voting members);
 - (b) the principal of the school who shall be entitled to attend and take part in meetings of the Board of Governors but not to vote on any question; and
 - (c) persons co-opted under Articles 122 and 139 of the 1989 Order who shall be entitled to attend and take part in meetings of the Board of Governors but not to vote on any question.
- (2) Where there are 10 voting members of the Board of Governors of the school, then of those members—
- (a) six shall be appointed as provided by the scheme of management and at least one of the persons so appointed shall, at the time of his appointment, be a parent of a pupil attending the school;
 - (b) two shall be appointed—
 - (i) where an agreement under paragraph 2 is in force in relation to the school, by the Head of the Department and the board or boards concerned in accordance with an agreement made between the Head of the Department and the board or boards concerned;
 - (ii) in any other case, by the Head of the Department;
 - (c) one shall be elected by parents of pupils attending the school from amongst parents of such pupils;
 - (d) one shall be elected by assistant teachers at the school from amongst such assistant teachers.

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(3) Where there are 18, 27 or 36 members of the Board of Governors of the school, sub-paragraph (2) shall apply as if for the numbers mentioned in heads (a), (b), (c) and (d) of that sub-paragraph there were substituted the fractions five-ninths, two-ninths, one-ninth and one-ninth respectively.

(4) Subject to sub-paragraph (5), persons elected to the Board of Governors under sub-paragraph (2)(c) and (d) shall hold office for a period of four years from the date on which they were elected.

(5) If a person referred to in sub-paragraph (4) ceases to hold office before the end of the period referred to in that sub-paragraph, any person elected to replace him shall hold office only for the remainder of that period.

(6) The Board of Governors shall, with the approval of the Department, make arrangements for the election of persons under sub-paragraph (2)(c) and (d) and such arrangements shall ensure that any vote taken for the purpose of any such election shall be by secret ballot.

(7) Where under any instrument of government of a school assets of a capital nature held for the purposes of or in connection with the school are vested in the Board of Governors of the school, the persons elected to the Board of Governors of the school under sub-paragraph (2)(c) and (d) shall, unless the other members of the Board of Governors otherwise determine, not be entitled to attend or take part in any meeting of the Board of Governors whenever a matter relating to the acquisition, disposal or management of such assets is being discussed or to vote on any question relating to such a matter.

6.—(1) The coming into force, or termination, of any agreement under paragraph 1(1) and any consequential change in the membership of the Board of Governors of a school shall not—

- (a) constitute a change for the purposes of Article 14(2)(d) or (e); or
- (b) break, or otherwise affect, the continuity of employment of persons employed by the Board of Governors.

(2) Where an agreement under paragraph 1(1)(a) in relation to a school is terminated under paragraph 1(3), the voting members of the Board of Governors of the school appointed under paragraph 4(2)(a) and (b) shall cease to hold office and such appointments to the Board of Governors shall be made under paragraph 5(2)(a) and (b) as are necessary to ensure that the membership of the Board of Governors complies with paragraph 5.

(3) Where an agreement under paragraph 1(1)(b) in relation to a school is terminated under paragraph 1(3), the voting members of the Board of Governors of the school appointed under paragraph 5(2)(a) and (b) shall cease to hold office and such appointments to the Board of Governors shall be made under paragraph 4(2)(a) and (b) as are necessary to ensure that the membership of the Board of Governors complies with paragraph 4.

(4) Persons appointed to the Board of Governors under sub-paragraph (2) or (3) shall hold office for the remainder of the original term of office of those ceasing to hold office under that provision.

(5) The termination under paragraph 1(3) of an agreement under paragraph 1(1) does not affect the membership of the Board of Governors of any persons other than those mentioned in sub-paragraph (2) or (3).

7. In this Schedule “assistant teacher” has the meaning assigned to it by paragraph 7 of Schedule 4.”

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Schedule 3 rep. by 1996 NI 1

Schedule 4—Amendments

Schedule 5—Repeals

Status:

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