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STATUTORY INSTRUMENTS

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**1993 No. 2810 (N.I. 12)**

**NORTHERN IRELAND**

**The Education and Libraries (Northern Ireland) Order 1993**

*Made - - - - 16th November 1993  
Coming into operation in accordance with Article 1(2)  
to (4)*

At the Court at Buckingham Palace, the 16th day of November 1993

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order has been approved by a resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1 of Schedule 1 to the Northern Ireland Act 1974<sup>(1)</sup> and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

**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;

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—

Articles 26 and 27;

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;

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.

### **Interpretation**

2.—(1) The Interpretation Act (Northern Ireland) 1954<sup>(2)</sup> 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<sup>(3)</sup>;

“the 1989 Order” means the Education Reform (Northern Ireland) Order 1989<sup>(4)</sup>.

(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.

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(2) 1954 c. 33 (N.I.)

(3) 1986 NI 3

(4) 1989 NI 20

## PART II COMPETITION

### *Interpretation*

#### **Works contract and functional work**

**3.** In this Part—

“works contract” means a contract constituting or including an agreement which provides for the carrying out of work by a board; and

“functional work” means—

- (a) work carried out by a board, other than work carried out under a works contract; and
- (b) work which is carried out otherwise than by a board but which is dependent upon, or incidental or preparatory to, other work which, by virtue of paragraph (a), is functional work in relation to that board;

and work carried out as mentioned in paragraph (b) shall be treated as carried out by the board.

#### **Defined activities**

**4.—(1)** Subject to the following provisions of this Article, each of the following is a defined activity for the purposes of this Part—

- (a) cleaning of buildings;
- (b) catering;
- (c) maintenance of ground; and
- (d) repair and maintenance of vehicles;

and Schedule 1 applies for the purpose of interpreting the preceding provisions of this paragraph.

(2) The Department may by order subject to affirmative resolution provide for an activity to be a defined activity by adding a sub-paragraph to those for the time being appearing in paragraph (1) or by modifying any provision of Schedule 1 which for the time being excludes anything from the activities falling within any of those sub-paragraphs.

(3) Before making an order under paragraph (2), the Department shall consult the boards.

(4) Where work would (apart from this paragraph) fall within more than one defined activity it shall be treated as falling only within such one of them as the board carrying out the work decides.

(5) Work which is carried out by a board through an employee and which would (apart from this paragraph) fall within a defined activity shall not do so if it is incidental to the greater part of the work he is employed to do and the greater part does not constitute a defined activity.

(6) If a board carries out work which (apart from this paragraph) would not fall within a defined activity, and which in the opinion of the board cannot be carried out efficiently separately from a particular defined activity, the work shall (if the board so decides) be treated as falling within that defined activity.

(7) Work which would (apart from this paragraph) fall within a defined activity shall not do so if it is calculated to avert, alleviate or eradicate the effects or potential effects of an emergency or disaster (actual or potential) involving or likely to involve danger to life or health or serious damage to or destruction of property.

(8) The Department may provide by order subject to negative resolution that any activity specified in the order, if carried out by a board or boards so specified, shall not be treated as a defined activity so long as conditions so specified are fulfilled.

*Works contracts: restrictions*

**Works contracts: restrictions**

5.—(1) If a board proposes to enter into a works contract with another person (the other party) and under the contract the board is to carry out work falling within a defined activity, the board may not enter into the contract unless—

- (a) the first or second alternative of the first condition is fulfilled; and
  - (b) the second condition is fulfilled.
- (2) The first alternative of the first condition is that—
- (a) the contract is made by acceptance of the board's offer to carry out the work;
  - (b) the board made the offer in response to an invitation by the other party to submit such offers; and
  - (c) the invitation was made to at least 3 other persons who are willing to carry out work of the kind concerned, and who are not boards or include at least 3 persons who are not boards.
- (3) Regulations may vary—
- (a) the number of persons to whom an invitation must be made under paragraph (2)(c); and
  - (b) the minimum number of those persons who are not to be boards.
- (4) The second alternative of the first condition is that before entering into the contract the other party published, in at least 2 newspapers circulating in the locality in which the work is to be carried out and at least one publication circulating among persons who carry out work of the kind concerned, a notice inviting persons to submit offers to carry out the work.
- (5) The second condition is that the other party, in entering into the contract and in doing anything else (whether or not required by this Part) in connection with the contract before entering into it, did not act in a manner having the effect or intended or likely to have the effect of restricting, distorting or preventing competition.
- (6) Anything which (apart from this paragraph) would amount to a failure to fulfil the first or second alternative of the first condition, or the second condition, shall not do so unless the board has become aware of the failure before entering into the contract.
- (7) This Article applies where it is proposed to enter into the works contract at any time after the expiration of 5 months from the day on which this Order is made.
- (8) Without prejudice to section 19(1)(a)(ii) of the Interpretation Act (Northern Ireland) 1954(5), a person entering into a works contract with a board shall not be bound to inquire whether this Article applies to the contract and, if so, whether this Article has been complied with, and any works contract entered into by a board, if otherwise valid, shall, notwithstanding that this Article applies to the contract and has not been complied with, have full force and effect.

*Functional work: restrictions*

**Functional work: restrictions**

6.—(1) A board may not carry out functional work falling within a defined activity unless each of the 6 conditions is fulfilled.

(2) The conditions mentioned in paragraph (1) are those set out in Article 7, which shall have effect subject to Article 8.

(3) This Article applies only if the work falls within such a defined activity, is of such a description, is proposed to be carried out by such board or boards, and is proposed to be carried out on or after such date, as may be specified by regulations; and regulations may describe work by reference to a specified proportion of work of a particular description.

(4) Regulations may provide that where a board proposes to carry out functional work which falls within a defined activity specified in the regulations (whether or not by a virtue of Article 4(4) or (6)) and to which this Article would not otherwise apply, it shall (if the board so decides) be treated as work to which this Article applies.

(5) This Article applies even if the work forms part of work begun before any date specified in the regulations, but references in this Article and the following provisions of this Part to the work do not include references to any work carried out before such date.

**The conditions**

7.—(1) The first condition is that, before carrying out the work, the board published, in at least 2 newspapers circulating in the locality in which the work is to be carried out and at least one publication circulating among persons who carry out work of the kind concerned, a notice containing—

- (a) a brief description of the work;
- (b) a statement that during a period specified in the notice any person may inspect a detailed specification of the work free of charge at a place and time specified in the notice;
- (c) a statement that during that period any person will be supplied with a copy of the detailed specification on request and on payment of such charge as is specified in the notice;
- (d) a statement that any person who may wish to carry out the work should notify the board of that fact within a period specified in the notice; and
- (e) a statement that the board intends to make, in accordance with the third condition, an invitation to carry out the work.

(2) The second condition is that—

- (a) the periods, place, time and charge specified in the notice are reasonable;
- (b) before carrying out the work, the board made a detailed specification of the work available for inspection, and copies of it available for supply, in accordance with the notice; and
- (c) the detailed specification includes a statement of the period during which the work is to be carried out.

(3) The third condition is that, if any person notified the board in accordance with the statement under paragraph (1)(d), the board made an invitation to carry out the work in accordance with the following rules—

- (a) the invitation was made by the board before carrying out the work, and not less than 3 nor more than 6 months after complying with the first condition;
- (b) if more than 3 persons who are not boards notified the board, at least 3 of them were invited;

- (c) if less than 4 persons who are not boards notified the board, each of them was invited;
- (d) if another board or boards notified the board, such one or more (if any) of them as the board decided was invited.

(4) Regulations may amend sub-paragraphs (b) and (c) of paragraph (3) so as to vary the number of persons who are not boards who must be invited to carry out work in particular circumstances.

(5) The fourth condition is that before carrying out the work the board, through its direct labour organisation or a similar organisation, prepared a written bid indicating a wish to carry out the work and the bid was prepared in accordance with the following rules—

- (a) if the board would, assuming it were an independent contractor, charge for carrying out the work, the bid must provide for an item to be credited to any account kept (or to be kept) by the board as regards the work under Article 9;
- (b) if the board would, assuming it were an independent contractor, pay for the right to carry out the work, the bid must provide for an item to be debited to any such account;
- (c) in the case of an item to be credited, the bid must state either what the board intends as its maximum amount or the method by which it intends to calculate its maximum amount;
- (d) in the case of an item to be debited, the bid must state either what the board intends as its minimum amount or the method by which it intends to calculate its minimum amount; and
- (e) a statement mentioned in sub-paragraph (c) or (d) may include provision for any intended amount or method to vary with changes in circumstances.

(6) The fifth condition is that the board, in reaching the decision that it should carry out the work and in doing anything else (whether or not required by this Part) in connection with the work before reaching the decision, did not act in a manner having the effect or intended or likely to have the effect of restricting, distorting or preventing competition.

(7) The sixth condition is that in carrying out the work the board complied with the detailed specification of it mentioned in paragraphs (1) and (2).

#### **The conditions: further provisions**

**8.—**(1) Regulations may provide that the second condition shall not be treated as fulfilled if the period stated by virtue of Article 7(2)(c)—

- (a) exceeds a period specified in the regulations; or
- (b) is less than another period so specified.

(2) Regulations may provide that the third condition shall not be treated as fulfilled unless—

- (a) the contents of any invitation included prescribed matters (which may relate to the time allowed for responding, the method of responding, or otherwise); and
- (b) if any response was made to any invitation, before carrying out the work the board complied with prescribed requirements as to responses (which may include requirements to disregard certain responses, requirements about the keeping or opening of responses, or otherwise).

(3) Regulations may provide that the fourth condition shall not be treated as fulfilled unless before carrying out the work the board complied with prescribed requirements as to the bid (which may include requirements about the preparation, keeping or opening of the bid, or otherwise).

(4) Regulations may provide that the fifth condition shall not be treated as fulfilled unless—

- (a) in accordance with prescribed requirements there is prepared and certified a document which appraises and fulfils such other conditions as may be prescribed with respect to responses falling within paragraph (2) and the bid referred to in paragraph (3); and

- (b) at such time or times (prior to reaching the decision referred to in Article 7(6)) as may be prescribed, copies of that document are provided or made available in accordance with any prescribed requirements.

(5) Where any document is provided or made available in accordance with the requirements of regulations under paragraph (4), the publication thereby of any defamatory matter in the document shall be privileged unless the publication is proved to be made with malice.

### *Accounts, reports and information*

#### **Accounts to be kept**

**9.**—(1) This Article applies where a board carries out, in the financial year beginning in 1993 or in a subsequent financial year, work which falls within a defined activity and fulfils the condition that—

- (a) it is carried out under a works contract to which Article 5 applies; or
- (b) Article 6 applies to it.

(2) For each financial year in which the work is carried out, the board shall keep an account as regards all work which falls within that activity, is carried out by it in that year and fulfils that condition.

(3) Where any work falling within the activity is carried out under a works contract, the board shall credit to the account kept under this Article as regards the activity for the financial year in which the work is carried out such an amount as is specified in the contract, or ascertained under it, as the price for carrying out the work in that year.

(4) Where any work falling within the activity is functional work, the board shall enter, in the account kept under this Article as regards the activity for the financial year in which the work is carried out, such item as is necessary to carry out any intention expressed by the board in relation to the work in any bid prepared under Article 7(5).

(5) The Department may specify—

- (a) items which are to be entered in accounts kept under this Article (in addition to items to be entered by virtue of paragraphs (3) and (4)); and
- (b) the method of determining the amount of any item to be entered by virtue of the specification.

(6) No item may be credited to an account kept under this Article except an item required to be credited by paragraph (3) or (4) or by virtue of a specification under paragraph (5).

#### **Financial objectives to be met**

**10.**—(1) This Article applies where a board carries out, in the financial year beginning in 1993 or in a subsequent financial year, work which falls within a defined activity and fulfils the condition that—

- (a) it is carried out under a works contract to which Article 5 applies; or
- (b) Article 6 applies to it.

(2) The board shall secure that such financial objective as the Department may specify for the year concerned is met by—

- (a) the revenue for all work which falls within that activity, is carried out by the board in that year and fulfils that condition; or
- (b) that revenue, adjusted by making such additions or subtractions (or both) as may be required by the specification.

(3) The reference in paragraph (2) to the revenue for the work concerned is to the aggregate of the items credited to the account kept under Article 9 as regards the work.

(4) A specification under this Article may define the financial objective concerned by reference to such factors as the Department thinks fit.

### **Report for financial year**

**11.**—(1) This Article applies where a board carries out, in the financial year beginning in 1993 or in a subsequent financial year, work which falls within a defined activity and fulfils the condition that—

- (a) it is carried out under a works contract to which Article 5 applies; or
- (b) Article 6 applies to it.

(2) The board shall prepare a report for the financial year concerned, containing as regards all work which falls within that activity, is carried out by the board in that year and fulfils that condition—

- (a) a summary of the account kept for that year under Article 9 as regards the work;
- (b) a statement showing whether the requirement under Article 10 has been fulfilled for that year as regards the work;
- (c) a statement identifying such of the work (if any) as falls only within the activity by virtue of a decision under Article 4(4);
- (d) a statement identifying such of the work (if any) as falls within the activity by virtue of a decision under Article 4(6); and
- (e) a statement identifying such of the work (if any) as is work to which Article 6 applies by virtue of a decision under Article 6(4).

(3) The summary referred to in paragraph (2)(a) shall present fairly the financial result, during the financial year concerned, of the work having been carried out and shall be expressed in such form as the Department may specify.

(4) A report under this Article shall also contain, as regards the work, such other information (and expressed in such form) as the Department may specify.

(5) The report may contain such other information as the board thinks fit.

(6) The report shall be prepared not later than 30th September in the financial year following that for which it is prepared, and the board concerned shall send a copy to the Department not later than 31st October in the financial year following that for which it is prepared.

(7) The Department shall appoint an auditor to consider the statement contained in the report by virtue of paragraph (2)(b) and give his written opinion on the statement to the board and to the Department.

### **Information**

**12.**—(1) If a board, having decided to carry out functional work to which Article 6 applies, is requested by a person to supply the person with a statement falling within paragraph (2), the board shall supply such a statement to the person.

(2) A statement falling within this paragraph is a written statement showing—

- (a) the board's decision to carry out the work;
- (b) the financial provisions shown in each offer (if any) to carry out the work made in response to an invitation made under Article 7(3); and
- (c) the financial provisions of the bid prepared under Article 7(5) in relation to the work.



(3) Where a board makes a decision in consequence of which any work is required to be carried out (whether by the board itself or by some other person) in accordance with a specification which has been made available for inspection in accordance with a notice published for the purposes of Article 7(1), it shall be the duty of the board—

- (a) to make arrangements for—
  - (i) a copy of the specification; and
  - (ii) a document containing a summary of the main requirements of the specification, to be kept available, throughout the period during which the work in question is to be carried out, for inspection by members of the public, at all reasonable hours, at the principal office of the board; and
- (b) to give such publicity to those arrangements as it thinks sufficient for drawing the attention of members of the public who may be interested to the fact that the specification and that document are so available.

(4) Paragraphs (5) to (7) apply to any report required to be prepared under Article 11.

(5) Any person may, at a place and time stated by a board which has prepared a report, inspect the report free of charge.

(6) A board which has prepared a report shall supply a copy (on request) to any person who pays such charge as the board may reasonably require.

(7) A board shall publish in at least 2 newspapers circulating in the area of the board notice of—

- (a) the place and time at which any report prepared by the board may be inspected in accordance with paragraph (5);
- (b) the fact that copies of the report are available for supply in accordance with paragraph (6); and
- (c) the charge for each copy.

### *Sanctions*

#### **Notice for purpose of getting information**

**13.—**(1) If it appears to the Department that in the financial year beginning in 1993 or in a subsequent financial year a board—

- (a) has entered into a contract to carry out work and has done so in contravention of Article 5;
- (b) has carried out work as regards which the conditions set out in Article 7 have to be but, in the circumstances, have not been fulfilled;
- (c) has decided to carry out work as regards which (if the work is carried out in accordance with the decision) those conditions will have to be but, in the circumstances in which it is proposed to carry it out, will not be fulfilled;
- (d) has carried out work in circumstances where Article 9 has not been complied with for the year concerned in relation to the defined activity within which the work falls or in relation to an account required by that Article to be kept for the year concerned as regards the activity;
- (e) has carried out work in circumstances where Article 10 has not been complied with for the year concerned in relation to the defined activity within which the work falls; or
- (f) has carried out work in circumstances where Article 11 has not been complied with for the year concerned in relation to the defined activity within which the work falls or in relation

to a report required by that Article to be prepared for the year concerned as regards the activity,

the Department may serve on the board a notice falling within paragraph (2).

(2) The notice is one which—

- (a) informs the board that it appears to the Department that in a financial year identified in the notice the board has acted as mentioned in one of the sub-paragraphs (so identified) of paragraph (1);
- (b) identifies the work concerned and states why it so appears; and
- (c) contains the requirement mentioned in paragraph (3).

(3) The requirement is that the board submit to the Department within such time as is specified in the notice a written response which—

- (a) states that the board has not acted as mentioned in the sub-paragraph concerned of paragraph (1) and justifies the statement; or
- (b) states that the board has acted as so mentioned and gives reasons why the Department should not give a direction under Article 14.

(4) Where work is specified under Article 6(3) as a proportion of particular work, the reference in paragraph (2)(b) to work is to the work of which the proportion forms a part.

(5) The Department may serve on a board different notices under this Article identifying the same financial year and the same work, whether such notices identify the same sub-paragraph or different sub-paragraphs of paragraph (1).

#### **Directions in respect of work carried out in contravention of this Part**

14.—(1) Paragraph (2) applies where—

- (a) the Department has served a notice on a board under Article 13;
- (b) the time specified in the notice has expired (whether or not the Department has received a written response to the notice); and
- (c) it still appears to the Department that the board has acted as mentioned in the sub-paragraph concerned of Article 13(1).

(2) Without prejudice to Article 101 of the 1986 Order, the Department may direct that with effect from such date as is specified in the direction the board—

- (a) shall not carry out any work falling within the appropriate activity;
- (b) shall not carry out such work falling within that activity as is identified in the direction;
- (c) may only carry out work falling within that activity if such conditions as are specified in the direction are fulfilled; or
- (d) as regards such work falling within that activity as is identified in the direction, may only carry it out if such conditions as are specified in the direction are fulfilled.

(3) Where the Department has given a direction under paragraph (2) or this paragraph (the previous direction) the Department may give a direction (a new direction) that with effect from such date as is specified in the new direction—

- (a) any prohibition applying by virtue of the previous direction (whether the prohibition applies outright or if conditions are not fulfilled) shall cease to apply;
- (b) any outright prohibition applying by virtue of the previous direction is replaced by a prohibition applying (as regards the same work) if conditions specified in the new direction are not fulfilled; or

- (c) any prohibition applying as regards work by virtue of the previous direction (whether the prohibition applies outright or if conditions are not fulfilled) is replaced by a prohibition which applies only to such of that work as is identified in the new direction but which is otherwise in the same terms as the prohibition in the previous direction.
- (4) If the Department directs under this Article that a board shall not carry out work, or may only carry out work if certain conditions are fulfilled, the direction shall have effect notwithstanding any statutory provision under which the board is required or authorised to do the work or (as the case may be) to do it without the need for the conditions to be fulfilled.
- (5) The conditions that may be imposed by a direction given under this Article in relation to the carrying out of any work include a condition restricting the carrying out of the work to cases where—
  - (a) the Department has been satisfied as to any matter specified or described in the direction; or
  - (b) the work is carried out under and in accordance with an authorisation or consent given for the purposes of the direction by the Department.
- (6) Where a direction under this Article imposes any condition in relation to the carrying out of any work, that direction may provide that the requirement that the condition is fulfilled is to have effect, in relation to that work, instead of any requirement which (apart from the direction) would have effect in relation to that work by virtue of this Part.
- (7) Without prejudice to paragraph (3), the power to give a direction under this Article shall include power, at any time, to make such variations of a direction under this Article as may be agreed with the board to which the direction relates.
- (8) In this Article “the appropriate activity” means the defined activity within which the work identified in the notice concerned falls.

#### *Miscellaneous*

#### **Power to define conduct as competitive or anti-competitive**

- 15.**—(1) The Department may by regulations make provision, for the purposes of the condition set out in Article 5(5) or 7(6), for conduct described in the regulations to be regarded, in accordance with the regulations and in such circumstances as may be so described—
- (a) as conduct which has the effect of restricting, preventing or distorting competition or is likely to have that effect; or
  - (b) as conduct which does not have that effect and is not likely to have that effect.
- (2) Without prejudice to the generality of paragraph (1) or to any power conferred by Article 8, regulations under this Article may—
- (a) prescribe the matters which are to be taken into account, or disregarded, in the course of any evaluation made for the purpose of deciding who should undertake or carry out particular work;
  - (b) prescribe the manner in which, or extent to which, any matter described in the regulations is to be so taken into account or disregarded;
  - (c) prescribe maximum and minimum periods for the periods which are required, by virtue of sub-paragraphs (b) and (d) of paragraph (1) of Article 7, to be specified in a notice published for the purposes of that paragraph;
  - (d) prescribe a maximum and a minimum period for the period which is to elapse, in a case where a notice has been so published, between—
    - (i) the announcement of the decision as to who should carry out the work in question;
    - and

- (ii) the beginning of the period during which the work is to be carried out;
- (e) make provision for the issue by the Department of guidance as to how conduct restricting, distorting or preventing competition is to be avoided in the doing of anything under or for the purposes of this Part; and
- (f) require the extent (if any) to which there has been a contravention of guidance issued by the Department under the regulations to be taken into account in any determination of whether or not a condition mentioned in paragraph (1) has been fulfilled.

#### **Application of this Part to professional services, etc.**

16.—(1) The Department may by order subject to affirmative resolution make such provision in relation to proposals for the carrying out of work to which this Article applies as it considers appropriate for facilitating or requiring separate procedures to be followed for—

- (a) the evaluation for the purposes of this Part of the quality of the services which persons willing to carry out the work are able to provide and of their fitness to provide them; and
  - (b) the evaluation for those purposes of the financial terms on which such persons would carry out the work.
- (2) This Article applies to any work which—
- (a) by virtue of an order under Article 4(2), falls within a defined activity for the purposes of this Part; and
  - (b) consists in, or involves, the provision of professional advice or of other professional services or the application of any financial or technical expertise.
- (3) Before making an order under this Article the Department shall consult the boards.
- (4) Without prejudice to Article 17(3), the power to make an order under this Article shall include power, for the purposes of, or in connection with, any separate procedures for which an order under this Article provides, to modify any provision of this Part.

#### **Regulations, orders, specifications and directions**

- 17.—(1) Regulations under this Part shall be subject to negative resolution.
- (2) The power to specify under Article 9, 10 or 11, and the power to give a direction under Article 14, shall be exercised in writing.
- (3) Any order or regulations under this Part and any specification or direction mentioned in paragraph (2) may include such supplementary, incidental, consequential or transitional provisions as appear to the Department to be necessary or expedient; and without prejudice to the generality of the foregoing—
- (a) an order under Article 4(2) may include provision amending or adapting any provision of this Part for the purpose of interpreting any sub-paragraph added by the order or for purposes of commencement or otherwise; and
  - (b) a direction under Article 14 may include provision with respect to work in progress or outstanding contractual commitments.

#### **Supplementary**

- 18.—(1) No provision of this Part relating to accounts shall prejudice any provision of Article 119 of the 1986 Order.
- (2) Nothing in Articles 13 and 14 shall prejudice any remedy available to a person (apart from those Articles) in respect of a failure to observe a provision of this Part.

(3) Nothing in this Part shall be construed as authorising a board to enter into any contract or carry out any work which it would not be authorised to enter into or carry out apart from this Part.

## 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<sup>(6)</sup>;

“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 (within the meaning of the Companies (Northern Ireland) Order 1986<sup>(7)</sup>), 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—

- (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<sup>(8)</sup>;

“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;

“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;

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(6) 1989 c. 32  
(7) 1986 NI 6  
(8) 1992 NI 5

“trade dispute” has the meaning assigned to it by Article 2(4) to (7) of the Industrial Relations (Northern Ireland) Order 1992 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.

### **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.

(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;
  - (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 section 41 of the Act of 1989 (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 section 41 of the Act of 1989 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 that section 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 that section.

(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.

#### **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.
- (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).

#### **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

### *Amalgamation of institutions of further education*

#### **Power of Department to determine that institutions shall be amalgamated**

**26.—**(1) The Department may determine that two or more institutions of further education under the management of a board shall be amalgamated to form a single new institution of further education (in this Part referred to as “the new institution”).

(2) Before issuing any determination under this Article affecting any institutions of further education, the Department shall consult—

- (a) the governing bodies of those institutions;
- (b) the board by which those institutions are managed; and
- (c) such bodies as appear to the Department to be representative of—
  - (i) persons employed by a board to work at those institutions;
  - (ii) students for whom education is provided at those institutions.

(3) A determination under this Article providing for the amalgamation of two or more institutions of further education shall specify the date (referred to in Article 27 as “the implementation date”) on which the amalgamation is to take effect.

(4) For the purposes of this Article and Article 27 an institution of further education is affected by a determination under this Article if, and only if, it is one of the institutions which are to be amalgamated in pursuance of the determination.

(5) References in this Article and Article 27 to an institution of further education include references to a technical secondary school conducted in association with that institution.

#### **Amalgamation in pursuance of determination under Article 26**

**27.—**(1) Where the Department issues a determination under Article 26, it shall be the duty of the board responsible for the management of the institutions of further education affected by the determination to take all such steps as are necessary to give effect to the determination.

(2) In particular, but without prejudice to the generality of paragraph (1), that board shall not later than the implementation date—

- (a) ensure that an instrument of government and articles of government are made for the new institution; and
- (b) make provision by means of a governing body for the management of the new institution.

(3) On the implementation date—

- (a) all property, rights and liabilities of the governing bodies of the institutions affected by the determination shall be transferred to, and by virtue of this paragraph vest in, the governing body of the new institution; and
- (b) the institutions affected by the determination shall cease to exist.

(4) Any land or other property transferred to the governing body of the new institution under this Article which immediately before the implementation date was held on trust shall vest in that body as trustees on the trusts applicable immediately before that date under any trust deed regulating the use of the land or other property for the purposes of an institution of further education.

(5) Stamp duty shall not be chargeable in respect of any transfer effected by this Article.

(6) In Article 103(9) of the 1989 Order at the end there shall be added the following sub-paragraph—

- “(c) in the case of an institution of further education formed in pursuance of a determination under Article 26 of the Education and Libraries (Northern Ireland) Order 1993, the governing bodies of the institutions which are to be amalgamated in pursuance of the determination.”.

### *Finance*

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

**28.**—(1) For Article 116 of the 1986 Order there shall be substituted the following Article—

##### **“Building and equipment grants for voluntary schools**

**116.**—(1) Subject to paragraph (2) and to regulations made with the approval of the Department of Finance and Personnel, the Department may pay to any person in respect of approved expenditure—

- (a) incurred for the provision or alteration of the premises of a voluntary school, a sum equal to—
  - (i) that expenditure where, when that expenditure is approved, the school is—
    - (A) a maintained school in relation to which an agreement under paragraph 1 of Schedule 5 is in force; or
    - (B) a voluntary grammar school in relation to which an agreement under paragraph 1(1) of Schedule 6 is in force;
  - (ii) eighty-five per cent. of that expenditure where, when that expenditure is approved, the school is—
    - (A) a maintained school not falling within head (i)(A); or
    - (B) a voluntary grammar school in relation to which an agreement under paragraph 1(1) of Schedule 6 is in force;
  - (iii) sixty-five per cent. of that expenditure in any other case;

- (b) incurred for the provision of equipment provided in connection with the provision or alteration of the premises of a voluntary grammar school, a sum equal to—
  - (i) that expenditure where, when that expenditure is approved, an agreement under paragraph 1(1)(a) of Schedule 6 is in force in relation to the school;
  - (ii) eighty-five per cent. of that expenditure where, when that expenditure is approved, an agreement under paragraph 1(1)(b) of Schedule 6 is in force in relation to the school;
  - (iii) sixty-five per cent. of that expenditure in any other case;
- (c) incurred for the provision of equipment for a voluntary school other than a maintained school or a voluntary grammar school, a sum equal to sixty-five per cent. of that expenditure.

(2) No grant shall be paid under paragraph (1)(a)(iii) to a person in respect of expenditure incurred for the provision or alteration of any premises of a voluntary grammar school other than school meals premises.

(3) In paragraph (2) “schools meals premises” means premises used, or to be used, wholly or mainly for the carrying out of arrangements approved under Article 58(5) or (6).

(4) Where a contract entered into for the provision or alteration of the premises of a school provides for payment by instalments, the date on which an instalment is paid under the contract may, for the purposes of this Article, be taken as the date on which expenditure of the amount of that instalment has been incurred.

(5) For the purposes of this Article, any question as to the date on which any expenditure was incurred or approved shall be determined by the Department.

(6) Regulations under paragraph (1) may make provision for—

- (a) the repayment in such circumstances as are prescribed of the whole or part of any grant paid under this Article;
- (b) the reduction in such circumstances as are prescribed of the amount of grant which would otherwise be payable under this Article;
- (c) the payment to the Department by such person as may be prescribed of a sum where—
  - (i) any premises of a school in respect of which the Department has, at any time after 8th. August 1978, paid a grant under paragraph (1)(a), cease to be used for approved purposes of a grant-aided school; or
  - (ii) any site in respect of which the Department has, at any time after that date, paid a grant under paragraph (1)(a), ceases, in the opinion of the Department, to be required for the purposes of a grant-aided school.

(7) Without prejudice to the generality of paragraph (6), regulations under paragraph (1) may—

- (a) provide for any repayment, reduction or payment under the regulations to be of such amount as the Department considers equitable;
- (b) provide for any such repayment, reduction or payment not to exceed such amount as may be determined under or in accordance with the regulations;
- (c) provide for any amount determined as mentioned in sub-paragraph (b) to include an amount in respect of interest calculated in such manner as may be prescribed; and
- (d) apply to grants made before as well as after the coming into operation of Article 28 of the Education and Libraries (Northern Ireland) Order 1993.”.

(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) Where an agreement under paragraph 1 of Schedule 5 to the 1986 Order or paragraph 1(1)(a) of Schedule 6 to that Order comes into force in relation to a school at any time before the expiration of 3 months from the day on which this Article comes into operation, paragraph (1) of Article 116 of that Order shall have effect, in relation to any expenditure of a description mentioned in that paragraph which is approved in connection with the school in the period beginning on 4th November 1992 and ending on the coming into force of that agreement, as if that agreement had been in force when the expenditure was approved.

(6) Paragraph (5) does not apply to expenditure incurred under, or in connection with, a contract for the provision or alteration of the premises of a school or the provision of equipment for a school if any part of the expenditure under, or in connection with, that contract was approved before 4th November 1992.

(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.

### **Grants to boards and other bodies**

**29.**—(1) In Article 113 of the 1986 Order (financial schemes of boards)—

- (a) in paragraph (1) the words “under the Education Orders” shall cease to have effect;
- (b) after paragraph (2) there shall be inserted the following paragraph—

“(2A) For the purposes of a financial scheme under this Article in relation to any period (“the new period”), any moneys received by a board in a previous period and not spent by it before the beginning of the new period shall be treated as receipts of the board in the new period.”;

- (c) in paragraph (3) after the word “expenditure” there shall be inserted the words “in any period” and after the word “approved” shall be inserted the words “in relation to that period”.

(2) In Article 114 of the 1986 Order (grants to boards) after the word “incurred” there shall be inserted the words “or to be incurred”.

### **Funding by Department of higher education**

**30.**—(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;
- (b) in the case of an institution of further education, the governing body constituted under Part VII of the 1989 Order;
- (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 Schedule 7 to the 1989 Order;

“higher education institution” means—

- (a) a university; and
- (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.

### **Premature retirement compensation costs**

31.—(1) After Article 53 of the 1989 Order there shall be inserted the following Article—

#### **“Premature retirement compensation costs**

**53A.**—(1) This Article applies in any financial year if—

- (a) in the case of any board, the board’s financial provision for relevant schools is subject to regulation by a scheme; and
- (b) in accordance with that scheme, premature retirement compensation costs of the board in relation to members of the staff of relevant schools are not included in the board’s aggregated budget for that year.

(2) Premature retirement compensation costs of a board in relation to a member of the staff of a relevant school shall not be met from the budget share of that school, except in pursuance of, and in accordance with the terms of, a direction under paragraph (3).

(3) Where there appears to a board to be good reason to do so in relation to any school, the board may direct that—

- (a) a specified amount shall be deducted from the budget share of the school in any single specified financial year; or
- (b) a specified amount shall be deducted from the budget share of the school 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 a member of the staff of the school.

(4) In paragraph (3) “specified” means specified in directions under that paragraph.

(5) The amount or (in a case falling within sub-paragraph (b) of that paragraph) the total amount to be deducted from the budget share of a school in pursuance of a direction given under paragraph (3) in relation to a member of the staff of a school shall not exceed such amount as appears to the board 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.

(6) Where in pursuance of a direction under paragraph (3) an amount falls to be deducted from a school’s budget share at a time when the school does not have a delegated budget, that amount shall not be deducted from any sum made available out of that budget to the Board of Governors under Article 51.

(7) Sub-paragraph (5) of paragraph 7 of Schedule 4 applies for the purposes of paragraph (3) of this Article as it applies for the purposes of sub-paragraph (4) of that paragraph.

(8) 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(9);

“premature retirement compensation costs of a 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.”.

(2) In Article 60 of the 1989 Order at the beginning of paragraph (3) there shall be inserted the words “Subject to paragraph (7A),” and after paragraph (7) there shall be inserted the following paragraphs—

“(7A) An amount may, in pursuance of, and in accordance with the terms of, a direction under paragraph (7B), be deducted from the amount of any grant to be paid under this Article to the Board of Governors of any school.

(7B) Where there appears to the Department to be good reason to do so in relation to any school, the Department may direct that—

- (a) a specified amount shall be deducted from the amount of any grant to be paid under this Article to the Board of Governors of the school in any single specified financial year; or
- (b) a specified amount shall be deducted from the amount of any such grant to be so paid 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 a member of the staff of the school.

(7C) In paragraph (7B) “specified” means specified in directions under that paragraph.

(7D) The amount or (in a case falling within sub-paragraph (b) of that paragraph) the total amount to be deducted in pursuance of a direction given under paragraph (7B) in relation to a member of the staff of a 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.

(7E) 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<sup>(10)</sup>;

“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.”.

(3) In Article 77 of the 1989 Order at the beginning of paragraph (2) there shall be inserted the words “Subject to paragraph (7),” and for paragraph (7) there shall be substituted the following paragraphs—

“(7) An amount may, in pursuance of, and in accordance with the terms of, a direction under paragraph (7A), be deducted from the amount of any maintenance grant to be paid under this Article to the Board of Governors of any school.

(7A) Where there appears to the Department to be good reason to do so in relation to any school, the Department may direct that—

(a) a specified amount shall be deducted from the amount of any maintenance grant to be paid under this Article to the Board of Governors of the school in any single specified financial year; or

(b) a specified amount shall be deducted from the amount of any maintenance grant to be so paid 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 a member of the staff of the school.

(7B) In paragraph (7A) “specified” means specified in directions under that paragraph.

(7C) The amount or (in a case falling within sub-paragraph (b) of that paragraph) the total amount to be deducted in pursuance of a direction given under paragraph (7A) in relation to a member of the staff of a 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.

(7D) 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<sup>(11)</sup>;

<sup>(10)</sup> SR 1991 No. 132

<sup>(11)</sup> SR 1991 No. 132



“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.”

(4) After Article 115 of the 1989 Order there shall be inserted the following Article—

**“Premature retirement compensation costs**

**115A.**—(1) This Article applies in any financial year if—

- (a) in the case of any board, the board’s financial provision for institutions of further education under its management is subject to regulation by a scheme; and
- (b) amounts to meet premature retirement compensation costs of the board in relation to members of the staff of such institutions are not appropriated by the board for allocation in accordance with that scheme among institutions covered by the scheme.

(2) Premature retirement compensation costs of a board in relation to a member of the staff of an institution of further education covered by the scheme shall not be met from the budget share of that institution, except in pursuance of, and in accordance with the terms of, a direction under paragraph (3).

(3) Where there appears to a board to be good reason to do so in relation to any institution of further education, the board may direct that—

- (a) a specified amount shall be deducted from the budget share of the institution in any single specified financial year; or
- (b) a specified amount shall be deducted from the budget share of the institution 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 a member of the staff of the institution.

(4) In paragraph (3) “specified” means specified in directions under that paragraph.

(5) The amount or (in a case falling within sub-paragraph (b) of that paragraph), the total amount to be deducted from the budget share of an institution of further education in pursuance of a direction given under paragraph (3) in relation to a member of the staff of an institution shall not exceed such amount as appears to the board 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.

(6) The fact that a board has a policy precluding dismissal of its employees by reason of redundancy is not to be regarded as a good reason for the purposes of paragraph (3).

(7) 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(12);

“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.”

(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<sup>(13)</sup>;

“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.”.

### *Commercial activities*

#### **Power of certain bodies to undertake commercial activities**

**32.**—(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—

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- (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),
- 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.

(11) Until the coming into operation of Article 34, paragraph (10) shall have effect with the substitution for paragraph (b) of the definition of relevant body of the following paragraph—

“(b) the Northern Ireland Curriculum Council.”.

### **Formation of companies in connection with institutions of further education**

33. After Article 119 of the 1989 Order there shall be inserted the following Article—

#### **“Formation of companies for purposes of Article 119(1)**

**119A.**—(1) The governing body of an institution of further education which has a delegated budget may, in the exercise of its powers under Article 119(1), form companies under the Companies (Northern Ireland) Order 1986(14).

(2) Subject to paragraphs (3) and (4), the board responsible for the management of an institution of further education may make loans to any company formed under this Article by the governing body of that institution.

(3) Loans made under this Article shall carry interest at a rate not less than a rate determined by the Department with the consent of the Department of Finance and Personnel, and—

(a) different rates may be so determined in respect of different categories of loans;

(b) a rate may be determined by reference to a rate—

(i) specified by or under any other statutory provision; or

(ii) ascertainable by such other means as the Department may with the consent of the Department of Finance and Personnel, specify.

(4) Before determining a rate under paragraph (3), the Department shall consult any boards and other bodies with which consultation appears to the Department to be desirable.

(5) The accounts kept by a board under Article 119 of the 1986 Order shall include a separate account of any loans made and repayments of principal or interest received by that board under this Article.”.

*The Northern Ireland Council for the Curriculum, Examinations and Assessment*

### **The Northern Ireland Council for the Curriculum, Examinations and Assessment**

34.—(1) After Article 17 of the 1989 Order there shall be inserted the following cross-heading and Article—

*“The Northern Ireland Council for the Curriculum, Examinations and Assessment*

#### **The Northern Ireland Council for the Curriculum, Examinations and Assessment**

**17A.**—(1) There shall be established a body to be known as the Northern Ireland Council for the Curriculum, Examinations and Assessment (in this Article and Articles 19 to 26 referred to as “the Council”).

(2) Schedule 3 shall have effect with respect to the Council.”.

(2) The following bodies are hereby abolished, namely—

- (a) the Northern Ireland Curriculum Council; and
- (b) the Northern Ireland Schools Examinations and Assessment Council,

and the functions exercisable by each of those bodies immediately before the appointed day shall as from that day be exercisable by the new Council.

(3) On the appointed day all property, rights and liabilities to which a former body is entitled or subject immediately before that day shall be transferred to, and by virtue of this Order vest in, the new Council.

(4) Paragraph (3) does not apply to rights and liabilities under a contract of employment, but paragraph (5) applies to any person who immediately before the appointed day is employed by a former body.

(5) The contract of employment between a person to whom this paragraph applies and the former body shall have effect from the appointed day as if originally made between him and the new Council.

(6) Without prejudice to paragraph (5)—

- (a) all the former body's rights, powers, duties and liabilities under or in connection with a contract to which that paragraph applies shall by virtue of that paragraph be transferred to the new Council on the appointed day; and
- (b) anything done before that day by or in relation to the former body in respect of that contract or the employee shall be deemed from that day to have been done by or in relation to the new Council.

(7) Paragraphs (5) and (6) are without prejudice to any right of an employee to terminate his contract of employment if a substantial change is made to his detriment in his working conditions, but no such right shall arise by reason only of the change in employer effected by paragraph (5).

(8) Stamp duty shall not be chargeable in respect of any transfer effected by this Article.

(9) In consequence of the preceding provisions of this Article—

- (a) the statutory provisions set out in Part I of Schedule 4 shall have effect subject to the amendments specified in that Part; and
- (b) any reference in any other statutory provision or any other document passed or made before the appointed day to a former body shall, so far as may be necessary for the purposes of this Article, be construed as a reference to the new Council.

(10) In this Article—

“the appointed day” means the day appointed for the coming into operation of this Article;

“former body” means a body abolished by paragraph (2);

“the new Council” means the Northern Ireland Council for the Curriculum, Examinations and Assessment established under Article 17A of the 1989 Order (as inserted by paragraph (1)).

#### *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) In Part III (the curriculum) in Article 35 after paragraph (6) there shall be inserted the following paragraph—

“(6A) Nothing in this Part, except Articles 29, 30 and 32 and Article 33 in so far as it applies for the purposes of those Articles, shall apply in relation to a school established in a hospital.”.

(3) In Part IV (admission of children to grant-aided schools) in Article 43 (exceptions) at the end there shall be added the following paragraph—

“(5) None of the provisions of Articles 36 to 42 have effect in relation to a school established in a hospital.”.

(4) In Part V (financing of schools) in Article 46(3)(a) (schools covered by a scheme) for the words “other than a special school or” there shall be substituted the words “other than a special school, a school established in a hospital or a”.

(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—

“( ) ( ) This Article does not apply to a school established in a hospital.”

shall be added—

(a) in Article 124 (discipline in schools), as paragraph (4);

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

(c) in Article 126 (annual parents' meeting), as paragraph (8).

(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.”.

*Miscellaneous amendments to the 1986 Order*

**Provision by boards of education otherwise than at a school**

**36.** In Article 6 of the 1986 Order—

- (a) in paragraph (3) (power of board, with the approval of the Department, to arrange for the provision of education otherwise than at a school) for the words “may, with the approval of the Department,” there shall be substituted the word “shall”; and
- (b) in paragraph (4) (power of board, with the approval of the Department, to arrange for special educational provision to be made otherwise than at a school) the words “with the approval of the Department and” shall cease to have effect.

**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.

(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.”.

### **Work experience for school children**

**40.** In Article 63(2) of the 1986 Order (employment of children for purposes of work experience) for the words from “only from the following dates—” to the end there shall be substituted the words “only at a time on or after the date on which the summer term begins at his school in the year immediately preceding the year in which he ceases to be of compulsory school age”.

### **Supply teachers**

**41.** The following provisions shall cease to have effect, namely—

- (a) Article 65(2)(b) of the 1986 Order (power of board to employ supply teachers); and
- (b) Article 143(1)(b) of the 1989 Order (power of Council for Catholic Maintained Schools to employ supply teachers).

### **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)).
- (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.—**(1) For Article 77 of the 1986 Order there shall be substituted the following Article—

**“Charges for library services**

77.—(1) Except as provided by this Article, no charge shall be made by a board for library services provided by it.

(2) A board may make a charge—

- (a) subject to paragraph (3), for lending library material or library apparatus;
- (b) for reserving for any person library material or library apparatus (whether that material or apparatus is for the time being held by the board or is to be obtained from elsewhere and whether for the purpose of lending the material or apparatus to that person or making it available for his use on library premises) and for notifying that person that that material or apparatus has become available or is not available for borrowing or use by him;
- (c) in respect of the failure to return any borrowed library material or library apparatus before the end of the period for which it is lent;
- (d) subject to paragraph (4), for making library apparatus available for use on library premises;
- (e) in respect of library apparatus, library material and any other equipment or thing used in providing the library service which is lost, damaged or destroyed by, or while on loan to, any person;
- (f) subject to paragraph (4), for assisting or instructing a person in the use of a computer;
- (g) for researching or collating information for and at the request of a person;
- (h) for supplying catalogues, indexes or similar articles where the articles become the property of the person to whom they are supplied;
- (i) for supplying library material which has been researched, collated, produced or copied by the board where the material becomes the property of the person to whom it is supplied;
- (j) for supplying copies of library material obtained from another library not maintained by the board or from any other body or person, where the copies become the property of the person to whom they are supplied;
- (k) for providing, or procuring the provision of, library material to a person who does not wish to collect it or have it collected and for notifying a person who has requested provision other than by collection that the library material is not available;
- (l) for providing a room or cubicle on library premises for the purpose of working or studying to which only the person paying the charge is for the time being permitted access;
- (m) subject to paragraph (5), for making library facilities available otherwise than on library premises; and
- (n) subject to paragraphs (3) and (4), for making available to any person library facilities which go beyond those ordinarily provided by the board as part of the library service.

(3) No charge shall be made under sub-paragraph (a) or (n) of paragraph (2) for lending any written material to any person where—

- (a) it is the duty of the board under Article 73(1) to provide a library service to that person;
- (b) the material is lent in the course of providing such a service to that person on any library premises;
- (c) the material is lent in a form in which it is readable without the use of any electronic or other apparatus; and

(d) that person is not a person who has required any such apparatus to be used, or made available to him, for putting the material into such a form in order that he may borrow it.

(4) No charge shall be made under sub-paragraph (d), (f) or (n) of paragraph (2) for making facilities available for any person—

(a) to read the whole or any part of any of the written materials for the time being held by the board—

(i) in a form in which they are readable without the use of any electronic or other apparatus; or

(ii) in microform; or

(b) to consult such catalogues, indexes or similar articles as are maintained, in any form whatever, exclusively for the purposes of that board's library service,

on library premises.

(5) No charge shall be made under sub-paragraph (m) of paragraph (2) to individual users of facilities made available as mentioned in that sub-paragraph where—

(a) the facilities are made available at a school, residential home, hospital, prison, club or like institution; and

(b) the person who has arranged with the board for the facilities to be made available at such institution is charged under that sub-paragraph.

(6) The Department may, by order subject to affirmative resolution, amend paragraphs (2) to (5).

(7) Subject to paragraph (8), any charge made under this Article shall be of such amount as the board may determine and, without prejudice to the generality of the foregoing, the board may—

(a) make different provision for different cases including different provision in relation to different persons, circumstances or localities; and

(b) make charges in respect of each use of the library facilities made available by it, or charge an annual subscription or a deposit in respect of all or some of such facilities.

(8) A board shall not make a charge under this Article to a person living or working or undertaking a course of study outside the area of the board if it would not be entitled in the circumstances to make the same charge to a person living or working or undertaking a course of study within that area.

(9) A board which makes a charge under this Article shall display in a conspicuous place within each library premises of the board a notice specifying the library facilities made available by the board for which it makes a charge and, in the case of each such facility, the amount of the charge or the basis on which the charge will be calculated.

(10) The provisions of Part I of the 1988 Act (copyright) relating to the rental of copies of sound recordings, films and computer programs apply to any lending by a board of copies of such works, whether or not a charge is made for that facility.

(11) In this Article—

“the 1988 Act” means the Copyright, Designs and Patents Act 1988(15);

“computer” means any device for storing and processing information;

“copying” and “copies” shall be construed in accordance with section 17 of the 1988 Act;

“library apparatus” means electronic or other apparatus intended for use with library material;

“residential home” means a residential care home or nursing home registered under the Registered Homes (Northern Ireland) Order 1992(16) or any residential accommodation provided by a Health and Social Services Board or a Health and Social Services Trust;

“written material” means—

- (a) any book, journal, pamphlet or other similar article; or
- (b) any reprographic copy (within the meaning of the 1988 Act) of any article falling within paragraph (a) or any other reproduction of such an article made by any means whatsoever.”.

(2) In Part VII of the 1986 Order after Article 78 there shall be inserted the following Article—

#### **“Interpretation of Part VII**

**78A.** In this Part—

“library material” means—

- (a) words, figures, images, sounds or data recorded in or on any medium;
- (b) toys; and
- (c) educational artefacts;

“library premises” means—

- (a) any premises which are occupied by a board and are premises where library facilities are made available by the board, in the course of the provision of a library service, to members of the public;
- (b) any vehicle which is used by a board for the purpose of providing such a service and is a vehicle in which facilities are so made available.”.

#### **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*

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

**45.—**(1) In Article 6 (compulsory contributory subjects) of the 1989 Order—

- (a) in paragraph (2)(c) at the end there shall be added the words “(read with Schedule 2A)”;

- (b) after paragraph (2) there shall be inserted the following paragraphs—
- “(2A) Schedule 2A sets out the lists of subjects or combinations of subjects referred to in column 4 of Schedule 2.
- (2B) In Schedule 2A a reference to a subject followed by “(SC)” is a reference to that subject taught as a short course and any other reference in that Schedule to that subject is a reference to that subject taught as a full course.”;
- (c) for paragraph (5) there shall be substituted the following paragraph—
- “(5) In paragraph (2B) “full course” means a course of such content as to prepare pupils in key stage 4 for examination for the Northern Ireland General Certificate of Secondary Education or for examination at an equivalent standard and “short course” means a course of any lesser content.”;
- (d) in paragraph (6) at the end there shall be added the words “and Schedule 2A”.
- (2) In Article 7 of the 1989 Order after paragraph (1) there shall be inserted the following paragraphs—
- “(1A) An order under paragraph (1) in relation to a compulsory contributory subject which may be taught as a short course shall specify separate attainment targets, programmes of study or assessment arrangements (as the case may be) for that subject taught as a short course and for that subject taught as a full course.
- (1B) Nothing in paragraph (1A) shall be construed as restricting any power of the Department under paragraph (1) to prescribe different attainment targets, programmes of study or assessment arrangements for a compulsory contributory subject in relation to different pupils in the same key stage.
- (1C) In paragraph (1A) “full course” and “short course” have the same meanings as in Article 6(5).”.
- (3) In Schedule 2 to the 1989 Order—
- (a) “(A)” shall be omitted where it occurs after any entry in column 2, 3 or 4;
- (b) the Note at the end of the Schedule shall be omitted;
- (c) in column 4 for the entry “Technology and Design” there shall be substituted the following entry—
- “One of the subjects from the list set out in paragraph 1 of Schedule 2A”;
- (d) in column 4 for the entry “History or Geography” there shall be substituted the following entry—
- “One of the subjects or combinations of subjects from the list set out in paragraph 2 of Schedule 2A”;
- (e) in column 4 for the entry “Art and Design or Music or Drama” there shall be substituted the following entry—
- “One of the subjects from the list set out in paragraph 3 of Schedule 2A”.
- (4) After Schedule 2 to the 1989 Order there shall be inserted the Schedule set out in Schedule 3.

### **Courses leading to external qualifications**

**46.**—(1) In Article 9 of the 1989 Order (approval of Department required for courses of study leading to external qualification) in paragraph (1) for the words “leading to a qualification authenticated by an outside person” there shall be substituted the words “to which this Article applies” and after that paragraph there shall be inserted the following paragraph—

“(1A) This Article applies to a course of study if—

- (a) the course is in a listed contributory subject in relation to which attainment targets and programmes of study are specified under Article 7(1)(a); and
- (b) the course leads to a qualification authenticated by an outside person.”.

(2) In Article 21(2)(a), (b) and (c) of the 1989 Order (arrangements for certain examinations) the words “and approved by the Department under Article 9” shall cease to have effect.

(3) In Article 34(1) of the 1989 Order (power to apply Articles 9 and 11(1)(d) to senior pupils) after the words “Articles 9” there shall be inserted the words “(as originally enacted)”.

### **Complaints relating to religious education and collective worship**

**47.**—(1) In Article 33 of the 1989 Order (complaints about exercise by board or Board of Governors of functions under certain provisions of Education Orders)—

- (a) in paragraph (1)(a) (matters subject to complaint) after head (iii) there shall be added the following head—
  - “(iv) any statutory provision relating to collective worship in grant-aided schools; or”;
- (b) paragraph (2) (exception for complaints relating to religious education) shall cease to have effect.

(2) Article 23(2) of the 1986 Order (complaints relating to religious education) shall cease to have effect.

(3) Nothing in this Article or in any related repeal in Schedule 5 applies in relation to a complaint received by the Department under Article 23(2) of the 1986 Order before the coming into operation of this Article.

### **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,”.

*Supplementary*

**Amendments and repeals**

**50.**—(1) The statutory provisions set out in Part II of Schedule 4 shall have effect subject to the amendments specified in that Part.

(2) The statutory provisions set out in Schedule 5 (which include provisions which are spent or no longer of any practical utility) are hereby repealed to the extent specified in the third column of that Schedule.

*R. P. Bulling*  
Clerk of the Privy Council

## SCHEDULES

### SCHEDULE 1

Article 4(1).

#### COMPETITION

##### *Cleaning of buildings*

1.—(1) Subject to sub-paragraph (2), the cleaning of the windows of any building (whether inside or outside) and the cleaning of the interior of any building fall within Article 4(1)(a).

(2) The following do not fall within Article 4(1)(a)—

- (a) the cleaning of the exterior (which here excludes windows) of any building;
- (b) the cleaning of the windows or interior of a dwelling.

(3) In sub-paragraph (2) “dwelling” means a building or part of a building occupied as a person’s home or as other living accommodation (whether the occupation is separate or shared with others) but does not include any part not so occupied.

##### *Catering*

2.—(1) Subject to sub-paragraph (2), the following (and only the following) fall within Article 4(1)(b)—

- (a) providing ingredients for, and preparing, delivering and serving, meals for consumption in schools and institutions of further education;
- (b) providing refreshments for consumption in schools and institutions of further education.

(2) The provision of milk in accordance with arrangements approved by the Department under Article 58 of the 1986 Order does not fall within Article 4(1)(b).

##### *Maintenance of ground*

3.—(1) Subject to sub-paragraph (2), the following (and only the following) fall within Article 4(1)(c)—

- (a) cutting and tending grass (including re-turfing and re-seeding but not initial turfing or seeding);
- (b) maintaining outdoor sports grounds, pitches, courts or tracks;
- (c) maintaining playgrounds, car parks and pathways;
- (d) planting and tending trees, hedges, shrubs, flowers and other plants (but excluding landscaping any area);
- (e) controlling weeds.

(2) An activity does not fall within Article 4(1)(c) if its primary purpose is research or securing the survival of any kind of plant.

*Repair and maintenance of vehicles*

4.—(1) Subject to sub-paragraph (2), the repair and the maintenance of any motor vehicle or trailer fall within Article 4(1)(d).

(2) The repair of damage caused by an accident does not fall within Article 4(1)(d).

(3) In this paragraph—

“motor vehicle” means a mechanically propelled vehicle intended or adapted for use on roads or otherwise on land;

“trailer” means a vehicle intended or adapted to be drawn by a motor vehicle.

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;
- (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.

(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.

*Status: This is the original version (as it was originally made).*

(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 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—

- (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;

*Status: This is the original version (as it was originally made).*

(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;
  - (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.

(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.

*Status: This is the original version (as it was originally made).*

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.”

### SCHEDULE 3

Article 45(4).

### SCHEDULE 2A TO THE 1989 ORDER, AS INSERTED

#### “SCHEDULE 2A

Article 6(2A).

#### COMPULSORY CONTRIBUTORY SUBJECTS IN KEY STAGE 4

1. The list referred to in the entry in column 4 of Schedule 2 relating to the area of study called Science and Technology is the following—

- Technology and Design
- Technology and Design (SC).

2. The list referred to in the entry in column 4 of Schedule 2 relating to the area of study called The Environment and Society is the following—

- History
- Geography
- Business Studies and History (SC)
- Business Studies and Geography (SC)
- History (SC) and Geography (SC)
- History (SC) and Business Studies (SC)
- Geography (SC) and Business Studies (SC).

3. The list referred to in the entry in column 4 of Schedule 2 relating to the area of study called Creative and Expressive Studies is the following—

Art and Design

Music

Drama

Media Studies

Art and Design (SC)

Music (SC)

Drama (SC)

Media Studies (SC).”

#### SCHEDULE 4

Articles 34(9) and 50(1).

#### MINOR AND CONSEQUENTIAL AMENDMENTS

### PART I

#### AMENDMENTS CONSEQUENTIAL ON THE ESTABLISHMENT OF THE NORTHERN IRELAND COUNCIL FOR THE CURRICULUM, EXAMINATIONS AND ASSESSMENT

*The Commissioner for Complaints Act (Northern Ireland) 1969 (c. 25)*

In Part II of Schedule 1 for the entry relating to the Northern Ireland Schools Examinations and Assessment Council substitute—

“The Northern Ireland Council for the Curriculum, Examinations and Assessment.”.

*The Industrial Relations (No. 2) (Northern Ireland) Order 1976 (NI 28)*

In Article 39(1)(g) for heads (i) and (ii) substitute—

“(i) the Northern Ireland Council for the Curriculum, Examinations and Assessment;”.

*The Education and Libraries (Northern Ireland) Order 1986 (NI 3)*

In Article 92(1A)(a) for “Curriculum Council” substitute “Council for the Curriculum, Examinations and Assessment”.

In Article 101(3) for sub-paragraphs (g) and (h) substitute—

“(g) the Northern Ireland Council for the Curriculum, Examinations and Assessment.”.

*The Education Reform (Northern Ireland) Order 1989 (NI 20)*

The following provisions shall cease to have effect, namely—

(a) Article 18 and the cross-heading immediately preceding it;

(b) Article 20;

(c) Article 23;

*Status: This is the original version (as it was originally made).*

(d) Article 24(3)(a) and (4);

(e) Article 27;

(f) in Schedule 3, paragraph 1 and the cross-heading immediately preceding it.

In Articles 14(3)(b) and 19(1) for “Curriculum Council” substitute “Council for the Curriculum, Examinations and Assessment”.

In Articles 21(1) and 22(1) for “Schools Examinations and Assessment Council” substitute “Council for the Curriculum, Examinations and Assessment”.

In Article 149(2) for sub-paragraph (e) substitute—

“(e) the Northern Ireland Council for the Curriculum, Examinations and Assessment;”.

In Schedule 3 for the heading substitute—

“SCHEDULE 3

Article 17A”.

### THE NORTHERN IRELAND COUNCIL FOR THE CURRICULUM, EXAMINATIONS AND ASSESSMENT

In Schedule 3 in paragraph 10 in sub-paragraph (3)(a) after “Council” insert “or who is the initial chief executive of the Council” and after that sub-paragraph insert—

“(3A) In sub-paragraph (3) “the initial chief executive” means the first person to be appointed as chief executive of the Northern Ireland Council for the Curriculum, Examinations and Assessment after the making of the Education and Libraries (Northern Ireland) Order 1993.”.

## PART II

### OTHER MINOR AND CONSEQUENTIAL AMENDMENTS

#### *The Education and Libraries (Northern Ireland) Order 1986 (NI 3)*

In Article 2(2) in the definition of “the Education Orders” for “and the 1989 Order” substitute “, the 1989 Order and the Education and Libraries (Northern Ireland) Order 1993”.

In Article 2(2) for the definition of “maintained school” substitute—

““maintained school” means a voluntary school other than a grammar school or a school which has, under Part II of Schedule 5, ceased to be a maintained school;”.

In Article 2(2) in the definition of “managers” for paragraphs (b), (c) and (cc) substitute—

“(b) in relation to a voluntary school or a grant-maintained integrated school, the Board of Governors of the school;”.

In Article 9(1)(b) for the words from “the trustees or Board of Governors of which” to the end substitute “in relation to which an agreement with the board is in force under paragraph 2 of Schedule 6.”.

In Article 9B for paragraph (4) substitute—

“(4) It shall be the duty of the Board of Governors of a voluntary school (other than a maintained school) to prepare a scheme of management for the school.”.

In Article 15(3) for “the trustees or Board of Governors of which have entered into an agreement with the Department under Schedule 6” substitute “in relation to which an agreement with the Department under paragraph 1(1) of Schedule 6 is in force” and the words from “but this paragraph” to the end shall cease to have effect.

In Article 16(4)(a) for the words from “pay to the Department” to the end substitute “repay to the Department such sums as are repayable in accordance with the provisions of regulations under that Article”.

In Article 21 for paragraph (3) substitute—

- “(3) Subject to paragraph (3A), in—
- (a) a controlled integrated school;
  - (b) a grant-maintained integrated school; and
  - (c) a voluntary school,

the religious education and collective worship required by paragraph (1) shall be under the control of the Board of Governors of the school and that religious education shall be subject to such arrangements for inspection and examination as the Board of Governors thinks fit.”.

In Article 32(3A) after “Article 143” insert “of the 1989 Order”.

In Article 52(1) and (3) the words “or the University of Ulster” shall cease to have effect.

In Article 55(1)(b) the words “at the University of Ulster or” and “University or” shall cease to have effect.

In Article 66 for paragraphs (4) to (11) substitute—

- “(4) Regulations under paragraph (3) may make provision for—
- (a) the repayment in such circumstances as are prescribed of the whole or part of any grant paid under this Article;
  - (b) the reduction in such circumstances as are prescribed of the amount of grant which would otherwise be payable under this Article;
  - (c) the payment to the Department by such person as may be prescribed of a sum where—
    - (i) any premises of a college of education in respect of which the Department has, at any time after 1st. August 1984, paid a grant under paragraph (3), cease to be used for approved purposes of a college of education; or
    - (ii) any site in respect of which the Department has, at any time after that date, paid a grant under paragraph (3), ceases, in the opinion of the Department, to be required for the purposes of a college of education.
- (5) Without prejudice to the generality of paragraph (4), regulations under paragraph (3) may—
- (a) provide for any repayment, reduction or payment under the regulations to be of such amount as the Department considers equitable;
  - (b) provide for any such repayment, reduction, or payment not to exceed such amount as may be determined under or in accordance with the regulations;
  - (c) provide for any amount determined as mentioned in sub-paragraph (b) to include an amount in respect of interest calculated in such manner as may be prescribed; and
  - (d) apply to grants made before as well as after the coming into operation of this paragraph.”.

In Article 73(3)(a) for “books and other printed matter, and pictures, gramophone records, films and other materials” substitute “library materials”.

In Article 75 for “premises provided or maintained by it for the purposes of its functions as a library authority shall” substitute “its library premises”.

In Article 78(1) for “premises where those facilities are provided” substitute “the library premises of the board”.

In Article 78(2) for “premises maintained by the board under this Order” substitute “library premises of the board”.

*Status: This is the original version (as it was originally made).*

In Article 80 for the words from the beginning to “(a) defray” substitute

“A board may—

(a) defray, at such rates as the Department may approve,”.

In Article 106(2) for “the trustees or Board of Governors of which have entered into an agreement under Schedule 6” substitute “in relation to which an agreement under paragraph 1(1) of Schedule 6 is in force”.

In Article 134(1) for “this Order” where it twice occurs substitute “the Education Orders”.

In Schedule 2 in paragraph 13(4) after “materials” insert “to the board” and after “works” insert “for the board”.

In Schedule 4 in paragraph 7 in the definition of “nominating trustees” for “paragraph 2(3)” substitute “paragraph 7(1)”.

In Schedule 7 in paragraph 1 for “the trustees or Board of Governors of which have not entered into an agreement under paragraph 1 of Schedule 6” substitute “in relation to which no agreement under paragraph 1(1) of Schedule 6 is in force”.

In Schedule 8 in paragraph 1 for “Article 11(7)” substitute “Article 11(6)”.

In Schedule 15 in paragraph 7 for “86” substitute “86(1)”.

*The Education Reform (Northern Ireland) Order 1989 (NI 20)*

In Article 19(1) after sub-paragraph (c) insert—

“(cc) produce, or secure or assist the production of, teaching materials for use in connection with the curriculum for grant-aided schools;”.

In Article 19 for paragraph (5) substitute—

“(5) The functions of the Council under paragraphs (1) and (4) in relation to the curriculum for grant-aided schools shall also be exercisable by the Council in relation to the curriculum for institutions of further education so far as relating to persons in full-time further education who have not attained the age of 19.”.

Article 21(3) shall cease to have effect.

In Article 22 after paragraph (1) insert—

“(1A) The Council may enter into arrangements to perform functions on behalf of, or provide services to, any other examining body or authority and such arrangements may provide for the payment by the said body or authority of the whole or part of any expenditure incurred by the Council in carrying out the arrangements.”.

In Article 22 at the end add—

“(4) In this Article references to examinations and assessments include references to examinations and assessments in respect of persons who have not attained the age of nineteen and are in full-time education at an institution of further education.”.

In Article 33(3) after sub-paragraph (a) insert—

“(aa) may contain provision requiring the tribunal to hear and determine the appeal within such period as may be specified in, or determined in accordance with, the regulations;”.

In Article 35(6) for “except Articles 30 and 32” substitute

“except—

(a) Article 29;

(b) Article 30;

- (c) Article 31(1) to (4) with the omission of the words in brackets in Article 31(2)(a)(iii) and of Article 31(2)(b)(i);
- (d) Article 32; and
- (e) Article 33, in so far as it applies for the purposes of those provisions.”.

In Article 37(7) for sub-paragraphs (a) and (b) substitute—

- “(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 persons for membership of an appeal tribunal;”.

In Article 60(1)(b) for “Article 116(1)(c)” substitute “Article 116(1)(b)”.

In Article 62(5)(a) after “paragraph (2)” insert “or Article 32 of the Education and Libraries (Northern Ireland) Order 1993”.

In Article 69(4)(a) for “two months” substitute “three months”.

In Article 77(11) the words in brackets shall cease to have effect.

In Article 115(2) after “required” insert “or authorised”.

In Article 115(4) for “in respect of the dismissal, or premature retirement, or for the purpose of securing the resignation,” substitute “in giving effect to any determination under paragraph (1) in respect”.

In Article 119(7)(a) after “paragraph (2)” insert “or Article 32 of the Education and Libraries (Northern Ireland) Order 1993”.

In Article 126(4) for sub-paragraphs (b) and (c) substitute—

- “(b) paragraph 2(4) or 3(5) of Schedule 5;
- (c) paragraph 4(5) or 5(6) of Schedule 6;”.

In Article 127 for paragraphs (2) and (3) substitute—

“(2) Articles 128 to 131 do not apply to a voluntary grammar school if no agreement with the Department is, or has at any time on or after 1st April 1992 been, in force in relation to the school under paragraph 1(1) of Schedule 6 to the 1986 Order.

(3) The application of those Articles to certain other voluntary grammar schools is subject to Articles 132 and 132A.”.

In Article 127(4)—

- (a) for “to not apply” substitute “do not apply”;
- (b) in sub-paragraph (b) for “not” substitute “neither resident in Northern Ireland nor”; and
- (c) in sub-paragraph (d) for head (ii) substitute—
  - “(ii) on 31st March 1992 was a specified pupil, as defined by regulation 4(c) of the Grammar Schools (Fees) Regulations (Northern Ireland) 1990 (as in operation on that date).”.

In Article 128(4)(a), (6)(b) and (7)(b) and Article 136(5) for “an approved” substitute “a”.

In Article 128(5) and (11), Article 133(3) and Article 136(1) and (3) the word “approved” shall cease to have effect.

In Article 137(5)(a) after “school hours” insert “, terms and holidays”.

In Article 138(1)(c) the words in brackets shall cease to have effect.

*Status: This is the original version (as it was originally made).*

In Article 140 after “school premises” insert “(including, without prejudice to the generality of the foregoing words, any powers under Article 62 or under Article 32 of the Education and Libraries (Northern Ireland) Order 1993)”.

In Article 146(7) for “that Order” substitute “the principal Order”.

In Schedule 4 in paragraph 7(2) after “required” insert “or authorised”.

In Schedule 4 in paragraph 7(4) for “in respect of the dismissal, or premature retirement, or for the purpose of securing the resignation,” substitute “in giving effect to any determination under subparagraph (1) in respect”.

In Schedule 7 in paragraphs 1(b) and 2 for “Technician” substitute “Technology”.

In Schedule 8 in paragraph 7(1)(a) for the words from “otherwise” to the end substitute “otherwise than as a teacher;”.

*The Education (Students Loans) (Northern Ireland) Order 1990 (NI 11)*

In Schedule 1 in paragraph 4(a) for “Technician” substitute “Technology”.

*The Planning (Northern Ireland) Order 1991 (NI 11)*

In Article 26(2) in the definition of “educational institution” in paragraph (d) for “Article 27 of that Order” substitute “Article 100 of the Education Reform (Northern Ireland) Order 1989”.

SCHEDULE 5

Article 50(2).

REPEALS

Number	Short Title	Extent of Repeal
1986 NI 3.	The Education and Libraries (Northern Ireland) Order 1986.	<p>In Article 2(2) the definition of “supply teacher”.</p> <p>In Article 6(4) the words “with the approval of the Department and”.</p> <p>Article 9A(7).</p> <p>In Article 15(3) the words from “but this paragraph” to the end.</p> <p>Article 23(2).</p> <p>In Article 52(1) and (3) the words “or the University of Ulster”.</p> <p>In Article 55(1)(b) the words “at the University of Ulster or” and “University or”.</p>



Number	Short Title	Extent of Repeal
		In Article 63(3) the definition of “autumn term”.
		In Article 65(2), sub-paragraph (b) and the word “or” immediately preceding it.
		In Article 65(4) the words “and supply”.
		Article 69A(2)(a)(iii) and (3).
		In Article 70, paragraph (1) (b) and the word “and” immediately preceding it, paragraph (3) and paragraph (4)(d) and the word “and” immediately preceding it.
		Article 72(4).
		Article 101(3)(c).
		In Article 113(1) the words “under the Education Orders”.
		In Schedule 2, paragraph 13(2) and (3).
		In Schedule 19, paragraph 6.
1988 c. 48.	The Copyright, Designs and Patents Act 1988.	In Schedule 7, paragraph 34.
1989 NI 20.	The Education Reform (Northern Ireland) Order 1989.	Article 18 and the cross-heading immediately preceding it.
		Article 20.
		In Article 21(2)(a), (b) and (c) the words “and approved by the Department under Article 9”.
		Article 21(3).
		Article 23.
		Article 24(3)(a) and (4).
		Articles 27 and 28.

**Status:** This is the original version (as it was originally made).

Number	Short Title	Extent of Repeal
		In Article 33(1)(a) the word “or” at the end of head (ii).
		Article 33(2).
		Article 35(3).
		Article 45(3)(a).
		Article 59(2).
		In Article 59(3), sub-paragraph (b) and the word “or” immediately preceding it.
		Article 59(4).
		Article 68(2)(c).
		In Article 77(11), the words in brackets
		Article 90(2)(c).
		Article 103(9)(a).
		Article 124(2).
		Article 125(5).
		Article 126(6).
		In Article 128(5) and (11) the word “approved”.
		In Article 133(3) the word “approved”.
		In Article 136(1) and (3) the word “approved”.
		In Article 138(1)(c) the words in brackets.
		Article 138(3)(a).
		In Article 141(5)(a) the words “, or paragraph 1(3)(b) of Schedule 5 to, ”.
		Article 143(1)(b) and (2).

Number	Short Title	Extent of Repeal
		Article 146(3), (5) and (6).
		Article 148(1)(d).
		In Article 148(5) the words “, persons approved by the Department under Article 11(8)”.
		Article 149(2)(b).
		Article 150(3) and (4).
		Article 151(3)(c).
		In Article 151(5) in sub-paragraph (b) the words “(including supply teachers)” and sub-paragraph (f).
		Article 153(1)(c).
		Article 154.
		In Article 163 the word “27, ”.
		In Article 164(2) the words “27(1) or (2),”.
		Article 165(1), (2) and (5).
		In Schedule 2, “(A)” where it occurs after any entry in column 2, 3 or 4 and the Note at the end of the Schedule.
		In Schedule 3, paragraph 1 and the cross-heading immediately preceding it.
		In Schedule 9 the amendment to the Planning (Northern Ireland) Order 1972 and the amendments to the definitions of “supply teacher” and “managers” in Article 2(2) of the 1986 Order and to Articles 11, 12, 18, 21(3), 23(2), 49, 63(2), 113(1) and 116(1) of, and Schedules 5 and 6 to, that Order.

## EXPLANATORY NOTE

*(This note is not part of the Order)*

Part II secures that education and library boards undertake certain activities only if they can do so competitively. Part III regulates certain functions of such boards in connection with public supply or works contracts. Part IV provides for the amalgamation of institutions of further education and the funding by the Department of higher education and contains miscellaneous amendments to the Education and Libraries (Northern Ireland) Order 1986 and the Education Reform (Northern Ireland) Order 1989. The principal amendments concern—

- (a) capital grants to, and management of, maintained schools and voluntary grammar schools;
- (b) the funding of premature retirement compensation costs of teachers and other persons;
- (c) the establishment and functions of the Northern Ireland Council for the Curriculum, Examinations and Assessment;
- (d) appeals concerning expulsion;
- (e) the curriculum in key stage 4.