
STATUTORY INSTRUMENTS

1996 No. 274

The Education (Northern Ireland) Order 1996

PART II

CHILDREN WITH SPECIAL EDUCATIONAL NEEDS

Introductory

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

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

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

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

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

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

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

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

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

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

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

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

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Code of practice

Code of practice

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

(2) It shall be the duty of—

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

to have regard to the provisions of the code.

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

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

Making and amendment of code

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

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

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

Special educational provision: general

Review of arrangements

6.—(1) A board shall—

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

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

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

[^{F1}Duty to educate children with special educational needs in ordinary schools

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

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

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

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

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Education otherwise than in ordinary schools

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

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

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

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

(3) If a board decides—

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

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

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

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

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

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

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

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

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

- (a) use its best endeavours, in exercising its functions in relation to the school, to secure that if any [^{F2}pupil attending the school] has special educational needs the special educational provision which his learning difficulty calls for is made,
- (b) secure that, where a [^{F2}pupil attending the school] has special educational needs, those needs are made known to all who are likely to teach him, and
- (c) secure that the teachers in the school are aware of the importance of identifying, and providing for, those [^{F3}pupils attending the school] who have special educational needs.

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

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

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

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

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

(4) This paragraph applies to a pupil if—

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

- F2** Words in art. 8(1)(a)(b) substituted (23.3.2007) by Education (Northern Ireland) Order 2006 (S.I. 2006/1915 (N.I. 11)), arts. 1(4)(c), 44(1), **Sch. 2 para. 35(a)**; S.R. 2007/197, **art. 2(a)**
- F3** Words in art. 8(1)(c) substituted (23.3.2007) by Education (Northern Ireland) Order 2006 (S.I. 2006/1915 (N.I. 11)), arts. 1(4)(c), 44(1), **Sch. 2 para. 35(b)**; S.R. 2007/197, **art. 2(a)**

[^{F4}Duty to inform parent where special educational provision made

8A. If—

- (a) a child for whom no statement is maintained under Article 16 is a registered pupil at an ordinary grant-aided school;

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- (b) special educational provision is made for him [^{F5}(whether at the school or elsewhere in pursuance of arrangements under Article 21 of the Education (Northern Ireland) Order 2006)] because it is considered that he has special educational needs; and
- (c) his parent has not previously been informed under this Article of special educational provision made for him ^{F6} . . . ,

the Board of Governors of the school shall inform the child's parent that special educational provision is being made for him ^{F6} . . . because it is considered that he has special educational needs.]

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F5 Words in art. 8A(b) substituted (23.3.2007) by Education (Northern Ireland) Order 2006 (S.I. 2006/1915 (N.I. 11)), arts. 1(4)(c), 44(1), **Sch. 2 para. 36(a)**; S.R. 2007/197, **art. 2(a)**

F6 Words in art. 8A repealed (23.3.2007) by Education (Northern Ireland) Order 2006 (S.I. 2006/1915 (N.I. 11)), arts. 1(4)(c)(d), 44, **Sch. 2 para. 36(b)**, **Sch. 3 Pt. III**; S.R. 2007/197, **art. 2**, **Sch.**

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

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

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

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

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

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

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

Special educational provision otherwise than in a grant-aided school

Special educational provision otherwise than in a grant-aided school

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

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

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

- (a) the interests of the child require such arrangements to be made; and

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- (b) those arrangements are compatible with the efficient use of resources.
- (3) Before making any arrangements under this Article, a board shall consult the child's parent.
- (4) This Article is without prejudice to any other powers of a board.

Special educational provision in institutions outside Northern Ireland

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

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

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

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

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

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

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

[^{F7}(1A) But that does not apply to a board deciding, for the purposes of Article 16(5), whether a parent has made suitable arrangements.]

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

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

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

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

- (d) provide equipment and services to the institution.

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Identification and assessment of children with special educational needs

General duty of board towards children for whom it is responsible

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

(2) This paragraph applies to a child if—

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

(3) For the purposes of this Part a board is responsible for a child if he is in the area of the board and—

- (a) he is a registered pupil at a grant-aided school, or
- (b) he has attained the age of two years, is not over compulsory school age and has been brought to the attention of the board as having, or probably having, special educational needs.

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

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

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

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

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

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

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

(5) Regulations may provide that, where a health and social services authority is under a duty by virtue of paragraph (4) to comply with a request to help a board in the making of an assessment

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under Article 15 or a statement under Article 16, it must, subject to prescribed exceptions, comply with the request within the prescribed period.

- (6) In this Article “health and social services authority” means—
- (a) a health and social services board; or
 - (b) a Health and Social Services trust established under the Health and Personal Social Services (Northern Ireland) Order 1991.

Assessment of educational needs

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

- (a) that the board^{F8} is considering whether] to make an assessment of the child's educational needs,
 - (b) of the procedure to be followed in making the assessment,
 - (c) of the name of the officer of the board from whom further information may be obtained, and
 - (d) of the parent's right to make representations, and submit written evidence, to the board within such period (which shall not be less than twenty-nine days beginning with the date on which the notice is served) as may be specified in the notice.
- (2) A child falls within this paragraph if—
- (a) he has special educational needs, and
 - (b) it is necessary for the board to determine the special educational provision which any learning difficulty he may have calls for.
- (3) Where—
- (a) a board has served a notice under paragraph (1) and the period specified in the notice in accordance with paragraph (1)(d) has expired, and
 - (b) the board remains of the opinion, after taking into account any representations made and any evidence submitted to it in response to the notice, that the child falls, or probably falls, within paragraph (2),

the board shall make an assessment of his educational needs.

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

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

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

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Statement of special educational needs

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

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- (2) The statement shall be in such form and contain such information as may be prescribed.
- (3) In particular, the statement shall—
 - (a) give details of the board's assessment of the child's special educational needs, and
 - (b) specify the special educational provision to be made for the purpose of meeting those needs, including the particulars required by paragraph (4).
- (4) The statement shall—
 - (a) specify the type of school or other institution which the board considers would be appropriate for the child,
 - (b) if the board is not required under Schedule 2 to specify the name of any grant-aided school in the statement, specify the name of any school or institution (whether in Northern Ireland or elsewhere) which it considers would be appropriate for the child and should be specified in the statement, and
 - (c) indicate any provision for the child for which it makes arrangements under Article 10(1)
 - (b) otherwise than in a school or institution and which it considers should be indicated in the statement.

[^{F9}(4A) Paragraph (4)(b) does not require the name of a school or institution to be specified if the child's parent has made suitable arrangements for the special educational provision specified in the statement to be made for the child.]

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

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

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

F9 2005 NI 6

Appeal against decision not to make statement

17.—(1) If, after making an assessment under Article 15 of the educational needs of any child for whom no statement is maintained under Article 16, the board does not propose to make such a statement, it shall give notice in writing of its decision, of the reasons for making it^{F10}. . . to the child's parent.

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

[^{F10}(2A) A notice under paragraph (1) shall inform the parent of the right of appeal under paragraph (2) and contain such other information as may be prescribed.

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

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

F10 2005 NI 6

Appeal against contents of statement

18.—^{F11}(1) The parent of a child for whom a board maintains a statement under Article 16 may appeal to the Tribunal—

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

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

- (a) the description in the statement of the board's assessment of the child's special educational needs,
- (b) the special educational provision specified in the statement (including the name of a school so specified),
- (c) if no school is specified in the statement, that fact.

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

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

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

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

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

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

- (a) the parent has expressed a preference for the school in pursuance of arrangements under^{F11} paragraph 5] of Schedule 2, or
- (b) in the proceedings the parent, the board or both have proposed the school.

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

F11 2005 NI 6

[^{F12}Unopposed appeals

18A.—(1) This Article applies if—

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

(2) The appeal is to be treated as having been determined in favour of the appellant.

(3) If an appeal is treated as determined in favour of the appellant as a result of paragraph (2), the Tribunal is not required to make any order.

(4) Before the end of the prescribed period, the board shall—

- (a) in the case of an appeal under Article 17, make a statement under Article 16 of the child's educational needs,
- (b) in the case of an appeal under Article 20 or 20A, make an assessment of the child's educational needs,
- (c) in the case of an appeal under paragraph 11(3) of Schedule 2 against a determination of the board not to comply with the parent's request, comply with the request.

(5) A board required by paragraph (4)(a) to make a statement under Article 16 shall maintain the statement under that Article.]

F12 2005 NI 6

Reviews of statements

19.—(1) A statement under Article 16 shall be reviewed by the board—

- (a) on the making of an assessment in respect of the child concerned under Article 15, and
- (b) in any event, within the period of twelve months beginning with the making of the statement or, as the case may be, with the previous review.

(2) Regulations may make provision—

- (a) as to the manner in which reviews of such statements are to be conducted,
- (b) as to the participation in such reviews of such persons as may be prescribed, and
- (c) in connection with such other matters relating to such reviews as the Department considers appropriate.

Assessment of educational needs at request of child's parent

20.—(1) Where—

- (a) the parent of a child for whom a board is responsible asks the board to arrange for an assessment to be made in respect of the child under Article 15,
- (b) such an assessment has not been made within the period of six months ending with the date on which the request is made, and

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(c) it is necessary for the board to make an assessment under that Article, the board shall comply with that request.

(2) Paragraph (1) applies whether or not the board is maintaining a statement under Article 16 for the child.

(3) If in any case where paragraph (1)(a) and (b) applies the board decides not to comply with the request—

(a) it shall give^[F13] notice in writing of that decision and of the reasons for making it to the parent of the child], and

(b) the parent may appeal to the Tribunal against the decision.

^[F13](3A) A notice under paragraph (3)(a) shall inform the parent of the right of appeal under paragraph (3)(b) and contain such other information as may be prescribed.]

(4) On an appeal under paragraph (3) the Tribunal may—

(a) dismiss the appeal, or

(b) order the board to arrange for an assessment to be made in respect of the child under Article 15.

F13 2005 NI 6

^[F14]**Review or assessment of educational needs at request of responsible body**

20A.—(1) This Article applies if—

(a) a child is a registered pupil at a school (whether or not he is a child in respect of whom a statement is maintained under Article 16),

(b) the responsible body asks the board to arrange for an assessment to be made in respect of him under Article 15, and

(c) such an assessment has not been made within the period of six months ending with the date on which the request is made.

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

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

(a) that it is considering whether to make an assessment of the child's educational needs,

(b) of the procedure to be followed in making the assessment,

(c) of the name of an officer of the board from whom further information may be obtained, and

(d) of the parent's right to make representations, and submit written evidence, to the board before the end of the period specified in the notice (“the specified period”).

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

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

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

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

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

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

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

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

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

- (a) dismiss it, or
- (b) order the board to arrange for an assessment to be made in respect of the child under Article 15.

(11) In this Article “the responsible body” means—

- (a) in relation to a grant-aided school, the Board of Governors,
- (b) in relation to an independent school, the proprietor.]

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Assessment of educational needs of children under two

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

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

(2) A child falls within this paragraph if—

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

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

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

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

in such manner as it considers appropriate.

[^{F15}General duties of boards]

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Status: Point in time view as at 12/04/2010.

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[^{F16}Advice and information for parents

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

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

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

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

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[^{F17}Resolution of disputes

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

(2) A board shall also make arrangements with a view to avoiding or resolving, in each relevant school, disagreements between the parents of a child who is a [^{F18}pupil attending] the school and has special educational needs and the Board of Governors or proprietor of the school about the special educational provision made for that child.

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

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

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

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

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

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

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

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F18 Words in [art. 21B\(2\)](#) substituted (23.3.2007) by [Education \(Northern Ireland\) Order 2006 \(S.I. 2006/1915 \(N.I. 11\)\)](#), [arts. 1\(4\)\(c\), 44\(1\)](#), [Sch. 2 para. 37](#); [S.R. 2007/197](#), [art. 2\(a\)](#)

Special Educational Needs Tribunal for Northern Ireland

Constitution of Tribunal

22.—^{F19}(1) The Special Educational Needs and Disability Tribunal for Northern Ireland (referred to in this Part as “the Tribunal”) shall exercise the jurisdiction conferred on it by this Part.]

(2) There shall be—

- (a) a President of the Tribunal appointed by the^{F20}[^{F21}Northern Ireland Judicial Appointments Commission];
- (b) a panel appointed by the^{F22}[^{F21}Northern Ireland Judicial Appointments Commission] of persons who may serve as chairman of the Tribunal; and
- (c) a panel appointed by the Department of persons who may serve as the other two members of the Tribunal apart from the chairman.

(3) No person may be appointed—

- (a) President or member of the panel mentioned in paragraph (2)(b) unless he possesses such legal qualifications as the^{F23}[^{F24}[^{F25}Department of Justice]] considers suitable^{F26} after consultation with the Lord Chief Justice];
- (b) member of the panel mentioned in paragraph (2)(c) unless he satisfies such requirements as may be prescribed.

^{F27}(3A) The Lord Chief Justice may nominate any of the following to exercise his functions under paragraph (3)—

- (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;
- (b) a Lord Justice of Appeal (as defined in section 88 of that Act).]

(4) The President—

- (a) ^{F28}.....
- (b) may resign office by notice in writing to the^{F29}[^{F30}Northern Ireland Judicial Appointments Commission]; and
- (c) is eligible for re-appointment if he ceases to hold office.

(5) A person appointed member of either panel shall hold office subject to such conditions as to the period of his appointment and otherwise as may be determined by the ^{F31}. . . body appointing him, but may resign office by notice in writing to that ^{F31}. . . body.

^{F32}(5A) For an appointment under paragraph (2)(b), the conditions mentioned in paragraph (5) are to be determined with the agreement of the [^{F33}Department of Justice].]

(6) The Department may—

- (a) pay to the President, and to any other person in respect of his service as a member of the Tribunal, such remuneration and expenses as it may, with the approval of the Department of Finance and Personnel, determine;
- (b) defray the expenses of the Tribunal to such amount as the Department may, with the approval of the Department of Finance and Personnel, determine;
- (c) provide for the Tribunal such staff and accommodation as the Tribunal may require.

(7) The jurisdiction of the Tribunal shall be exercised by such number of tribunals as may be determined from time to time by the President.

Status: Point in time view as at 12/04/2010.

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- F19** 2005 NI 6
- F20** Words in art. 22(2) substituted (prosp.) by Justice (Northern Ireland) Act 2002 (c. 26), ss. 5, 87(1), **Sch. 3 para. 37(2)(a)** (This amendment does not come into operation before the said amending Sch. 3 is subsequently substituted (12.4.2010) by the Northern Ireland Act 2009 (c. 3), **Sch. 3 para. 13**; S.I. 2010/812, **art. 2**. This new Sch. 3 of the Justice (Northern Ireland) Act 2002 (c. 26) does not amend other legislation, therefore this amendment never comes into operation.)
- F21** Words in art. 22(2)(a)(b) substituted (12.4.2010) by Northern Ireland Act 2009 (c. 3), ss. 2(3), 5(7)(a), **Sch. 4 para. 26(2)** (with Sch. 5 para. 16); S.I. 2010/812, **art. 2**
- F22** Words in art. 22(2) substituted (prosp.) by Justice (Northern Ireland) Act 2002 (c. 26), ss. 5, 87(1), **Sch. 3 para. 37(2)(b)** (This amendment does not come into operation before the said amending Sch. 3 is subsequently substituted (12.4.2010) by the Northern Ireland Act 2009 (c. 3), **Sch. 3 para. 13**; S.I. 2010/812, **art. 2**. This new Sch. 3 of the Justice (Northern Ireland) Act 2002 (c. 26) does not amend other legislation, therefore this amendment never comes into operation.)
- F23** Words in art. 22(3)(a) substituted (prosp.) by Justice (Northern Ireland) Act 2002 (c. 26), ss. 5, 87(1), **Sch. 3 para. 37(3)** (This amendment does not come into operation before the said amending Sch. 3 is subsequently substituted (12.4.2010) by the Northern Ireland Act 2009 (c. 3), **Sch. 3 para. 13**; S.I. 2010/812, **art. 2**. This new Sch. 3 of the Justice (Northern Ireland) Act 2002 (c. 26) does not amend other legislation, therefore this amendment never comes into operation.)
- F24** Words in art. 22(3)(a) substituted (12.4.2010) by Northern Ireland Act 2009 (c. 3), ss. 2(3), 5(7)(a), **Sch. 4 para. 26(3)** (with Sch. 5 para. 16); S.I. 2010/812, **art. 2** (The exact substituted words of this amendment are superceded at (12.4.2010) by the substitution of words by Department of Justice Act (Northern Ireland) 2010 (c. 3), ss. 1(5), 3(2), **Sch. para. 10**; S.R. 2010/147, **art. 2(2)**)
- F25** Words in art. 22(3)(a) substituted (12.4.2010) by Department of Justice Act (Northern Ireland) 2010 (c. 3), ss. 1(5), 3(2), **Sch. para. 10**; S.R. 2010/147, **art. 2(2)**
- F26** Words in art. 22(3)(a) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(2), 148(1), Sch. 5 para. 102(2); S.I. 2006/1014, **art. 2(a)**, Sch. 1 paras. 10, 12(b)
- F27** Art. 22(3A) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(2), 148(1), Sch. 5 para. 102(3); S.I. 2006/1014, **art. 2(a)**, Sch. 1 paras. 10, 12(b)
- F28** Art. 22(4)(a) repealed (3.4.2006) by Justice (Northern Ireland) Act 2002 (c. 26), ss. 86, 87(1), Sch. 13; S.R. 2006/124, **art. 2**, Sch. paras. 9, 11(j)
- F29** Words in art. 22(4)(b) substituted (prosp.) by Justice (Northern Ireland) Act 2002 (c. 26), ss. 5, 87(1), **Sch. 3 para. 37(4)** (This amendment does not come into operation before the said amending Sch. 3 is subsequently substituted (12.4.2010) by the Northern Ireland Act 2009 (c. 3), **Sch. 3 para. 13**; S.I. 2010/812, **art. 2**. This new Sch. 3 of the Justice (Northern Ireland) Act 2002 (c. 26) does not amend other legislation, therefore this amendment never comes into operation.)
- F30** Words in art. 22(4)(b) substituted (12.4.2010) by Northern Ireland Act 2009 (c. 3), ss. 2(3), 5(7)(a), **Sch. 4 para. 26(2)** (with Sch. 5 para. 16); S.I. 2010/812, **art. 2**
- F31** Words in art. 22(5) omitted (12.4.2010) by virtue of Northern Ireland Act 2009 (c. 3), ss. 2(3), 5(7)(a), **Sch. 4 para. 26(4)** (with Sch. 5 para. 16); S.I. 2010/812, **art. 2**
- F32** Art. 22(5A) inserted (12.4.2010) by Northern Ireland Act 2009 (c. 3), ss. 2(3), 5(7)(a), **Sch. 4 para. 26(5)** (with Sch. 5 para. 16); S.I. 2010/812, **art. 2**
- F33** Words in art. 22(5A) substituted (12.4.2010) by Department of Justice Act (Northern Ireland) 2010 (c. 3), ss. 1(5), 3(2), **Sch. para. 10**; S.R. 2010/147, **art. 2(2)**

Modifications etc. (not altering text)

- C1** Art. 22(2)(c) functions transferred from Department of Education to Department of Justice (1.4.2011) by Departments (Transfer of Functions) Order (Northern Ireland) 2011 (S.R. 2011/44), arts. 1(2), **3** (with art. 8(2))
- C2** Art. 22(3)(b) functions transferred from Department of Education to Department of Justice (1.4.2011) by Departments (Transfer of Functions) Order (Northern Ireland) 2011 (S.R. 2011/44), arts. 1(2), **3** (with art. 8(2))

C3 Art. 22(6) functions transferred from Department of Education to Department of Justice (1.4.2011) by Departments (Transfer of Functions) Order (Northern Ireland) 2011 (S.R. 2011/44), arts. 1(2), 3 (with art. 8(2))

Tribunal procedure

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

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

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

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

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

[^{F34}(2A) Proceeding before the Tribunal shall be held in private, except in prescribed circumstances.]

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

[^{F34}(4) Part I of the Arbitration Act 1996 shall not apply to any proceedings before the Tribunal, but regulations may make provision corresponding to any provision of that Part.]

[^{F34}(4A) The regulations may make provision for an appeal under this Part to be heard, in prescribed circumstances, with a claim under Chapter I of Part III of the Special Educational Needs and Disability (Northern Ireland) Order 2004.]

(5) Any person who without reasonable excuse fails to comply with—

- (a) any requirement in respect of the discovery or inspection of documents imposed by the regulations by virtue of paragraph (2)(g), or
- (b) any requirement imposed by the regulations by virtue of paragraph (2)(h),

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is guilty of an offence.

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

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Modifications etc. (not altering text)

C4 Art. 23 functions transferred from Department of Education to Department of Justice (1.4.2011) by Departments (Transfer of Functions) Order (Northern Ireland) 2011 (S.R. 2011/44), arts. 1(2), 3 (with art. 8(2))

[^{F35}**Compliance with orders**

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

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Appeals from Tribunal

24. [^{F36}Where a party to an appeal to the Tribunal is dissatisfied in point of law with a decision of the Tribunal, that party] may, according as rules of court may provide, either appeal therefrom to the High Court or require the Tribunal to state and sign a case for the opinion of the High Court.

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Special schools and other institutions

Religious education in special schools

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

(2) Accordingly—

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

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

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

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

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

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

School attendance orders

School attendance orders

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

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

(2) If—

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

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

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

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

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

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

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

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

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

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

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- (a) informing him of its intention to serve the order,
- (b) specifying the school which the board intends to name in the order and, if it thinks fit, one or more other schools which it regards as suitable alternatives, and
- (c) stating the effect of sub-paragraphs (4) and (5).

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

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

- (5) If before the expiration of the period mentioned in sub-paragraph (4) the parent—
 - (a) applies for the child to be admitted to a school other than the school or schools specified in the notice; and
 - (b) notifies the board accordingly,

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

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

- (a) the parent applies for the child to be admitted to a school other than the school named in the order; and
- (b) as a result of the application the child is offered a place at a school,

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

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

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

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

- (3) Where the statement does not specify the name of a school—
 - (a) the board shall, in accordance with paragraph 10 of Schedule 2 to the Education (Northern Ireland) Order 1996, amend the statement so that it specifies the name of a school, and
 - (b) that school shall then be named in the order.

- (4) Where—
 - (a) a school attendance order is in force in respect of a child for whom the board maintains a statement under Article 16 of the Education (Northern Ireland) Order 1996, and
 - (b) the name of the school specified in the statement differs (for whatever reason) from that specified in the order,

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

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

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

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

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

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

- (a) sub-paragraphs (2) to (4) do not apply if the name of a school is specified in the statement, and
- (b) in any other case a direction under sub-paragraph (4) may require the board to make such amendments in the statement as the Department considers necessary or expedient in consequence of its determination.”.

Supplementary

Regulations and orders

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

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

Status:

Point in time view as at 12/04/2010.

Changes to legislation:

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