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STATUTORY INSTRUMENTS

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**1996 No. 274**

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

**PART III**

**MISCELLANEOUS**

**Withdrawal of school from maintained status**

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

- (a) in Article 11(2) the words from “and may be withdrawn” to the end;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

**Independent schools**

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

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

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

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

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

(b) after paragraph (7) there shall be added—

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

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

(b) may provide that all matters relating to the procedure on appeals which are not specifically regulated by the regulations shall be determined by the tribunal.

(9) The Department may—

- (a) pay to members of the Independent Schools Tribunal such remuneration and expenses as it may, with the approval of the Department of Finance and Personnel, determine;
- (b) defray the expenses of the tribunal to such amount as the Department may, with the approval of the Department of Finance and Personnel, determine;
- (c) provide for the tribunal such staff and accommodation as the tribunal may require.”.

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

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

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

(3) At the end there shall be added—

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

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

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

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

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

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

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

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

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

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

- (c) specify the matters or descriptions of matters which are, or are not, to be taken into account by a Board of Governors in forming an opinion for the purposes of paragraph (2) or (3);
  - (d) specify the administrative procedures to be followed by a Board of Governors in exercising its functions under this Article; and
  - (e) prohibit the delegation by the Board of Governors (notwithstanding anything in the scheme of management of the school) of such functions under this Article as are specified in the guidance.
- (7) The Department shall issue such guidance as it thinks fit as to—
- (a) the exercise by a board of its functions under paragraph (4); and
  - (b) the giving by a board of advice for the purposes of paragraph (6)(b).
- (8) The Department shall publish the guidance issued by it under paragraphs (6) and (7) in such manner as it thinks fit.
- (9) In this Article—
- “appropriate Board of Governors”, in relation to a child, means the Board of Governors of the school at which the child is a registered pupil;
- “normal date of commencement”, in relation to a child, means the date on which, but for any provision made under paragraph (2), (3) or (4), the child would commence secondary education;
- “relevant board”, in relation to the Board of Governors of a school, means—
- (a) in the case of a controlled school, the board by which the school is managed;
  - (b) in the case of a maintained school, the board by which the school is maintained; and
  - (c) in the case of any other school, the board for the area in which the school is situated.
- (10) This Article does not apply in relation to—
- (a) children in respect of whom statements are maintained under Article 16 of the Education (Northern Ireland) Order 1996; or
  - (b) children in independent schools.”.

### **Corporal punishment**

**32.**—(1) Article 49A of the 1986 Order (corporal punishment) shall be amended as follows.

(2) In paragraph (1) after the word “pupil” there shall be inserted the words “to whom this paragraph applies”.

(3) After paragraph (1) there shall be inserted—

“(1A) Where, in any proceedings, it is shown that corporal punishment has been given to a pupil by or on the authority of a member of the staff, giving the punishment cannot be justified if the punishment was inhuman or degrading.

(1B) In determining whether punishment is inhuman or degrading regard shall be had to all the circumstances of the case, including the reason for giving it, how soon after the event it is given, its nature, the manner and circumstances in which it is given, the persons involved and its mental and physical effects.”.

(4) For paragraph (5) there shall be substituted—

“(5) In this Article “pupil” does not include any person who has attained the age of 18 years.

- (5A) Paragraph (1) applies to a pupil for whom education—
  - (a) is provided at a grant-aided school; or
  - (b) is secured, otherwise than at such a school, by a board.”.

### **School inspections**

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **Lay persons**

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

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

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

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

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

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

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

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

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

### **Key stages**

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

“(6) For the purpose of this Part the key stages in relation to a pupil are as follows—

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

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

**Compulsory contributory subjects in key stage 4**

**35.**—(1) For Schedule 2 to the 1989 Order (compulsory contributory subjects) there shall be substituted the Schedule set out in Schedule 3 to this Order.

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

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

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

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

(4) In Article 9(1A) of the 1989 Order for the words “attainment targets and programmes of study” there shall be substituted the words “programmes of study”.

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

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

“Home Economics  
Economics  
Social and Environmental Studies”.

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

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

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

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

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

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

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

“to—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Publication and distribution of information with respect to institutions of further education**

**38.** In Article 105 of the 1989 Order (publication of information with respect to institutions of further education)—

(a) in paragraph (6)(a) for head (ii) there shall be substituted—

“(ii) the educational achievements of students on entry to the institution and the educational achievements of students while at the institution (including in each case the results of examinations, tests and other assessments of those students);

(iii) the resources of the institution (including the sums put at the disposal of its governing body under Article 109(2) of the 1989 Order) and the effectiveness of the use made of such resources; and

(iv) the careers of students of the institution after completing any course or leaving the institution; and”;

(b) after paragraph (6) there shall be inserted—

“(6A) For the purposes of paragraph (6)(a)(iv), a person’s career includes any education, training, employment or occupation; and the regulations may in particular require the published information to show—

(a) the numbers of students not undertaking any career, and

(b) the persons providing students with education, training or employment.”;

(c) after paragraph (7) there shall be added—

“(8) The published information shall not name any student to whom it relates.

(9) The Department may by regulations require the Board of Governors of any secondary school to provide such persons as may be prescribed with such categories of information falling within paragraph (10) as may be prescribed.

(10) Information falls within this paragraph if it is—

(a) published under paragraph (6)(a); and

(b) made available to Boards of Governors for distribution.

(11) Information provided under paragraph (9) shall be provided in such form and in such manner as may be prescribed.”.

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

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

(a) any premises (“the relevant premises”) of a voluntary school—

(i) cease to be used for approved purposes of the school; and

(ii) are disposed of by the trustees of the school; and

(b) no provision is made by any trust deed executed in relation to the relevant premises for the application of the residual proceeds of the disposal of those premises.

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



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

(4) In paragraph (2) “residual proceeds of the disposal of the relevant premises” means the amount of the proceeds of the disposal of the relevant premises less the amount of any liabilities or expenses of the trustees arising in respect of, or in connection with, the relevant premises or the disposal thereof, including in particular (but without prejudice to the generality of the foregoing)—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

together with the signature of any other member.

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

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

### **Incorporation of governing bodies of institutions of further education**

**41.**—(1) A governing body constituted in pursuance of Part VII of the 1989 Order on or after the appointed day shall be constituted as a body corporate.

(2) A governing body so constituted before that day shall, as constituted on that day, become on that day a body corporate.

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

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

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

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

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

(6) A governing body incorporated by virtue of this Article shall be known as “The governing body of ... ..” with the addition of the name of the institution of further education.

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

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

together with the signature of any other member.

(8) A governing body incorporated under this Article is dissolved by virtue of this paragraph—

- (a) if the institution of further education ceases to exist by virtue of Article 27(3)(b) of the Education and Libraries (Northern Ireland) Order 1993 (amalgamation with other institution); or
- (b) if the institution of further education is discontinued for any other reason.

(9) Where the governing body of an institution of further education is dissolved under paragraph (8)(b) all property, rights and liabilities of the governing body held or subsisting immediately before the date of dissolution shall on that date be transferred to, and by virtue of this paragraph vest in, the board responsible for the management of the institution.

(10) Where personal data are transferred under paragraph (3) to a governing body incorporated by virtue of this Article—

- (a) any entry made in respect of the governing body constituted immediately before the appointed day as a data user in the register maintained under section 4 of the Data Protection Act 1984, or
- (b) any application for registration as a data user made by that body under section 6 of that Act,

shall have effect as if it were made in respect of or, as the case may be, by the governing body so incorporated.

Expressions used in this paragraph and in that Act shall have the same meaning in this paragraph as in that Act.

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

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

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

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

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

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

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

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

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

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

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

(7) In this Article—

“school” does not include a special school;

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