

SCHEDULES

SCHEDULE 1

Article 15.

MAKING OF ASSESSMENTS UNDER ARTICLE 15

Introductory

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

Medical and other advice

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

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

Manner, and timing, of assessments, etc.

3.—(1) Regulations may make provision—

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

(2) Sub-paragraph (1)(b) does not apply to a determination made following the service of notice under^{F1} paragraph 3 of Schedule 2 of a proposal to amend the statement.

[
^{F2}(3) Regulations may provide—

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

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

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

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F1 2005 NI 6
F2 2005 NI 6

Attendance at examinations

4.—(1) Where a board^{F3} is considering whether to make an assessment, it may serve a notice on the parent of the child concerned requiring the child's attendance for examination in accordance with the provisions of the notice.

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

(3) A notice under this paragraph shall—

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

F3 2005 NI 6

Offence

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

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

^{F4}SCHEDULE 2

MAKING AND MAINTENANCE OF STATEMENTS UNDER ARTICLE 16

F4 2005 NI 6

Introductory

1. In this Schedule—

- “amendment notice” has the meaning given in paragraph 3,
- “statement” means a statement of a child's special educational needs under Article 16,
- “periodic review” means a review conducted in accordance with Article 19(1)(b), and
- “re-assessment review” means a review conducted in accordance with Article 19(1)(a).

Copy of proposed statement

2.—(1) Before making a statement, a board shall serve on the parent of the child concerned a copy of the proposed statement.

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- (2) The copy of the proposed statement shall not specify—
- (a) any prescribed matter,
 - (b) any matter in pursuance of Article 16(4).

Amendments to a statement

- 3.—(1) A board shall not amend a statement except—
- (a) in compliance with an order of the Tribunal,
 - (b) as directed by the Department under paragraph 2(4) of Schedule 13 to the Education and Libraries (Northern Ireland) Order 1986 (NI 3), or
 - (c) in accordance with the procedure laid down in this Schedule.
- (2) If, following a re-assessment review, a board proposes to amend a statement, it shall serve on the parent of the child concerned a copy of the proposed amended statement.
- (3) The copy of the proposed amended statement shall not specify—
- (a) any prescribed matter,
 - (b) any matter in pursuance of Article 16(4).
- (4) If, following a periodic review, a board proposes to amend a statement, it shall serve on the parent of the child concerned—
- (a) a copy of the existing statement, and
 - (b) an amendment notice.
- (5) If, at any other time, a board proposes to amend a statement, it shall proceed as if the proposed amendment were an amendment proposed after a periodic review.
- (6) An amendment notice is a notice in writing giving details of the amendments to the statement proposed by the board.

Provision of additional information

- 4.—(1) Sub-paragraph (2) applies when a board serves on a parent—
- (a) a copy of a proposed statement under paragraph 2,
 - (b) a copy of a proposed amended statement under paragraph 3, or
 - (c) an amendment notice under paragraph 3.
- (2) The board shall also serve on the parent a written notice explaining (to the extent that they are applicable)—
- (a) the arrangements under paragraph 5,
 - (b) the effect of paragraph 6, and
 - (c) the right to appeal under Article 18.
- (3) A notice under sub-paragraph (2) shall contain such other information as may be prescribed.

Preference as to school

- 5.—(1) Every board shall make arrangements for enabling a parent—
- (a) on whom a copy of a proposed statement has been served under paragraph 2,
 - (b) on whom a copy of a proposed amended statement has been served under paragraph 3, or
 - (c) on whom an amendment notice has been served under paragraph 3 which contains a proposed amendment about—

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- (i) the type or name of a school or institution, or
- (ii) the provision made for the child concerned otherwise than in a school or institution under arrangements made under Article 10(1)(b),

to be specified in the statement,

to express a preference as to the grant-aided school at which he wishes education to be provided for his child and to give reasons for his preference.

(2) Any such preference must be expressed or made within the period of fifteen days beginning—

- (a) with the date on which the written notice mentioned in paragraph 4 was served on the parent, or
- (b) if a meeting has (or meetings have) been arranged under paragraph 7(1)(b) or (2), with the date fixed for that meeting (or the last of those meetings).

(3) Where a board makes a statement in a case where the parent of the child concerned has expressed a preference in pursuance of such arrangements as to the grant-aided school at which he wishes education to be provided for his child, the board shall specify the name of that school in the statement unless—

- (a) the school is unsuitable to the child's age, ability or aptitude or to his special educational needs, or
- (b) the attendance of the child at the school would be incompatible with the provision of efficient education for the children with whom he would be educated or the efficient use of resources.

Consultation on specifying name of school in statement

6.—(1) Sub-paragraph (2) applies if a board is considering—

- (a) specifying the name of a grant-aided school in a statement, or
- (b) amending a statement—
 - (i) if no school was specified in the statement before the amendment, so that a grant-aided school will be specified in it,
 - (ii) if a school was specified in the statement before the amendment, so that a different school, which is a grant-aided school, will be specified in it.

(2) The board shall—

- (a) serve a copy of the proposed statement or amended statement, or of the existing statement and of the amendment notice, on each affected body, and
- (b) consult each affected body.

(3) “Affected body” means—

- (a) the Board of Governors of any school which the board is considering specifying; and
- (b) if a school which the board is considering specifying is in the area of another board, that board.

Representations

7.—(1) A parent on whom a copy of a proposed statement has been served under paragraph 2 or on whom a proposed amended statement or an amendment notice has been served under paragraph 3 may—

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- (a) make representations (or further representations) to the board about the content of the proposed statement or the statement as it will have effect if amended in the way proposed by the board, and
 - (b) require the board to arrange a meeting between him and an officer of the board at which the proposed statement or the statement as it will have effect if amended in the way proposed by the board can be discussed.
- (2) Where a parent, having attended a meeting arranged by a board under sub-paragraph (1)(b) in relation to—
- (a) a proposed statement, or
 - (b) an amendment proposed following a re-assessment review,
- disagrees with any part of the assessment in question, he may require the board to arrange such meeting or meetings as it considers will enable him to discuss the relevant advice with the appropriate person or persons.
- (3) In this paragraph—
- “relevant advice” means such of the advice given to the board in connection with the assessment as it considers to be relevant to that part of the assessment with which the parent disagrees, and
- “appropriate person” means the person who gave the relevant advice or any other person who, in the opinion of the board, is the appropriate person to discuss it with the parent.
- (4) Any representations under sub-paragraph (1)(a) must be made within the period of fifteen days beginning—
- (a) with the date on which the written notice mentioned in paragraph 4 was served on the parent, or
 - (b) if a meeting has (or meetings have) been arranged under sub-paragraph (1)(b) or (2), with the date fixed for that meeting (or the last of those meetings).
- (5) A requirement under sub-paragraph (1)(b) must be made within the period of fifteen days beginning with the date on which the written notice mentioned in paragraph 4 was served on the parent.
- (6) A requirement under sub-paragraph (2) must be made within the period of fifteen days beginning with the date fixed for the meeting arranged under sub-paragraph (1)(b).

Making the statement

- 8.—**(1) Where representations are made to a board under paragraph 7(1)(a), the board shall not make or amend the statement until it has considered the representations and the period or the last of the periods allowed by paragraph 7 for making requirements or further representations has expired.
- (2) If a board makes a statement, it may be in the form originally proposed (except as to the matters required to be excluded from the copy of the proposed statement) or in a form modified in the light of the representations.
- (3) If a board amends a statement following service of a proposed amended statement under paragraph 3, the amended statement made may be in the form proposed or in a form modified in the light of the representations.
- (4) If a board amends a statement following service of an amendment notice, the amendments may be those proposed in the notice or amendments modified in the light of the representations.
- (5) Regulations may provide that, where a board is under a duty (subject to compliance with the preceding requirements of this Schedule) to make a statement, the duty, or any step required to be

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taken for performance of the duty, must, subject to prescribed exceptions, be performed within the prescribed period.

(6) Such provision shall not relieve the board of the duty to make a statement, or take any step, which has not been performed or taken within that period.

Service of statement

9.—(1) Where a board makes or amends a statement it shall serve a copy of the statement, or the amended statement, on the parent of the child concerned.

(2) It shall, at the same time, give the parent written notice of his right to appeal under Article 18(1) against—

- (a) the description in the statement of the board's assessment of the child's special educational needs,
 - (b) the special educational provision specified in the statement (including the name of a school specified in the statement), or
 - (c) if no school is named in the statement, that fact.
- (3) A notice under sub-paragraph (2) must contain such other information as may be prescribed.

Keeping, disclosure and transfer of statements

10.—(1) Regulations may make provision as to the keeping and disclosure of statements.

(2) Regulations may make provision, where a board becomes responsible for a child for whom a statement is maintained by another board, for the transfer of the statement to it and for Part II of this Order to have effect as if the duty to maintain the transferred statement were its duty.

Change of named school

11.—(1) Sub-paragraph (2) applies where—

- (a) the parent of a child for whom a statement is maintained which specifies the name of a school or institution asks the board to substitute for that name the name of a grant-aided school specified by the parent, and
 - (b) the request is not made less than twelve months after—
 - (i) a request under this paragraph,
 - (ii) the service of a copy of the statement or amended statement under paragraph 9, or
 - (iii) if the parent has appealed to the Tribunal under Article 18 or this paragraph, the date when the appeal is concluded,whichever is the later.
- (2) The board shall comply with the request unless—
- (a) the school is unsuitable to the child's age, ability or aptitude or to his special educational needs, or
 - (b) the attendance of the child at the school would be incompatible with the provision of efficient education for the children with whom he would be educated or the efficient use of resources.
- (3) Where the board decides not to comply with the request—
- (a) it shall give notice in writing of that fact to the child's parent, and
 - (b) the parent of the child may appeal to the Tribunal against the decision.

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(4) A notice under sub-paragraph (3)(a) must inform the parent of the right of appeal under sub-paragraph (3)(b) and contain such other information as may be prescribed

(5) On the appeal the Tribunal may—

(a) dismiss the appeal, or

(b) order the board to substitute for the name of the school or other institution specified in the statement the name of the grant-aided school specified by the parent.

(6) Regulations may provide that, where a board is under a duty to comply with a request under this paragraph, the duty must, subject to prescribed exceptions, be performed within the prescribed period.

(7) Such provision shall not relieve the board of the duty to comply with such a request which has not been complied with within that period.

Procedure for ceasing to maintain a statement

12.—(1) A board may not cease to maintain a statement except in accordance with paragraph 13.

(2) Sub-paragraph (1) does not apply where the board—

(a) ceases to maintain a statement for a child who has ceased to be a child for whom it is responsible, or

(b) is ordered to cease to maintain a statement under Article 18(3)(c).

13.—(1) A board may cease to maintain a statement only if it is no longer necessary to maintain it.

(2) Where the board decides to cease to maintain a statement—

(a) it shall give notice in writing of that fact to the child's parent, and

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

(3) A notice under sub-paragraph (2)(a) must inform the parent of the right of appeal under sub-paragraph (2)(b) and contain such other information as may be prescribed.

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

(a) dismiss the appeal, or

(b) order the board to continue to maintain the statement in its existing form or with such amendments of the description in the statement of the board's assessment of the child's special educational needs or the special educational provision specified in the statement, and such other consequential amendments, as the Tribunal may determine.

(5) Except where the parent of the child appeals to the Tribunal under this paragraph, a board may only cease to maintain a statement under this paragraph within the prescribed period beginning with the service of the notice under sub-paragraph (2).

(6) A board may not, under this paragraph, cease to maintain a statement if—

(a) the parent of the child has appealed under this paragraph against the board's determination to cease to maintain the statement; and

(b) the appeal has not been determined by the Tribunal or withdrawn.]

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SCHEDULE 4

Article 40.

INCORPORATION OF BOARDS OF GOVERNORS

Contracts of employment

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

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

Dissolution of Board of Governors

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

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

- 3.—(1) Where it appears to the Department that a Board of Governors is to be dissolved by virtue of paragraph 2(1)(a), the Department may give such directions as it thinks fit with respect to the winding up of the Board of Governors and in particular with respect to the transfer of any property, rights or liabilities of the Board of Governors.
- (2) Before giving any directions under this paragraph in relation to the Board of Governors of a school the Department shall consult—
 - (a) the Board of Governors of the school,
 - (b) in the case of a controlled school, the board responsible for the management of the school,
 - (c) in the case of a voluntary school, the trustees and (where the school is a Catholic maintained school) the Council for Catholic Maintained Schools.
- (3) Where directions under this paragraph provide for the transfer of any property, right or liability to any person or body, that property, right or liability shall, by virtue of this paragraph, vest in that person or body on such date as is specified in relation thereto in the directions.

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

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

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

Data protection

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

Schedule 5—Amendments

Schedule 6—Repeals

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