

1990 No. 288

EDUCATION

**Education (Curriculum) (Temporary Exceptions)
Regulations (Northern Ireland) 1990***Made* 30th July 1990*Coming into operation* 1st September 1990

The Department of Education, in exercise of the powers conferred on it by Article 17(1), (2), (3), (5) and (7) of the Education Reform (Northern Ireland) Order 1989(a) and of every other power enabling it in that behalf, and after consulting as required by Article 17(10) of that Order with those persons with whom consultation appeared to it to be desirable, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Education (Curriculum) (Temporary Exceptions) Regulations (Northern Ireland) 1990 and shall come into operation on 1st September 1990.

Interpretation

2.—(1) In these Regulations—

“general direction” and “special direction” mean directions given in the circumstances specified in regulation 3(1)(b)(i) or (ii) respectively, and “direction”, where used without qualification, means either a general or a special direction or both as the context may require;

“operative date” means the date on which a direction comes into operation;

“relevant board” in relation to a school means—

- (a) in the case of a controlled school, the board responsible for the management of the school;
- (b) in the case of a maintained school, the board by which the school is maintained;
- (c) in the case of any other grant-aided school, the board for the area in which the school is situated;

“school day” means a day when the school is open for teaching purposes.

(2) In these Regulations any reference to the Board of Governors, or the Chairman of the Board of Governors, of a school includes, in relation to a voluntary school referred to in Article 11(8) of the principal Order(b), a

(a) S.I. 1989/2406 (N.I. 20)

(b) The Education and Libraries (Northern Ireland) Order 1986 (S.I. 1986/594 (N.I. 3))

reference to the person approved in relation to that school by the Department under the said Article 11(8).

(3) In their application to a technical secondary school conducted in association with an institution of further education, these Regulations shall have effect as if—

- (a) references to the Board of Governors, or the Chairman of the Board of Governors, of a school included references to the governing body of the institution or, as the case may be, the Chairman of that governing body;
- (b) references to the principal of a school included references to the principal of the institution.

Cases and circumstances in which directions may be given

3.—(1) Subject to paragraph (2), where the principal of a grant-aided school is of the opinion in the case of any registered pupil at the school—

- (a) that it is not for the time being appropriate that the provisions of Articles 5, 6 and 8 of the 1989 Order^(a) should apply in respect of that pupil as they would otherwise apply in respect of him; and
- (b) either that—
 - (i) the circumstances that give rise to that opinion are likely to change significantly so that, within six months from the operative date, the application of those provisions will be appropriate in respect of that pupil; or
 - (ii) those circumstances are indicative of a need for the pupil to be assessed under Article 29 of the principal Order with a view to the making or amending of a statement of special educational needs in respect of him;

he may give a direction of the kind referred to in regulation 4.

(2) A principal shall not give a direction in circumstances to which paragraph (1)(b)(ii) applies unless he has first consulted the relevant board.

General and special directions

4.—(1) Subject to paragraphs (2) to (4) a direction may direct as respects any registered pupil that the provisions of Articles 5, 6 and 8 of the 1989 Order which apply to the pupil concerned—

- (a) shall not apply; or
- (b) shall apply with such modifications as may be specified in the direction;

from such operative date and for such operative period as may be so specified.

(2) No operative date which is less than one month after the date on which the direction is given may be so specified unless the principal is satisfied that it is essential in the interests of the pupil or for other educational reasons that the direction should come into force earlier.

(a) The Education Reform (Northern Ireland) Order 1989 (S.I. 1989/2406 (N.I. 20))

(3) Subject to paragraph (4), the maximum operative period that may be specified in a direction shall be—

- (a) in the case of a general direction either—
 - (i) a fixed period not exceeding six months; or
 - (ii) a period determinable when the principal is satisfied that the circumstances giving rise to the direction no longer apply; and
- (b) in the case of a special direction either—
 - (i) a period ending when a statement of special educational needs is made in respect of the pupil under Article 31 of the principal Order or, as the case may be, where such an existing statement is amended under paragraph 8 of Schedule 11 to that Order; or
 - (ii) a period ending not later than one month after the relevant board gives notice to the principal that it has determined not to make or, as the case may be, to amend, such a statement in respect of the pupil.

(4) In no case shall the operative period of a direction exceed six months, and in the case of any direction falling within paragraph (3)(a)(ii) or (3)(b) the direction shall cease to have effect six months from its operative date if it has not already done so but without prejudice to the making of a further direction under regulations 9 to 11.

Form and contents of directions

5. A direction shall be in writing, and shall include brief particulars of—

- (a) the provisions of Articles 5, 6 and 8 which are to be modified or disapplied in respect of the pupil;
- (b) the operative date of the direction and, if that date is less than one month after the date on which the direction is given, the reasons for it;
- (c) the operative period of the direction;
- (d) the reasons for the direction, indicating whether it is general or special;
- (e) the provision which it is intended should be made for the pupil's education during the operative period of the direction insofar as it differs from that which would otherwise apply to him;
- (f) either—
 - (i) in the case of a general direction, the manner in which the principal proposes to secure the full application in relation to the pupil, after the end of the operative period, of the provisions of Articles 5, 6 and 8; or
 - (ii) in the case of a special direction, his opinion that the pupil has or probably has special educational needs by virtue of which the relevant board would be required to determine the special educational provision that should be made for the pupil, and of the reasons for it; and
- (g) the right of the parent of the pupil to appeal to the Board of Governors against the direction under Article 17(7) of the 1989 Order.

Information

6. The principal shall—

- (a) keep a copy of the direction at the school with any other records relating to the pupil; and
- (b) send a copy of the direction as soon as possible, and in any event within three school days from the date on which it was given, by first-class post to—
 - (i) the chairman of the Board of Governors of the school;
 - (ii) in the case of a special direction, the relevant board; and
 - (iii) at least one parent of the pupil as registered at the school, at the address so registered.

Variation and revocation of directions

7.—(1) A principal may vary any direction given by him except so as to extend its operative period.

(2) Any such variation shall be by notice in writing, setting out those provisions of the direction which are to be varied and giving brief particulars of the variations and the reasons for them.

(3) A variation to a direction shall not come into force until at least one month after the date on which notice of variation is given unless the principal is satisfied that it is essential in the interests of the pupil or for other educational reasons for it to be brought into force earlier.

(4) Regulation 6 shall apply to a variation of a direction as it applies to a direction.

8.—(1) A principal may revoke any direction given by him by a notice in writing giving brief particulars of—

- (a) the reasons for the revocation;
- (b) the date on which the revocation is to take effect; and
- (c) a description of the manner in which he proposes to secure the full application in relation to the pupil of the provisions of Articles 5, 6 and 8 after the direction has ceased to have effect, unless those particulars are unchanged from those contained in the initial direction (if any) except in their timing.

(2) Regulation 6 shall apply to a notice revoking a direction as it applies to a direction.

Further directions

9.—(1) A principal who has given a general direction in respect of a pupil may, if he is still of the same opinion for which he gave the original direction, give a further such direction in respect of him for an operative period of not more than three months beginning—

- (a) immediately after the end of the operative period of the first direction subject to the prior written consent of three members of the Board of Governors being obtained; and

(b) immediately after the expiry of a further direction given under paragraph (a) subject to the prior written consent of three members of the Board of Governors being obtained.

(2) Regulation 6 shall apply to a further general direction, and shall apply to the consent of the Board of Governors as it applies to a direction.

10.—(1) Subject to paragraphs (3) and (4), a principal who has given a special direction in respect of a pupil may, if he is still of the same opinion for which he gave the original direction, give a further such direction in respect of him—

(a) if a statement of special educational needs has not been made or, as the case may be, amended in respect of the pupil before the end of the operative period of the first direction and the relevant board has not given notice to the principal that it has determined not to make or amend such a statement;

(b) if the relevant board's decision not to determine the special educational provision that should be made for the pupil is subject to appeal under paragraph 1(4) of Schedule 11 to the principal Order at the time that the operative period of the first special direction expires; or

(c) if a statement of special educational needs has been made in respect of the pupil but is subject to appeal under paragraph 5(9) of Schedule 11 to the principal Order at the time that the operative period of the first special direction expires.

(2) Any further special direction given under paragraph (1) shall be for an operative period beginning immediately after the expiry of the operative period of the first direction and shall be for an operative period ending not later than one month after the statement of special educational needs has been made or amended, or the appeal disposed of, as the case may be, and in any event that period shall not exceed six months.

(3) A further special direction may be given—

(a) twice, while paragraph (1)(a) applies;

(b) once, while paragraph (1)(b) applies; and

(c) any number of times while paragraph (1)(c) applies.

(4) A principal shall not give a second further special direction under paragraph 3(a) without the prior approval of the Department.

(5) Regulation 6 shall apply to a further special direction.

11.—(1) A principal shall not give a further direction in respect of a pupil which is based on the same reasons as an earlier direction unless it falls within regulation 9 or 10, but may give a further direction based on different reasons if he obtains the prior written consent of three members of the Board of Governors and, where the further direction is a further special direction, after consultation with the relevant board.

(2) Regulation 6 shall apply to such a further direction and shall apply to the consent of the Board of Governors as it applies to a direction.

Parental requests and right of appeal

12.—(1) Subject to paragraphs (2) and (3), a parent of a registered pupil may at any time request the principal to give a direction (or a further direction), or to revoke or vary a direction currently in force.

(2) Such a request may be made orally or in writing and shall include the reasons for which it is made.

(3) The principal shall not be obliged to entertain a request to revoke or vary a direction currently in force more than once during each of—

(a) the operative period of that direction; and

(b) the operative period of any further direction or directions given under regulation 9, 10 or 11.

(4) Where, following the making of a request, the principal refuses to give, vary or revoke a direction, as the case may be, he shall give the reasons for his decision, and details of the right of appeal provided by Article 17(7) of the 1989 Order in writing to—

(a) the parent who has made the request; and

(b) the Board of Governors.

(5) The period prescribed for the purposes of Article 17(7)(c) of the 1989 Order (failure to give, revoke or vary a direction in accordance with a request) shall be two weeks.

Sealed with the Official Seal of the Department of Education on 30th July 1990.

(L.S.)

S. Peover

Assistant Secretary

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations enable principals of grant-aided schools to direct that the provisions of Articles 5, 6 and 8 of the Education Reform (Northern Ireland) Order 1989 (“the 1989 Order”) (statutory requirements concerning the curriculum and assessment) shall not apply to a pupil, or shall apply with modifications.

Regulation 3 provides that a direction may only be given in cases where the principal considers that the statutory requirements are not appropriate for the pupil, and either that:

- (i) circumstances are likely to change so that within six months it will be appropriate to apply the statutory requirements in relation to the pupil, or
- (ii) the pupil needs to be assessed by the relevant education and library board with a view to a statement of special educational needs being made or, if one already exists, amended.

Regulation 4 provides for the date on which a direction is to come into force and its duration. It may not come into force less than one month after it is given unless the principal feels that this is essential. In no case is the duration of a direction to exceed six months.

Regulation 5 prescribes the form and contents of directions, and regulation 6 provides for copies to be kept with the pupil’s school records and to be sent to the chairman of the Board of Governors of the school, the relevant education and library board, where appropriate, and to a parent of the pupil.

A direction may be varied (except so as to extend its operative period) or revoked by notice in writing setting out the prescribed particulars; the provisions of regulation 6 concerning copies apply to a notice of variation or revocation (regulations 7 and 8).

Further directions may be given in certain circumstances and subject, as appropriate, to consultation with the relevant board or to the consent of the Board of Governors or both, or to the approval of the Department (regulations 9 to 11).

Parents of a pupil may request the principal to give a direction or to revoke or vary an existing one; the principal must give his decision within two weeks, with reasons if he refuses the request. The parent has a right of appeal to the Board of Governors against a refusal by virtue of Article 17(7) of the 1989 Order (Regulation 12).