
STATUTORY RULES OF NORTHERN IRELAND

2005 No. 384

The Education (Special Educational Needs)
Regulations (Northern Ireland) 2005

PART I
GENERAL

Citation and commencement

1. These Regulations may be cited as the Education (Special Educational Needs) Regulations (Northern Ireland) 2005 and shall come into operation on 1st September 2005.

Interpretation

2.—(1) In these Regulations—

“assessment” means an assessment of a child’s educational needs under Article 15 of the 1996 Order;

“board” means an education and library board;

“Northern Ireland curriculum” means the curriculum for every grant-aided school as described in Articles 5, 6 and 8 of and Schedules 1 and 2 to the Education Reform (Northern Ireland) Order 1989(1);

“registered medical practitioner” means a fully registered person within the meaning of the Medical Act 1983(2);

“principal” includes any person to whom the duties or functions of a principal under these Regulations have been delegated by the principal in accordance with regulation 3;

“qualified teacher” means a person who is eligible to be employed as a teacher in a grant-aided school;

“the responsible body” has the meaning as given by Article 20A(11);

“statement” means a statement of a child’s special educational needs made under Article 16 of the 1996 Order;

“target” means the knowledge, skills and understanding which a child is expected to have by the end of a particular period;

“transition plan” means a document prepared which sets out the arrangements which a board considers appropriate for a young person during the period when he is aged 14 to 19 years, including arrangements for special education provision and for any other necessary provision, for suitable employment and accommodation and for leisure activities, and which will facilitate a satisfactory transition from childhood to adulthood;

(1) S.I.1989/2406 (N.I. 20) as amended by S.I. 1996/274 (N.I.) Article 35 and Schedule 3

(2) 1983 c. 54

“the Tribunal” means the Special Educational Needs and Disability Tribunal for Northern Ireland having the jurisdiction conferred on it by Part II of the 1996 Order and Chapter I of Part III of the 2005 Order⁽³⁾;

“the 1996 Order” means the Education (Northern Ireland) Order 1996;

“the 1997 Regulations” means the Education (Special Educational Needs) Regulations (Northern Ireland) 1997⁽⁴⁾;

“the 2005 Order” means the Special Educational Needs and Disability (Northern Ireland) Order 2005.

(2) In these Regulations any reference to a numbered Article is a reference to the Article of the 1996 Order bearing that number.

(3) In these Regulations any reference to the health and social services authority is, in relation to a particular child, a reference to the health and social services authority in whose area the child lives.

Delegation of functions or duties of a principal

3. Where a principal has any functions or duties under these Regulations he may delegate those functions or duties—

- (a) generally to a member of staff of the school who is a qualified teacher; or
- (b) in a particular case to a member of staff of the school who teaches the child in question.

Notices

4. Any notice required to be given by these Regulations shall be in writing.

PART II

ASSESSMENTS

Notices relating to assessment

5.—(1) Paragraph (2) applies where—

- (a) under Article 15(1)⁽⁵⁾ or 20A(3) a board serves a notice on a child’s parent that it is considering whether to make an assessment, or
- (b) under Article 15(4) or 20A(7) a board gives notice to a child’s parent of its decision to make an assessment.

(2) Where this paragraph applies a board shall send copies of the relevant notice to—

- (a) the health and social services authority, and
- (b) if the child is registered at a school, the principal of that school.

(3) Where a copy of a notice is sent under paragraph (2), an endorsement on the copy or a notice accompanying that copy shall inform the recipient what advice the board is likely to seek.

(4) Where—

- (a) under Article 20(1) a child’s parent asks a board to arrange for an assessment, and

(3) S.I. 2005/1117 (N.I. 6) Article 21(1) and (3)

(4) S.R. 1997 No. 327 as amended by S.R. 1998 No. 217

(5) Article 15(1) was amended by S.I. 2005/1117 (N.I. 6) Schedule 5 paragraph 3

- (b) no assessment has been made for that child within the period of 6 months ending with the date on which the request is made,

the board shall give notice to the persons referred to in paragraph (2)(a) and (b) that the request for an assessment has been made and inform them what advice the board is likely to seek.

(5) Where—

- (a) under Article 20A(1) a responsible body asks a board to arrange for an assessment, and
- (b) no assessment has been made for that child within the period of 6 months ending with the date on which the request is made,

the board shall give notice to the persons referred to in paragraph (2)(a) and (b) that the request for an assessment has been made and inform them what advice the board is likely to seek.

Advice to be sought by a board

6.—(1) For the purpose of making an assessment under Article 15 a board shall seek—

- (a) advice from a child's parent;
- (b) educational advice as provided for in regulation 7;
- (c) medical advice as provided for in regulation 8;
- (d) psychological advice as provided for in regulation 9;
- (e) social services advice from the health and social services authority; and
- (f) any other advice which the board considers appropriate for the purpose of arriving at a satisfactory assessment.

(2) The advice referred to in paragraph (1) shall be written advice relating to—

- (a) the educational, medical, psychological or other features of the case (according to the nature of the advice sought) which appear to be relevant to the child's educational needs (including his likely future needs);
- (b) how those features could affect the child's educational needs, and
- (c) the provision which is appropriate for the child in light of those features of the child's case, whether by way of special education provision or non-educational provision, but not relating to any matter which is required to be specified in a statement by virtue of Article 16(4)(b).

(3) A person from whom the advice referred to in paragraph (1) is sought may in connection therewith consult such persons as it appears to him expedient to consult; and he shall consult such persons, if any, as are specified in the particular case by the board as the persons who have relevant knowledge of, or information relating to, the child.

(4) When seeking the advice referred to in paragraphs (1)(b) to (f) a board shall provide the person from whom it is sought with copies of—

- (a) any representations made by the parent, and
- (b) any evidence submitted by, or at the request of, the parent

under Article 15(1)(d) or Article 20A(3)(d) as the case may be.

(5) The board need not seek the advice referred to in paragraph (1)(b) to (f) if—

- (a) it has obtained advice under paragraph (1)(b) to (f) respectively within the preceding 12 months, and
- (b) the board, the person from whom the advice was obtained and the child's parent are satisfied that the existing advice is sufficient for the purpose of arriving at a satisfactory assessment.

Educational advice

7.—(1) The educational advice referred to in regulation 6(1)(b) shall, subject to paragraphs (2) to (5), be sought—

- (a) from the principal of each school which the child is currently attending or which he has attended at any time within the preceding 18 months;
- (b) if advice cannot be obtained from a principal of a school which the child is currently attending (because the child is not attending a school or otherwise), then from a person who the board is satisfied has experience of teaching children with special educational needs or knowledge of the differing provision which may be called for in different cases to meet those needs;
- (c) if the child is not currently attending a school and if advice obtained under subparagraph (b) is not advice from such a person, then from a person responsible for educational provision for him; and
- (d) if any of the child's parents is a serving member of Her Majesty's armed forces, from Service Children's Education.

(2) The advice sought as provided in paragraph (1)(a) to (c) shall not be sought from any person who is not a qualified teacher.

(3) The advice sought from a principal as provided in paragraph (1)(a) shall, if the principal has not himself taught the child within the preceding 18 months, be advice given after consultation with a teacher who has so taught the child.

(4) The advice sought from a principal as provided in paragraph (1)(a) shall include advice relating to the steps which have been taken by the school to identify and assess the special educational needs of the child and to make provision for the purpose of meeting those needs.

(5) Where it appears to the board, in consequence of medical advice or otherwise, that the child in question is—

- (a) hearing impaired; or
- (b) visually impaired; or
- (c) both hearing impaired and visually impaired,

and any such person from whom advice is sought as provided in paragraph (1) is not qualified to teach pupils who are so impaired then the advice sought shall be advice given after consultation with a person who is so qualified.

(6) For the purposes of paragraph (5) a person shall be considered to be qualified to teach pupils who are hearing impaired or visually impaired or who are both hearing impaired and visually impaired if he is qualified to be employed at a school as a teacher of a class for pupils who are so impaired otherwise than to give instruction in a craft, trade or domestic subject.

(7) Paragraphs (3) and (5) are without prejudice to regulation 6(3).

Medical advice

8. The medical advice referred to in regulation 6(1)(c) shall be sought from the health and social services authority, who shall obtain the advice from a registered medical practitioner.

Psychological advice

9.—(1) The psychological advice referred to in regulation 6(1)(d) shall be sought from a person—

- (a) regularly employed by the board as an educational psychologist; or
- (b) engaged by the board as an educational psychologist in the case in question.

(2) The advice sought from a person as provided in paragraph (1) shall, if that person has reason to believe that another psychologist has relevant knowledge of, or information relating to, the child, be advice given after consultation with that other psychologist.

(3) Paragraph (2) is without prejudice to regulation 6(3).

Matters to be taken into account in making an assessment

10. When making an assessment a board shall take into consideration—

- (a) any representations made by the child’s parent under Article 15(1)(d) or 20A(3)(d);
- (b) any evidence submitted by, or at the request of, the child’s parent under Article 15(1)(d) or 20A(3)(d); and
- (c) the advice obtained under regulation 6.

Time limits and prescribed information relating to assessment

11.—(1) Where under Article 15(1) a board serves a notice on a child’s parent informing him that it is considering whether to make an assessment it shall within 6 weeks beginning with the date of service of that notice give notice to the child’s parent of—

- (a) its decision to make an assessment, and of its reasons for making that decision, or
- (b) its decision not to assess the educational needs of the child and of its reasons for that decision, and

in either case the availability to the parent of advice and information from the board on matters related to his child’s special educational needs under Article 21A(6).

(2) Where under Article 20(1) a parent asks the board to arrange for an assessment to be made it shall within 6 weeks beginning with the date of receipt of the request, give notice to the child’s parent—

- (a) of—
 - (i) its decision to make an assessment;
 - (ii) its reasons for making that decision, and
 - (iii) the availability to the parent of advice and information from the board on matters related to his child’s special educational needs under Article 21A; or
- (b) of—
 - (i) its decision not to comply with the parent’s request;
 - (ii) its reasons for making that decision;
 - (iii) the availability to the parent of advice and information from the board on matters related to his child’s special educational needs under Article 21A;
 - (iv) the availability to the parent of arrangements for the avoidance and resolution of disputes between parents and boards made by the board under Article 21B(1)(7);
 - (v) the parent’s right to appeal to the Tribunal against the decision not to make an assessment;
 - (vi) the time limit within which an appeal must be made to the Tribunal, and
 - (vii) the fact that the arrangements for the avoidance and resolution of disputes made under Article 21B(1) cannot affect the parent’s right of appeal to the Tribunal and

(6) Article 21A was inserted by S.I.2005/1117 (N.I. 6) Article 4

(7) Article 21B was inserted by S.I. 2005/1117(N.I. 6) Article 5

that a parent may appeal to the Tribunal and enter into the arrangements made under Article 21B(1).

(3) Where Article 20A(1) applies a board shall, within 6 weeks beginning with the date of receipt of a request from a responsible body that an assessment of a child be made, give notice to that body—

- (a) of the board's decision to make an assessment, and of its reasons for making that decision, or
- (b) of the board's decision not to assess the educational needs of the child, and of its reasons for making that decision.

(4) Where Article 20A(1) applies a board shall, within 6 weeks beginning with the date of receipt of a request from a responsible body that an assessment of a child be made, give notice to the child's parent—

- (a) of—
 - (i) the board's decision to make an assessment;
 - (ii) the board's reasons for making that decision, and
 - (iii) the availability to the parent of advice and information from the board about matters related to his child's special educational needs under Article 21(A), or
- (b) of—
 - (i) the board's decision not to assess the educational needs of the child;
 - (ii) the board's reasons for making that decision;
 - (iii) the availability to the parent of advice and information from the board on matters related to his child's special educational needs under Article 21(A);
 - (iv) the availability to the parent of arrangements for the avoidance and resolution of disputes between parents and boards made by the board under Article 21B(1);
 - (v) the parent's right to appeal to the Tribunal against the decision not to make an assessment;
 - (vi) the time limit within which an appeal must be made to the Tribunal, and
 - (vii) the fact that the arrangements for the avoidance and resolution of disputes made under Article 21B(1) cannot affect the parent's right to appeal to the Tribunal and that the parent may appeal to the Tribunal and enter into the arrangements made under Article 21B(1).

(5) A board need not comply with the time limits referred to in paragraphs (1) to (4) if it is impractical to do so because—

- (a) the board has requested advice from the principal of a school during a period beginning one week before any date on which that school was closed for a continuous period of not less than 4 weeks beginning with that date and ending one week before the date on which it re-opens;
- (b) exceptional personal circumstances affect the child or his parent during the 6 week period referred to in paragraphs (1) to (4), or
- (c) the child or his parent is absent from the board's area for a continuous period of not less than 4 weeks during the 6 week period referred to in paragraphs (1) to (4).

(6) Subject to paragraph (7), where under Article 15(4) or 20A(7) a board has given notice to the child's parent of its decision to make an assessment it shall complete that assessment within 10 weeks beginning with the date on which such notice was given.

(7) A board need not comply with the time limit referred to in paragraph (6) if it is impractical to do so because—

- (a) in exceptional cases after receiving the advice sought under regulation 6 it is necessary for the board to seek further advice;
 - (b) the child's parent has indicated to the board that he wishes to provide advice to the board after the expiry of 6 weeks beginning with the date on which a request for such advice under regulation 6(1)(a) was received, and the board has agreed to consider such advice before completing the assessment;
 - (c) the board has requested advice from the principal of a school under regulation 6(1)(b) during a period beginning one week before any date on which that school was closed for a continuous period of not less than 4 weeks beginning with that date and ending one week before the date on which it re-opens;
 - (d) the board has requested advice from a health and social services authority under regulation 6(1)(c) or (e) and the health and social services authority has not complied with that request within 6 weeks beginning with the date on which it was made;
 - (e) exceptional personal circumstances affect the child or his parent during the 10 week period referred to in paragraph (6);
 - (f) the child or his parent is absent from the board's area for a continuous period of not less than 4 weeks during the 10 week period referred to in paragraph (6); or
 - (g) the child fails to keep an appointment for an examination or a test during the 10 week period referred to in paragraph (6).
- (8) Subject to paragraph (9) where a board has requested help from a health and social services authority in the making of an assessment under Article 15, the health and social services authority shall comply with that request within 6 weeks beginning with the date on which it receives it.
- (9) A health and social services authority need not comply with the time limit referred to in paragraph (8) if it is impractical to do so because—
- (a) exceptional personal circumstances affect the child or his parent during the 6 week period referred to in paragraph (8);
 - (b) the child or his parent is absent from the board's area for a continuous period of not less than 4 weeks during the 6 week period referred to in paragraph (8),
 - (c) the child fails to keep an appointment for an examination or a test made by the authority during the 6 week period referred to in paragraph (8), or
 - (d) the authority has not before the date on which a copy of a notice has been served on it in accordance with regulation 5(2), (4) or (5) produced or maintained any information or records relevant to the assessment of the child under Article 15.
- (10) This regulation shall have effect subject to regulation 16.

Children without statements in special schools

12. If a child without a statement has been admitted to a special school for the purposes of an assessment under Article 15 at that school, he may remain there—

- (a) until the expiry of 10 days during which the school is open to pupils after the board serves a notice under Article 17 informing the child's parent that it does not propose to make a statement;
- (b) until a statement is made as under Article 16; or
- (c) if a child has been admitted to a special school established in a hospital, until he is no longer in that hospital.

PART III

STATEMENTS

Notices accompanying a proposed statement or proposed amended statement following a re-assessment review

13. A notice served by a board on a parent under paragraph 4(2) of Schedule 2 to the 1996 Order when—

- (a) a copy of a proposed statement is served under paragraph 2 of that Schedule; or
- (b) a copy of a proposed amended statement is served under paragraph 3 of that Schedule

shall contain the information as specified in Part A of Schedule 1.

Amendment notice following a review under Article 19(1)(b)

14. The notice served by a board on a parent under paragraph 4(2) of Schedule 2 to the 1996 Order when an amendment notice is served under paragraph 3 of that Schedule shall contain the information as specified in Part B of Schedule 1.

Statement of special educational needs

15. A statement shall—

- (a) be in a form substantially corresponding to that set out in Schedule 2;
- (b) contain the information therein specified;
- (c) be dated and authenticated by the signature of a duly authorised officer of the board concerned;
- (d) set out whether it is the first statement made by the board for the child or a subsequent statement; and
- (e) indicate on the first page if it is—
 - (i) amended following a review under Article 19(1)(b) and the date of that review;
 - (ii) amended following a review other than a review under Article 19(1)(b), and the date of that review;
 - (iii) amended in compliance with an order of the Tribunal, and the date of any such order; or
 - (iv) amended pursuant to a direction of the Department, and the date of any such direction.

Time limit relating to a proposed statement

16.—(1) This regulation applies where a board has—

- (a) served a notice on a parent under Article 15;
- (b) received a request from a child’s parent under Article 20(1) to arrange for an assessment to be made; or
- (c) received a request from a responsible body under Article 20A(1) to arrange for an assessment to be made,

and it is necessary under Article 16(1) for the board to make a statement.

(2) Subject to paragraph (3), the period within which a board shall serve on the child’s parent a proposed statement under paragraph 2 of Schedule 2 to the 1996 Order shall be 18 weeks beginning

with the date on which it served the notice referred to in paragraph (1)(a) or received the request referred to in paragraph (1)(b) or (c), as the case may be.

(3) A board need not comply with the time limit referred to in paragraph (2) if it is impractical to do so for any of the reasons mentioned in regulation 11(7).

Time limits and prescribed information relating to a statement

17.—(1) Where a board has made an assessment of a child for whom no statement is maintained it shall—

- (a) serve a copy of a proposed statement and a notice on the child’s parent under paragraphs 2(1) and 4(2) of Schedule 2 to the 1996 Order; or
- (b) within a period of 2 weeks beginning with the date on which the assessment was made give notice to the child’s parent—
 - (i) under Article 17 that it has decided not to make a statement;
 - (ii) of its reasons for that decision;
 - (iii) of the parent’s right of appeal against that decision to the Tribunal; and
 - (iv) of the time limit within which an appeal must be made.

(2) Where a board has made an assessment of a child for whom a statement is maintained it shall—

- (a) serve on the child’s parent a copy of a proposed amended statement and a notice under paragraphs 3(2) and 4(2) of Schedule 2 to the 1996 Order; or
- (b) give notice to the child’s parent—
 - (i) under paragraph 13(2) of Schedule 2 to the 1996 Order that it has decided to cease to maintain the statement;
 - (ii) of the parent’s right of appeal against that decision to the Tribunal; and
 - (iii) of the time limit within which an appeal to the Tribunal must be made; or
- (c) serve on the child’s parent a notice—
 - (i) which informs him that it has decided not to amend the statement;
 - (ii) which informs him of its reasons for that decision;
 - (iii) which is accompanied by copies of the professional advice obtained during the assessment;
 - (iv) which informs him that under Article 18(1A) he may appeal to the Tribunal against the description in the statement of the board’s assessment of the child’s special educational needs, the special educational provision specified in the statement (including the name of a school so specified) or, if no school is named in the statement, that fact; and
 - (v) which informs him of the time limit within which an appeal to the Tribunal must be made.

(3) Subject to paragraph (5), where a board has served a copy of a proposed statement or proposed amended statement on the child’s parent under paragraph 2(1) or 3(2) of Schedule 2 to the 1996 Order the board shall within 8 weeks beginning with the date on which the proposed statement or proposed amended statement was served, serve a copy of the completed statement or completed amended statement and a written notice on the child’s parent under paragraph 9(1) and 9(2) of that Schedule.

(4) The board need not comply with the time limit referred to in paragraph (3) if it is impractical to do so because—

- (a) exceptional personal circumstances affect the child or his parent during the 8 week period referred to in paragraph (3);

- (b) the child or his parent is absent from the board's area for a continuous period of not less than 4 weeks during the 8 week period referred to in paragraph (3);
 - (c) the child's parent indicates that he wishes to make representations to the board about the content of the statement under paragraph 7(1) of Schedule 2 to the 1996 Order after the expiry of the 15 day period for making such representations provided for in paragraph 7(4) of that Schedule;
 - (d) a meeting between the child's parent and an officer of the board has been held pursuant to paragraph 7(1) of Schedule 2 of the 1996 Order and the child's parent under paragraph 7(2) of that Schedule has either required that another such meeting be arranged or has required a meeting with the appropriate person (as defined in paragraph 7(3) of that Schedule) to be arranged; or
 - (e) the board has sent a written request to the Department seeking its consent under Article 12 to the child being educated at an institution in Northern Ireland other than a grant aided school and that institution is not approved under Article 26 and such consent has not been received by the board within 3 weeks beginning with the date on which the request was sent.
- (5) Where under paragraph 11(1)(a) of Schedule 2 to the 1996 Order the child's parent asks the board to substitute for the name of the school or institution specified in a statement the name of a grant aided school specified by him and where the conditions referred to in paragraph 11(1)(b) of that Schedule have been satisfied the board shall within 8 weeks beginning with the date on which the request was received either—
- (a) comply with the request; or
 - (b) give notice to the child's parent under paragraphs 11(3) and (4) of that Schedule that it has decided not to comply with the request, its reasons for that decision, and of his right to appeal against that decision to the Tribunal.
- (6) Subject to paragraph (7), where under paragraph 3(4) of Schedule 2 to the 1996 Order a board has served an amendment notice on the child's parent informing him of its proposal to amend a statement it shall amend the statement within 8 weeks beginning with the date on which the notice was served.
- (7) The board need not comply with the time limit in paragraph (6) where—
- (a) the amendment notice contained an amendment about the type or name of a school or institution or the provision made for the child concerned under the arrangements made under Article 10; and
 - (b) it is impractical to do so because of any of the circumstances referred to in paragraph (4) (a) to (e) apply in relation to the 8 week period referred to in paragraph (6).
- (8) Where under paragraph 13(1) of Schedule 2 to the 1996 Order a board gives notice to a child's parent that it has decided to cease to maintain a statement, the board shall not cease to maintain the statement before the expiry of the period during which the parent may appeal to the Tribunal against the decision.
- (9) Any notice given in accordance with this regulation shall inform the parent on whom it is served of—
- (a) the availability to the parent of advice and information from the board on matters related to his child's special educational needs under Article 21A;
 - (b) the availability to the parent of arrangements with a view to avoiding or resolving disagreements between parents and boards made by the board under Article 21B; and
 - (c) the fact that the arrangements made under Article 21B cannot affect any right the parent has to appeal to the Tribunal and that the parent may appeal to the Tribunal and take up the arrangements made under Article 21B.

Review of statement where child not aged 14 attends school

18.—(1) This regulation applies where—

- (a) a board carries out a review under Article 19(1);
- (b) the child concerned attends a school; and
- (c) regulation 19 does not apply.

(2) The Board shall by notice in writing require the principal of the child's school to submit a report to it under this regulation by a specified date not less than 2 months beginning with the date on which the notice is given and shall send a copy of the notice to the child's parent.

(3) The principal shall for the purpose of preparing the report referred to in paragraph (2) seek advice as to the matters referred to in paragraph (4) from—

- (a) the child's parent;
 - (b) any person whose advice the board considers appropriate for the purpose of arriving at a satisfactory report and whom it specifies in the notice referred to in paragraph (2);
 - (c) any person whose advice the principal considers appropriate for the purpose of arriving at a satisfactory report.
- (4) The advice referred to in paragraph (3) shall be written advice as to—
- (a) the child's progress towards meeting the objectives specified in the statement;
 - (b) the child's progress towards attaining any targets established in furtherance of the objectives specified in the statement;
 - (c) where the school the child attends is a grant-aided school—
 - (i) any modifications to or exclusions from the application of the Northern Ireland curriculum to the child;
 - (ii) the appropriateness of any provisions substituted for the provisions of the Northern Ireland curriculum in order to maintain a balanced and broadly based curriculum;
 - (d) where appropriate, and in any case where a transition plan exists, any matters which are the appropriate subject of such a plan;
 - (e) whether the statement continues to be appropriate;
 - (f) any amendments to the statement which would be appropriate;
 - (g) whether the board should cease to maintain the statement.

(5) The notice referred to in paragraph (2) shall require the principal to invite the following persons to attend a meeting to be held on a date before the report referred to in that paragraph is submitted—

- (a) the representative of the board specified in the notice;
- (b) the child's parent;
- (c) a member or members of the staff of the school who teach the child or who are otherwise responsible for the provision of education for the child whose attendance the principal considers appropriate;
- (d) any other person whose attendance the principal considers appropriate; and
- (e) any person whose attendance the board considers appropriate and who is specified in the notice.

(6) The principal shall not later than 2 weeks before the date on which a meeting referred to in paragraph (5) is to be held send to all persons invited to that meeting copies of the advice he has received pursuant to his request under paragraph (3) and by written notice accompanying the copies

shall request the recipients to submit to him before or at the meeting any written comments on that advice and any other advice which they think appropriate.

- (7) The meeting referred to in paragraph (5) shall consider—
- (a) the matters referred to in paragraph (4);
 - (b) any significant changes in the child's circumstances since the date on which the statement was made or last reviewed.
- (8) The meeting referred to in paragraph (5) shall recommend—
- (a) any steps which it concludes ought to be taken, including whether the board should amend or cease to maintain the statement;
 - (b) any targets to be established in furtherance of the objectives specified in the statement which it concludes the child ought to meet during the period until the next review;
 - (c) where a transition plan exists, the matters which it concludes ought to be included in that plan.

(9) If the meeting cannot agree the recommendations to be made under paragraph (8) the persons who attended the meeting shall make differing recommendations as it appears necessary to each of them.

(10) The report to be submitted under paragraph (2) shall be completed after the meeting is held and shall include the principal's assessment of the matters referred to in paragraph (7) and his recommendations as to the matters referred to in paragraph (8), and shall refer to any difference between his assessment and recommendations and those of the meeting.

(11) Where the principal submits his report to the board under paragraph (2) he shall at the same time send copies to—

- (a) the child's parent;
- (b) the persons from whom the principal sought advice under paragraph (3);
- (c) the persons who were invited to the meeting in accordance with paragraph (5);
- (d) any other person to whom the board considers it appropriate that a copy be sent and to whom it directs him to send a copy;
- (e) any other person to whom the principal considers it appropriate that a copy be sent.

(12) The board shall review the statement under Article 19(1) in light of the report and any other information or advice which it considers relevant, shall make written recommendations as to the matters referred to in paragraph (8)(a) and (b) and, where a transition plan exists, shall amend the plan as it considers appropriate.

(13) The board shall send copies of the recommendations and any transition plan referred to in paragraph (12) to—

- (a) the child's parent;
- (b) the principal;
- (c) the persons from whom the principal sought advice under paragraph (3);
- (d) the persons who were invited to attend the meeting in accordance with paragraph (5);
- (e) any other person to whom it considers it appropriate that a copy be sent.

First review of statement after a child's 14th birthday for a child who attends school

19.—(1) This regulation applies where—

- (a) a board carries out a review of a child's statement under Article 19(1);
- (b) the child concerned attends a school;

- (c) the review is the first review commenced on or after the date on which child has attained the age of 14 years.
- (2) The board shall for the purpose of preparing a report under this regulation by notice require the principal of the child's school to seek the advice referred to in regulation 18(4) from—
- (a) the child's parent;
 - (b) any person whose advice the board considers appropriate for the purpose of arriving at a satisfactory report and whom it specifies in the notice;
 - (c) any person whose advice the principal considers appropriate for the purpose of arriving at a satisfactory report.
- (3) The board shall invite the following persons to attend a meeting to be held on a date before the review referred to in paragraph (1) is required to be completed—
- (a) the child's parent;
 - (b) a member or members of staff of the school who teach the child or who are otherwise responsible for the provision of education for the child whose attendance the principal considers appropriate and whom he has asked the board to invite;
 - (c) a representative of the health and social services authority;
 - (d) a person providing careers services under section 1 of the Employment and Training Act (Northern Ireland) 1950(8);
 - (e) any person whose attendance the principal considers appropriate and whom he has asked the board to invite; and
 - (f) any person whose attendance the board considers appropriate.
- (4) The principal shall not later than two weeks before the date on which the meeting referred to in paragraph (3) is to be held serve on all the persons invited to attend that meeting copies of the advice he has received pursuant to his request under paragraph (2) and shall by written notice request the recipients to submit to him before or at the meeting any written comments on that advice and any other advice which they think appropriate.
- (5) A representative of the board shall attend the meeting referred to in paragraph (3).
- (6) The meeting referred to in paragraph (3) shall consider the matters referred to in regulation 18(7)(a) and (b) and shall make recommendations in accordance with regulation 18(8) and (9).
- (7) The report to be prepared by the board under this regulation shall be completed after the meeting, shall contain the board's assessment of the matters required to be considered by the meeting and its recommendations as to the matters required to be recommended by it and shall refer to any difference between its assessment and recommendations and those of the meeting.
- (8) The board shall send copies of the report to—
- (a) the child's parent;
 - (b) the principal;
 - (c) the persons from whom the principal sought advice under paragraph (2);
 - (d) the persons who were invited to attend the meeting under paragraph (3);
 - (e) any person to whom it considers it appropriate to send a copy.
- (9) The board shall review the statement under Article 19(1) in light of the report and any other information or advice which it considers relevant, shall make written recommendations as to the matters referred to in regulation 18(8)(a) and (b), and shall prepare a transition plan.

(8) 1950 c. 29 (N.I.) as amended by Article 3 of the Employment and Training (Amendment) (Northern Ireland) Order 1988 S.I. 1988/1087 (N.I. 10)

(10) The board shall send copies of the recommendations and the transition plan referred to in paragraph (9) to the persons referred to in paragraph (8).

Review of statement where child does not attend school

20.—(1) This regulation applies where a board carries out a review of a statement under Article 19(1) and the child concerned does not attend school.

(2) The board shall prepare a report addressing the matters referred to in regulation 18(4), in any case where the review referred to in paragraph (1) is commenced on or after the date on which the child has attained the age of 14 years, and for that purpose shall seek advice on those matters from the child's parent and any other person whose advice it considers appropriate for the purpose of arriving at a satisfactory report.

(3) The board shall invite the following persons to attend a meeting to be held before the review referred to in paragraph (1) is required to be completed—

- (a) the child's parent;
- (b) where the review referred to in paragraph (1) is the first review commenced after the date on which the child has attained the age of 14 years—
 - (i) a representative of the health and social services authority;
 - (ii) a person providing careers services under Section 1 of the Employment and Training Act (Northern Ireland) 1950; and
- (c) any person whose attendance the board considers appropriate.

(4) The board shall not later than 2 weeks before the date on which the meeting referred to in paragraph (3) is to be held send to all the persons invited to that meeting a copy of the report which it proposes to make under paragraph (2) and by written notice accompanying the copies shall request the recipients to submit to the board any written comments on the report and any other advice which they think appropriate.

(5) A representative of the board shall attend the meeting referred to in paragraph (3).

(6) The meeting referred to in paragraph (3) shall consider the matters referred to in regulation 18(7)(a) and (b) and shall make recommendations in accordance with regulation 18(8) and (9).

(7) The report prepared by the board under paragraph (2) shall be completed after the meeting referred to in paragraph (3) is held, shall contain the board's assessment of the matters required to be considered by the meeting and its recommendations as to the matters required to be recommended by the meeting, and shall refer to any difference between its assessment and recommendations and those of the meeting.

(8) The board shall send copies of the report to—

- (a) the child's parent;
- (b) the persons from whom it sought advice under paragraph (2);
- (c) the persons who were invited to attend the meeting under paragraph (3);
- (d) to any person whom it considers it appropriate to send a copy.

(9) The board shall review the statement under Article 19(1) in light of the report and any other information or advice which it considers relevant, shall make written recommendations as to the matters referred to in regulation 18(8)(a) and (b), in any case where the review is the first review commenced on or after the date on which the child has attained the age of 14 years prepare a transition plan, and where a transition plan already exists, amend the plan as it considers appropriate.

(10) The board shall send copies of the recommendations and any transition plan referred to in paragraph (9) to the persons referred to in paragraph (8).

Transfer of statements

21.—(1) This regulation applies where a child in respect of whom a statement is maintained moves from the board area which maintains the statement ('the old board') into that of another board ('the new board').

(2) The old board shall transfer the statement to the new board.

(3) From the date of the transfer—

- (a) the statement shall be treated for the purposes of the new board's duties and functions under Part II of the 1996 Order and these Regulations as if it had been made by the new board on the date on which it was made by the old board; and
- (b) where the new board makes an assessment under Article 15 and the old board has supplied the new board with advice obtained in pursuance of a previous assessment regulation 6(5) shall apply as if the new board had obtained the advice on the date on which the old board obtained it.

(4) The new board shall within 6 weeks beginning with the date on which the statement was transferred to it serve a notice on the child's parent informing him—

- (a) that the statement has been transferred;
- (b) whether it proposes to make an assessment under Article 15; and
- (c) when it proposes to review the statement in accordance with paragraph (5).

(5) The new board shall review the statement under Article 19(1) before the expiry of whichever of—

- (a) the period of 12 months beginning with the making of the statement, or as the case may be, with the previous review; or
- (b) the period of 3 months beginning with the date of the transfer,

whichever is the later.

(6) Where by virtue of the transfer of the statement the new board comes under a duty to arrange the child's attendance at a school specified in the statement but as a result of the child's move into the area of the new board that attendance is no longer practicable, the new board may arrange for the child's attendance at another school appropriate for the child until such time as it is possible to amend the statement in accordance with the procedure set out in Schedule 2 to the 1996 Order.

Restriction on disclosure of statements

22.—(1) Subject to the provisions of the 1996 Order and of these Regulations, a statement in respect of a child shall not be disclosed without the parent's consent except—

- (a) to persons to whom, in the opinion of the board concerned, the statement should be disclosed in the interests of the child;
- (b) for the purpose of any appeal under the 1996 Order;
- (c) for the purposes of educational research which, in the opinion of the board, may advance the education of children with special educational needs, if, but only if, the person engaged in that research undertakes not to publish anything contained in, or derived from, a statement otherwise than in a form which does not identify any individual concerned including, in particular, the child concerned or his parent;
- (d) on the orders of any court or for the purposes of any criminal proceedings;
- (e) for the purposes of any investigation under the Commissioner for Complaints (Northern Ireland) Order 1996(9);

- (f) to the Department when it requests such disclosure for the purpose of deciding whether to give directions or make an order under Article 101 of the 1986 Order⁽¹⁰⁾;
 - (g) for the purposes of an assessment of the needs of the child with respect to the provisions of any statutory services for him being carried out by officers of a health and social services authority by virtue of arrangements made under section 5(5) of the Disabled Persons (Northern Ireland) Act 1989⁽¹¹⁾;
 - (h) for the purposes of a health and social services authority in the performance of its duties under Article 26(1)(a), 174(6), 175(3), 176(2), or 177(5) of the Children (Northern Ireland) Order 1995⁽¹²⁾; or
 - (i) to an inspector, pursuant to Article 102 of the 1986 Order⁽¹³⁾.
- (2) The arrangement for keeping such statements shall be such as to ensure, so far as is reasonably practicable, that unauthorised persons do not have access to them.
- (3) In this regulation any reference to a statement includes a reference to any representations, evidence, advice or information which is set out in the appendices to a statement.

PART IV

COMPLIANCE WITH TRIBUNAL ORDERS

Compliance with Tribunal orders

23.—(1) Subject to paragraph (4), if the Tribunal, following an appeal to it by a parent, makes an order requiring a board to perform an action referred to in paragraph (2) the board shall perform that action within the period specified in that paragraph.

(2) In the case of an order—

- (a) to make an assessment, the board shall notify the child's parent within 4 weeks that it will make an assessment under Article 15(4) or 20A(7) as the case may be;
- (b) to make and maintain a statement under Article 16, the board shall make a statement within 5 weeks;
- (c) remitting a case back to the board under Article 17(3)(c) the board shall take the action referred to in regulation 15(1)(a) or (b) within 2 weeks;
- (d) to amend a statement, the board shall serve an amendment notice on the child's parent under paragraph 3 of Schedule 2 to the 1996 Order within 5 weeks;
- (e) to continue to maintain a statement, the board shall continue to maintain the statement with immediate effect;
- (f) to continue to maintain and to amend a statement, the board shall continue to maintain the statement with immediate effect and shall serve an amendment notice on the child's parent under paragraph 3 of Schedule 2 to the 1996 Order within 5 weeks;
- (g) to substitute the name of the school or other institution specified in a child's statement with the name of a school specified by a parent, the board shall specify the school specified by the parent within 2 weeks unless the school is closed to pupils and in those circumstances within 2 weeks of the school next reopening;

⁽¹⁰⁾ As substituted by S.I. 1989/2406 (N.I. 20) Article 158

⁽¹¹⁾ 1989 c. 10 as amended by Article 7 of and Schedule 1 to the Health and Social Services (Northern Ireland) Order 1994 S.I. 1994/429 (N.I. 2)

⁽¹²⁾ S.I. 1995/755 (N.I. 2)

⁽¹³⁾ Article 102 was substituted by S.I. 1996/274 (N.I. 1) Article 33

- (h) dismissing an appeal against a determination to cease to maintain a statement, the board shall cease to maintain that statement immediately or on a date proposed by the board, whichever is the later.
- (3) In each case the period shall begin on the day after the issue of the order in question.
- (4) The board need not comply with the time limits referred to in paragraph (2) if it is impractical to do so because—
 - (a) exceptional personal circumstances affect the child or his parent during the relevant time period;
 - (b) the child or his parent is absent from the board's area for a continuous period of not less than 2 weeks during the relevant time period;
 - (c) the child's parent indicates that he wishes to make representations to the board about the content of the statement under paragraph 7(1) of Schedule 2 to the 1996 Order after the expiry of the 15-day period for making such representations provided for in paragraph 7(4) of that Schedule;
 - (d) a meeting between the child's parent and an officer of the board has been held pursuant to paragraph 7(4) of Schedule 2 to the 1996 Order and the child's parent under paragraph 7(2) of that Schedule either required that another such meeting be arranged or has required that a meeting with the appropriate person (as defined in paragraph 7(3) of that Schedule) be arranged; or
 - (e) the board has sent a written request to the Department seeking its consent under Article 12 to the child being educated at an institution in Northern Ireland other than a grant aided school and that institution is not approved by it under Article 26 and such consent has not been received by the board within 3 weeks beginning with the date on which the request was sent.

Compliance with parents' requests when a board concedes an appeal to the Tribunal

- 24.**—(1) Subject to paragraph (3) if, under Article 18A, an appeal to the Tribunal is treated as having been determined in favour of the parent making the appeal, the board shall—
- (a) in the case of an appeal under Article 17, make a statement within 5 weeks;
 - (b) in the case of an appeal under Article 20 or 20A the board shall make an assessment within 4 weeks, and
 - (c) in the case of an appeal under paragraph 11(3) of Schedule 2 to the 1996 Order against a determination not to comply with the parent's request to substitute the name of a grant-aided school for the name of a school or institution specified in the statement, comply with that request within 2 weeks.
- (2) In each case the period shall begin on the day after the board notifies the Tribunal that they have determined that they will not, or no longer, oppose the appeal.
- (3) The board need not comply with the time limits referred to in paragraph (1) if it is impractical to do so because—
- (a) exceptional personal circumstances affect the child or his parent during the relevant time period;
 - (b) the child or his parent is absent from the board's area for a continuous period of not less than 2 weeks during the relevant time period;
 - (c) the child's parent indicates that he wishes to make representations to the board about the content of the statement under paragraph 7(1) of Schedule 2 after the expiry of the 15 day period for making such representations provided for in 7(4) of that Schedule;

- (d) a meeting between the child's parent and an officer of the board has been held pursuant to paragraph 7(1) of Schedule 2 to the 1996 Order and the child's parent under paragraph 7(2) of that Schedule either required that another such meeting be arranged or has required that a meeting with the appropriate person (as defined in paragraph 7(3) of that Schedule) to be arranged; or
- (e) the board has sent a written request to the Department seeking its consent under Article 12 to the child being educated at an institution in Northern Ireland other than a grant aided school and that institution is not approved under Article 26 and such consent has not been received by the board within 3 weeks beginning with the day on which the request was sent.

PART V

REVOCATIONS AND TRANSITIONAL PROVISIONS

Revocations

- 25.** Subject to regulation 26, the following Regulations are hereby revoked—
- (a) the Education (Special Educational Needs) Regulations (Northern Ireland) 1997⁽¹⁴⁾; and
 - (b) the Education (Special Educational Needs) (Amendment) Regulations (Northern Ireland) 1998⁽¹⁵⁾.

Transitional provisions

26.—(1) Subject to the following provisions of this regulation references in these Regulations to anything done under these Regulations shall be read in relation to the times, circumstances or purposes in relation to which a corresponding provision of the 1997 Regulations had effect and so far as the nature of the reference permits as including a reference to that corresponding provision.

(2) Regulations 4 to 9 of the 1997 Regulations shall continue to apply in relation to any assessment where before 1st September 2005 in pursuance of Article 15(4) the board notifies the parent that it has decided to make an assessment.

(3) Where regulations 4 to 9 of the 1997 Regulations continue to apply in relation to any assessment but the board has not before 1st January 2006—

- (a) notified the parent of its decision not to make a statement in accordance with Article 17(1);
- (b) served on the parent a copy of a proposed statement in accordance with paragraph 2 of Schedule 2 to the 1996 Order; or
- (c) served on the parent a copy of a proposed amended statement under paragraph 3 of Schedule 2 to the 1996 Order,

regulations 5 to 10 shall apply in relation to the assessment from 1st January 2006 as if on that date the board had given notice to the parent under Article 15(4) of its decision to make an assessment.

(4) Where in accordance with paragraph (3) regulations 5 to 10 apply in relation to an assessment the board shall obtain advice in accordance with Part II, but advice obtained in accordance with the 1997 Regulations shall be considered to have been obtained under Part II if such advice is appropriate for the purpose of arriving at a satisfactory assessment under that Part.

(5) Where before 1st September 2005 in accordance with Article 15(1) the board has served notice on the child's parent that it proposes to make an assessment but it has not before that date notified the

⁽¹⁴⁾ S.R. 1997 No. 327

⁽¹⁵⁾ S.R. 1998 No. 217

parent under Article 15(1) that it has decided to make the assessment or notified him under Article 15(6) that it has decided not to make the assessment regulation 9A of the 1997 Regulations⁽¹⁶⁾ shall continue to apply for the purpose of any such notification under Article 15(4) or 15(6) only.

(6) Where before 1st September 2005 in accordance with Article 20 a parent has asked the board to arrange for an assessment to be made of his child's educational needs but the board has not before that date notified the parent under Article 15(4) that it has decided to make the assessment or notified him under Article 20(3)(a) that it has decided not to make the assessment, regulation 9A of the 1997 Regulations shall continue to apply for the purpose of any notification under Article 15(4) or 20(3)(a) only.

(7) Regulations 11 and 12 of the 1997 Regulations shall continue to apply to the making of any statement where before 1st September 2005 the board has served on the parent a copy of a proposed statement in accordance with paragraph 2 of Schedule 2 to the 1996 Order.

(8) Regulation 12 of the 1997 Regulations shall continue to apply in relation to a proposal to amend a statement where a board serves a notice under paragraph 10(1) or 11(2) of Schedule 2 to the 1996 Order before 1st September 2005.

(9) Regulation 13 of the 1997 Regulations shall continue to apply to a review of a statement in respect of which a board serves a notice as required by regulation 14(2) of those Regulations before 1st September 2005.

(10) Regulation 14 of the 1997 Regulations shall continue to apply to a review of a statement in respect of which a board serves a notice as required by regulation 14(2) of those Regulations before 1st September 2005.

(11) Regulation 15 of the 1997 Regulations shall continue to apply to a review in respect of which a board in accordance with regulation 15(3) of those Regulations has before 1st September 2005 invited the attendance of the persons specified in that regulation to a meeting.

Sealed with the Official Seal of the Department of Education on 10th August 2005.

L.S.

Christine Jendoubi
A senior officer of the
Department of Education