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## STATUTORY INSTRUMENTS

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# 2003 No. 424 (N.I. 12)

## The Education and Libraries (Northern Ireland) Order 2003

- - - - - 27th February 2003

### PART I INTRODUCTORY

#### **Title and commencement**

- 1.—(1) This Order may be cited as the Education and Libraries (Northern Ireland) Order 2003.
- (2) Except as provided by the following provisions of this Article, this Order comes into operation on 1st April 2003.
- (3) The following provisions come into operation on such day or days as the Department may by order appoint<sup>F1</sup>
- (a) Part II (together with Schedule 1);
  - (b) Part II of Schedule 3 and Article 40(2) so far as relating thereto.
- (4) An order under paragraph (3) may make such transitional and saving provisions as appear to the Department to be necessary or expedient.
- (5) The following provisions of this Order do not apply in relation to, or affect the operation of any other statutory provision in relation to, a financial year ending on or before 31st March 2003—
- (a) Articles 10, 12 and 38; and
  - (b) in Part I of Schedule 3, the repeal of—
    - (i) Articles 113, 114 and 119 of the 1986 Order; and
    - (ii) Article 29 of the Education and Libraries (Northern Ireland) Order 1993 Order (NI 12).

<b>F1</b> fully exercised by SR 2005/133, 246
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#### **Interpretation**

- 2.—(1) The Interpretation Act (Northern Ireland) 1954 (c.33) applies to this Order as it applies to an Act of the Assembly.
- (2) In this Order—
- “the 1986 Order” means the Education and Libraries (Northern Ireland) Order 1986 (NI 3);

*Status: Point in time view as at 01/01/2006.*

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“the 1989 Order” means the Education Reform (Northern Ireland) Order 1989 (NI 20);

“the 1997 Order” means the Education (Northern Ireland) Order 1997 (NI 5);

“the 1998 Order” means the Education (Northern Ireland) Order 1998 (NI 13).

(3) This Order shall be construed as one with the 1986 Order; and accordingly Article 2 of the 1986 Order, in so far as it relates to the interpretation of words or expressions used in that Order and in this Order, applies for the purposes of this Order as it applies for the purposes of that Order.

(4) In this Order and in any of the Orders mentioned in paragraph (1) a reference to “the Education Orders” includes a reference to this Order.

## PART II

### FUNDING OF GRANT-AIDED SCHOOLS

#### **The common funding scheme for grant-aided schools**

3.—(1) There shall be a scheme ( “the common funding scheme”) for the funding of relevant schools.

(2) In this Part “relevant school” means a grant-aided school, other than a special school or a school established in a hospital.

(3) The common funding scheme—

- (a) shall be prepared and adopted, and
- (b) may be varied or replaced,

by the Department in accordance with the following provisions of this Article.

(4) The Department shall prepare a draft scheme after consultation with—

- (a) the boards;
- (b) the Council for Catholic Maintained Schools; and
- (c) such other bodies and persons as it thinks fit.

(5) The Department shall send a copy of the draft scheme to—

- (a) each board;
- (b) the Council for Catholic Maintained Schools; and
- (c) each body or person consulted by it under paragraph (4)(c).

(6) Each board shall, in such manner as the Department may direct—

- (a) consult the Board of Governors of every relevant<sup>F2</sup> . . . school in its area about the draft scheme; and
- (b) inform the Department of the outcome of those consultations.

*Para. (7) rep. by 2003 NI 12*

(8) The Department shall consider —

- (a) any views submitted to it by a body or person mentioned in paragraph (5); and
- (b) the outcome of the consultations mentioned in paragraph (6) and (7),

and shall then—

- (i) adopt the scheme (either in the form of the draft or with such modifications as the Department thinks appropriate); and
- (ii) publish the scheme.

(9) Subject to the paragraph (10), the scheme may be varied or replaced by a subsequent scheme made under this Article.

(10) If in the opinion of the Department a subsequent scheme prepared by it does not make any significant change to the previous scheme, paragraphs (5) to (8) do not apply in relation to that scheme and the Department may adopt and publish the scheme.

(11) It shall be the duty of every board to give effect to the common funding scheme for the time being adopted under this Article.

(12) On such day as the Department may by order appoint the following provisions of this Article shall cease to have effect—

- (a) in paragraph (6), the words “controlled and maintained”; and
- (b) paragraph (7).

F2 2003 NI 12

#### **Contents of the common funding scheme**

- 4.—(1) The common funding scheme shall include—
- (a) provision requiring the budget share of each relevant school for a financial year to be determined by the application of a formula ( “the common funding formula”) set out in the scheme;
  - (b) provision requiring the delegation by the board to the Board of Governors of each relevant controlled or maintained school of the management of the school's budget share for each financial year; and
  - (c) such other provisions as are required by this Part or Part VII of the 1998 Order to be included in the scheme.
- (2) The common funding scheme may include such other provisions—
- (a) as are authorised by this Part or Part VII of the 1998 Order to be included in the scheme; or
  - (b) as appear to the Department to be necessary or expedient in connection with the funding of relevant schools.
- (3) For the purposes of this Part and Part VII of the 1998 Order a school's budget share in respect of a financial year is—
- (a) in relation to a controlled or maintained school, the amount management of which falls to be delegated to the Board of Governors of the school under the common funding scheme in respect of that year;
  - (b) in relation to a voluntary grammar school, the amount of the grant to be made to that school under Article 60(3)(a) of the 1989 Order or Article 61(2)(a) of the 1998 Order in respect of that year; and
  - (c) in relation to a grant-maintained integrated school, the amount of the grant to be made to that school under Article 77(2)(a) of the 1989 Order or Article 63(2)(a) of the 1998 Order in respect of that year.
- (4) In this Article “formula” includes methods, principles and rules of any description, however expressed.
- (5) The common funding formula—
- (a) shall include provision for taking into account, in the case of each relevant school, the number and ages of pupils who—

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- (i) are, or are expected to be, registered at the school on such date or dates (whether before or during that year) as may be determined by or under the scheme; and
  - (ii) are not of a class or description excluded by the scheme from being taken into account for the purposes of any such provision;
  - (b) may include provision for taking into account factors affecting the particular needs of any class or description of school;
  - (c) may include provision for taking into account factors affecting the needs of individual schools which are subject to variation from school to school.
- (6) The common funding formula may, in relation to a grammar school having a preparatory department, make special provision for the determination of the budget share of that school in so far as it relates to the preparatory department.
- (7) The special provision made by virtue of paragraph (6) may include provision the effect of which is that the budget share of the school, in so far as it relates to the preparatory department—
- (a) is substantially less than it would have been but for that provision; or
  - (b) is nil.
- (8) In paragraphs (6) and (7) “preparatory department”, in relation to a grammar school, means that part of the school in which primary education is provided.
- (9) The common funding scheme—
- (a) shall provide for a school's budget share for a financial year to be determined initially before the beginning of that year; but
  - (b) may provide for that budget share to be revised from time to time.
- (10) The common funding scheme may provide for amounts determined by or in accordance with the common funding scheme to be allocated to relevant schools (in addition to their budget share).
- (11) The common funding scheme may provide for it to apply with such modifications as may be specified therein in relation to a school which becomes a relevant school at any time during the course of a financial year (whether by virtue of being newly established as such a school or by virtue of becoming such a school where it was previously an independent school).

#### **Conditions as to financial delegation**

5.—(1) The delegation under the common funding scheme of the management of a school's budget share shall be subject to such conditions—

- (a) as may be imposed by the scheme; or
- (b) as may be imposed in accordance with the scheme by the board.

(2) The common funding scheme shall require the board in imposing any conditions by virtue of paragraph (1)(b) to have regard to any guidance issued by the Department as to the conditions it regards as appropriate for imposition by a board.

#### **Effect of financial delegation**

6.—(1) In the case of each controlled and maintained school with a delegated budget, the board shall put at the disposal of the Board of Governors in respect of each financial year a sum equal to the school's budget share for that year, to be spent for the purposes of the school.

(2) The times at which, and the manner in which, any such sum is put at the disposal of the Board of Governors shall be such as may be provided by or under the scheme.

(3) A board may not delegate to the Board of Governors of a relevant controlled or maintained school the power to spend any amount appropriated by the board for the purposes of the school otherwise than as required or authorised by or under the scheme.

(4) The Board of Governors of a school which has a delegated budget—

(a) shall be entitled, subject to any provision made by or under the scheme, to spend any sum made available to it in respect of the school's budget share for a financial year as it thinks fit for the purposes of the school; and

(b) may delegate to the principal, to such extent as may be permitted by or under the scheme, its power under sub-paragraph (a) in relation to any part of that sum.

(5) The members of the Board of Governors of a school shall not incur any personal liability in respect of anything done in good faith in the exercise or purported exercise of their powers under paragraph (4).

### **Publication of financial statements**

7.—(1) The common funding scheme shall require each board—

(a) before the beginning of each financial year to prepare and publish a statement of the financial provision it plans to make in that year for relevant<sup>F3</sup> . . . schools in its area;

(b) after the end of each financial year to prepare and publish a statement of—

(i) resources actually used in that year for the purposes of all relevant<sup>F3</sup> . . . schools; and

(ii) resources so used which were used, or are treated by the board as having been used, for the purposes of each such school.

(2) A statement prepared under this Article shall—

(a) be prepared in such form and at such times, and

(b) contain such particulars,

as may be required by or under the scheme.

(3) The board shall furnish—

(a) the Board of Governors of each relevant school, and

(b) the Council for Catholic Maintained Schools,

with a copy of each statement prepared by the board under this Article.

(4) A Board of Governors shall secure that a copy of any statement furnished to it under this Article is available for inspection (at all reasonable times and free of charge) at the school.

(5) In this Article a reference to the use of resources is a reference to their expenditure, consumption or reduction in value.

(6) On such day as the Department may by order appoint the words “controlled and maintained” in paragraph (1)(a) and (b) shall cease to have effect.

**F3** 2003 NI 12

### **Interpretation of this Part**

8.—(1) In this Part—

(a) references to a school which has a delegated budget are references to a school managed by a Board of Governors to which a board has for the time being delegated the management of the school's budget share in pursuance of the scheme;

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- (b) the Board of Governors of a school to which the board is required by the scheme to delegate the management of the school's budget share is said to have a right to a delegated budget.
- (2) In this Part—
  - “the scheme” means the common funding scheme under Article 3;
  - “the board”, in relation to a school, means the board for the area in which the school is situated.
- (3) References in this Part—
  - (a) to a school's budget share are to be construed in accordance with Article 4(3);
  - (b) to a relevant school are to be construed in accordance with Article 3(2).
- (4) The Department may by order subject to affirmative resolution substitute for references in this Part to a financial year references to such other period as the Department may determine.
- (5) Directions and guidance given by the Department under this Part shall—
  - (a) be in writing; and
  - (b) be published in such manner as the Department thinks fit.

*Article 9—Amendments*

## PART III

### BOARDS: FINANCE AND THE DUTY OF BEST VALUE

#### *Financing of boards*

#### **Resource allocation plans**

- 10.**—(1) In respect of each financial year, a board shall prepare, and submit to each of the funding departments, a resource allocation plan which sets out the estimated use of resources by the board in that year in respect of the relevant functions of the board.
- (2) The plan submitted to a funding department under paragraph (1) shall—
    - (a) be in such form as that department may approve; and
    - (b) contain such other information in connection with the exercise, or proposed exercise, by the board of relevant functions as that department may direct.
  - (3) A funding department may approve a plan submitted to it under paragraph (1) with or without modifications.
  - (4) A board may, with the approval of a funding department, at any time submit a revised resource allocation plan to that department, and that department may approve the revised plan with or without modifications.
  - (5) Resources shall not be used by a board otherwise than in accordance with a plan (or revised plan) approved under this Article.
  - (6) For the purposes of this Order and the Education Orders “the funding departments” are—
    - (a) the Department;
    - (b) the Department of Culture Arts and Leisure; and
    - (c) the Department for Employment and Learning.
  - (7) For the purposes of this Article “relevant functions” means—
    - (a) in relation to a plan submitted to the Department of Culture, Arts and Leisure, functions of the board under—

- (i) Article 37 of the 1986 Order, so far as relating to cultural and recreational activities; and
  - (ii) Part VII of the 1986 Order;
  - (b) in relation to a plan submitted to the Department for Employment and Learning, functions of the board under—
    - (i) Article 50 of the 1986 Order;
    - (ii) Article 52 or 60 of that Order, so far as relating to pupils attending institutions of further education; and
    - (iii) the Further Education (Northern Ireland) Order 1997 (NI 15);
  - (c) in relation to a plan submitted to the Department, all other functions of the board.
- (8) In this Article a reference to the use of resources is a reference to their expenditure, consumption or reduction in value.

### **Funding of boards**

**11.**—(1) The Department of Culture, Arts and Leisure may from time to time pay to a board such amounts as that department thinks necessary to enable the board to meet expenditure incurred, or to be incurred, by the board in the exercise of its functions under—

- (a) Article 37 of the 1986 Order, so far as relating to cultural and recreational activities; and
- (b) Part VII of the 1986 Order.

(2) The Department for Employment and Learning may from time to time pay to a board such amounts as that department thinks necessary to enable the board to meet expenditure incurred, or to be incurred, by the board in the exercise of its functions under—

- (a) Article 50 of the 1986 Order;
- (b) Article 52 or 60 of that Order, so far as relating to pupils attending institutions of further education; and
- (c) the Further Education (Northern Ireland) Order 1997 (NI 15).

(3) The Department may from time to time pay to a board such amounts as the Department thinks necessary to enable the board to meet expenditure incurred, or to be incurred, by the board in the exercise of any of its functions, other than those mentioned in paragraphs (1) and (2).

### **Accounts of boards**

**12.**—(1) A board shall keep accounts in such form as the Department may direct.

(2) A board shall prepare a statement of accounts in respect of each financial year in such form and containing such information as the Department, with the approval of the Department of Finance and Personnel, may direct.

(3) A board shall send copies of the statement of accounts to each of the funding departments and the Comptroller and Auditor General for Northern Ireland by such date as the Department may direct.

(4) The Comptroller and Auditor General shall—

- (a) examine, certify and report on the statement of accounts; and
- (b) send a copy of his report to the board and to each of the funding departments.

(5) The annual report of a board laid before the Assembly under Article 38 shall include—

- (a) the statement of accounts of the board for that year; and
- (b) the report of the Comptroller and Auditor General thereon.

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- (6) In the discharge of his functions under this Article, the Comptroller and Auditor General—
- (a) shall have right of access to the books, accounts and records of the funding departments and the boards; and
  - (b) may require from any member or officer (or former member or officer) of a board such information relating to the affairs of the board as he may consider necessary for the proper discharge of those functions.
- (7) Before issuing directions under this Article the Department shall consult the other funding departments.

### *The duty of best value*

#### **The duty of best value**

**13.—**(1) A board shall make arrangements for continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness.

(2) For the purpose of deciding how to carry out its duty under paragraph (1), a board shall consult persons appearing to the board to be representative of persons who use, are likely to use, or otherwise have an interest in, services provided by the board in pursuance of its functions.

#### **Contracts: exclusion of non-commercial considerations**

**14.—**(1) The Department may by order provide, in relation to boards, for a specified matter to cease to be a non-commercial matter for the purposes of Article 20 of the Education and Libraries (Northern Ireland) Order 1993 (NI 12) (board contracts: exclusion of non-commercial considerations).

- (2) An order under this Article may—
- (a) provide for a matter to cease to be a non-commercial matter for specified purposes or to a specified extent;
  - (b) apply in relation to specified boards, functions or contracts;
  - (c) amend a statutory provision;
  - (d) include supplementary, incidental, consequential and transitional provisions

(3) In exercising a function regulated by Article 20 of the Education and Libraries (Northern Ireland) Order 1993 (NI 12) with reference to a matter which is the subject of an order under this Article a board shall have regard to any guidance issued by the Department.

- (4) Before the Department—
- (a) makes an order under this Article; or
  - (b) issues any guidance under paragraph (3),

it shall consult the other funding departments.

(5) No order shall be made under this Article unless a draft of the order has been laid before, and approved by resolution of, the Assembly.

#### **Power to modify statutory provisions and confer new powers**

**15.—**(1) If the Department thinks that a statutory provision prevents or obstructs compliance by boards with the duty under Article 13(1), the Department may by order make provision modifying or excluding the application of the provision in relation to boards.



(2) The Department may by order make provision conferring on boards any power which the Department thinks necessary or expedient to permit or facilitate compliance with the duty under Article 13(1).

(3) In exercising a power conferred under paragraph (2) a board shall have regard to any guidance issued by the Department after consultation with the other funding departments.

(4) An order under this Article may—

- (a) impose conditions on the exercise of any power conferred by the order (including conditions about consultation or approval);
- (b) amend a statutory provision;
- (c) include supplementary, incidental, consequential and transitional provisions.

(5) No order shall be made under this Article unless a draft has been laid before, and approved by resolution of, the Assembly

(6) Before the Department makes an order under this Article it shall consult—

- (a) the other funding departments;
- (b) the boards; and
- (c) such other persons as appear to the Department to be representative of interests affected by the proposals.

(7) If, following consultation under paragraph (6), the Department proposes to make an order under this Article it shall lay before the Assembly a document explaining the proposals and, in particular—

- (a) setting them out in the form of a draft order; and
- (b) giving details of consultation under paragraph (6).

(8) Where a document relating to proposals is laid before the Assembly under paragraph (7), no draft of an order under this Article to give effect to the proposals (with or without modification) shall be laid before the Assembly until after the expiry of the statutory period beginning with the day on which the document was laid.

(9) In preparing a draft order under this Article the Department shall consider any representations made during the period mentioned in paragraph (8).

(10) A draft order laid before the Assembly in accordance with paragraph (5) must be accompanied by a statement of the Department giving details of—

- (a) any representations considered in accordance with paragraph (9); and
- (b) any changes made to the proposals contained in the document laid before the Assembly under paragraph (7).

### **Repeal of competition provisions**

**16.** Part II of, and Schedule 1 to, the Education and Libraries (Northern Ireland) Order 1993 (NI 12) (competition) shall cease to have effect.

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## PART IV SCHOOLS

### *Welfare and protection of pupils*

#### **Duty on Boards of Governors to safeguard and promote the welfare of pupils**

**17.**—(1) It shall be the duty of the Board of Governors of a grant-aided school to safeguard and promote the welfare of registered pupils at the school at all times when such pupils are—

- (a) on the premises of the school; or
- (b) in the lawful control or charge of a member of the staff of the school.

(2) Paragraph (1) does not apply in relation to pupils for whom accommodation is provided by the Board of Governors of a voluntary school (as to whom broadly corresponding provision is made by Article 176(1) of the Children (Northern Ireland) Order 1995 (NI 2)).

(3) Article 101 of the 1986 Order (directions by Department as to performance of duties imposed by or under the Education Orders) shall apply in relation to the duty imposed on the Board of Governors of a voluntary school by Article 176(1) of the Children (Northern Ireland) Order 1995 as it applies in relation to duties imposed on such a Board of Governors by or under any provision of the Education Orders.

#### **Child protection measures**

**18.**—(1) It shall be the duty of the Board of Governors of a grant-aided school—

- (a) to determine the measures to be taken at the school (whether by the Board of Governors, the staff of the school or other persons) with a view to protecting pupils from abuse (whether at school or elsewhere);
- (b) to review those measures—
  - (i) from time to time; and
  - (ii) (without prejudice to head (i)) at such times as the Department may direct;
- (c) in determining or reviewing those measures to have regard to any guidance given by the Department, the board for the area in which the school is situated and (in the case of a Catholic maintained school) the Council for Catholic Maintained Schools;
- (d) to prepare a written statement of such measures and to secure that—
  - (i) a copy of that statement is given (free of charge) to the parents of all registered pupils at the school and to the staff of the school; and
  - (ii) copies of the statement are available for inspection (at all reasonable times and free of charge) at the school; and
- (e) to secure that such measures are taken.

(2) Directions under paragraph (1)(b)(ii) may be given—

- (a) in relation to grant-aided schools generally;
- (b) in relation to a class or description of grant-aided school; or
- (c) in relation to any particular grant-aided school or schools.

(3) In this Article “abuse” includes sexual abuse and abuse causing physical or mental harm to a child.

### **School discipline measures to prevent bullying**

19.—(1) Article 3 of the 1998 Order (responsibility of Board of Governors and principal for discipline) shall be amended as follows.

(2) In paragraph (2)(b) (consultation by Board of Governors before making or revising statement of general principles concerning discipline) for the words “the parents of registered pupils at the school” there shall be substituted “the registered pupils at the school and the parents of those pupils”.

(3) In paragraph (3)(a)(ii) (principal to determine measures to be taken to encourage good behaviour and respect for others on the part of pupils) at the end there shall be added “and, in particular, preventing all forms of bullying among pupils”.

(4) In paragraph (3) after sub-paragraph (a) there shall be inserted—

“(aa) before determining such measures, to consult the registered pupils at the school and the parents of those pupils;” .

### *Admissions*

### **Admission appeals: tribunal procedures and expenses**

20.—(1) In Article 15(8) of the 1997 Order (regulations as to constitution and procedure of admission appeal tribunals) after sub-paragraph (d) there shall be inserted—

“(dd) may provide for tribunals to sit in private, except in such circumstances as may be specified in, or determined in accordance with, the regulations;” .

(2) In Article 15(10) of the 1997 Order (travelling and subsistence allowances to members of admission appeal tribunals to be on such conditions and at such rates as the Department may determine) the words “, on such conditions and at such rates as the Department may determine, ” shall be omitted.

(3) After that paragraph there shall be inserted—

“(10A) Payments under paragraph (10) shall be made at such rates and on such conditions as may be—

- (a) determined by the board; and
- (b) approved by the Department.” .

### **Parental preferences for admission to nursery schools**

21.—(1) In Article 23 of 1998 Order (arrangements for applications for admission to pre-school education to be made directly to the Board of Governors of the school concerned) for paragraphs (1) and (2) there shall be substituted—

“(1) Every board shall make arrangements for the parent of a child resident in the area of the board—

- (a) to express (in order of preference) his preferences as to the school at which he wishes pre-school education to be provided for his child;
- (b) where any of those schools provides both full time and part-time pre-school education, to express his preference as to which kind of pre-school education he wishes to be provided for his child; and
- (c) to give reasons for his preferences.

(2) Where the parent of a child has expressed his preferences under arrangements under paragraph (1)—

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- (a) the parent shall be taken as making an application for admission of the child to the school which is the first preference of the parent; and
- (b) if that application is refused, the parent shall then be taken as making an application for admission of the child to the school which is the second preference of the parent,

and so on, taking each preference of the parent in order.

(2A) Where—

- (a) a school provides both full-time and part time education; and
- (b) a parent's expressed preferences include both,

paragraph (2) shall be read as if references to admission to a school were references to admission to a school for the particular kind of pre-school education (that is to say part-time or full-time) which is specified in the preference in question.” .

(2) This Article does not apply in relation to any admission to a school taking effect, or proposed admission which would take effect, in a school year ending on or before 31st July 2004.

### **Admission to special schools of children resident outside Northern Ireland**

**22.**—(1) A board may make arrangements for the admission to a special school in its area of a child who is resident outside Northern Ireland and has special educational needs.

(2) Arrangements made in respect of a child under this Article shall not be for a period of more than one school year at a time; but further arrangements may be made under this Article for a subsequent school year in respect of the same child and the same special school.

(3) A board may only enter into arrangements under this Article in respect of a special school and a school year (or a part thereof) if the board is of the opinion that doing so will not, in the school year in question, prevent the admission to the school of a child resident in Northern Ireland.

(4) Articles 128 to 131 of the 1989 Order (which restrict the charges which can be made in respect of pupils at a grant-aided school) shall not apply to a special school in relation to a pupil admitted to the school in accordance with arrangements under this Article; and accordingly in Article 127 of the 1989 Order after paragraph (4) there shall be inserted—

“(4A) Those Articles do not apply to a special school in relation to a pupil admitted to the school in accordance with arrangements under Article 22 of the Education and Libraries (Northern Ireland) Order 2003.” .

(5) A board may, in respect of a pupil admitted to a special school in accordance with arrangements under this Article, make such charges as it may determine.

### *Miscellaneous*

#### **Removal of members of Boards of Governors**

**23.**—(1) The Department may by regulations provide for the removal by the Department of all of the voting and co-opted members of the Board of Governors of a grant-aided school ( “the relevant school” )—

- (a) in prescribed circumstances; or
- (b) in such circumstances as may be determined by the Minister of Education in accordance with the regulations.

(2) Regulations under paragraph (1)—

- (a) shall provide for the formation of a new Board of Governors for the relevant school;

- (b) may provide for the exercise by a prescribed person or body of prescribed functions of the Board of Governors of the relevant school during such period as may be prescribed; and
  - (c) may, for the purposes of any provision made by virtue of sub-paragraph (a) or (b), provide for any prescribed provisions of the Education Orders to apply in relation to the relevant school with such modifications as may be prescribed.
- (3) Regulations under paragraph (1) shall require the Department before exercising any power of removal conferred by the regulations—
- (a) to consult such bodies and persons as may be prescribed;
  - (b) to give to the Board of Governors of the relevant school such notice as may be prescribed of its intention to exercise the power of removal;
  - (c) to afford the Board of Governors an opportunity to make representations to the Department concerning the matter; and
  - (d) to consider any representations so made.
- (4) The Department may by regulations provide for the removal from office by a relevant authority of any member of the Board of Governors of a grant-aided school appointed by it—
- (a) in prescribed circumstances; or
  - (b) in such circumstances as may be determined by the Minister of Education in accordance with the regulations.
- (5) Regulations under paragraph (4)—
- (a) shall provide for the appointment of a person to hold office in place of the member removed for the remainder of his term of office; and
  - (b) may for that purpose provide for any prescribed provisions of the Education Orders to apply in relation to that appointment with such modifications as may be prescribed.
- (6) Regulations under paragraph (4) shall require the relevant authority before exercising any power of removal conferred by the regulations—
- (a) to consult such bodies and persons as may be prescribed;
  - (b) to give to such persons or bodies as may be prescribed such notice as may be prescribed of its intention to exercise the power of removal;
  - (c) to afford to such bodies or persons as may be prescribed an opportunity to make representations to the relevant authority concerning the matter; and
  - (d) to consider any representations so made.
- (7) This Article and any regulations under this Article have effect in relation to a grant-aided school notwithstanding any provision for the time being contained in—
- (a) the scheme of management of the school; or
  - (b) any other instrument of government of the school;
- and any such scheme or instrument shall have effect accordingly.
- (8) In this Article, in relation to a Board of Governors—
- “co-opted members” means members co-opted under Article 122 or 139 of the 1989 Order;
  - “relevant authority” means a body by which, or person by whom, any member of the Board of Governors is appointed;
  - “voting members” has the same meaning as Article 122 of the 1989 Order.
- (9) In this Article “appoint” includes nominate and choose.

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### **Development proposals for grant aided schools**

**24.** In Article 14 of the 1986 Order (development proposals for grant-aided schools) for paragraph (5) there shall be substituted—

“(5) Before a proposal concerning an existing school is submitted to the board under paragraph (2), the person making the proposal shall consult the following persons (or representatives of them)—

- (a) the Board of Governors of the school concerned;
- (b) the teachers employed at that school; and
- (c) the parents of registered pupils at that school.

(5A) Before a proposal concerning an existing school is submitted to the Department by the board under paragraph (1) or (3), the board shall consult the following persons (or representatives of them)—

- (a) the Board of Governors of the school concerned;
- (b) the teachers employed at that school; and
- (c) the parents of registered pupils at that school.

(5B) Before a proposal concerning any school is submitted to the Department by the board under paragraph (1), (2) or (3), the board shall consult the trustees and managers (or representatives of them) of any other school which would, in the opinion of the board, be affected by the proposal.” .

### **Appeals against expulsion: tribunal procedures**

**25.** In Article 49(10) of the 1986 Order (regulations as to constitution and procedure of tribunals hearing appeals against expulsion of pupils) after sub-paragraph (d) there shall be inserted—

- “(da) may provide for an appeal tribunal in considering an appeal to have regard in particular to any matters specified in the regulations;
- (db) may provide for appeal tribunals to sit in private, except in such circumstances as may be specified in, or determined in accordance with, the regulations;” .

### **Curriculum, etc. complaints: tribunal procedures**

**26.** In Article 33(3) of the 1989 Order (regulations as to constitution and procedure of tribunal hearing complaints concerning curriculum and related matters) after sub-paragraph (aa) there shall be inserted—

- “(ab) may provide for the tribunal in considering a complaint to have regard in particular to any matters specified in the regulations;
- (ac) may provide for the tribunal to sit in private, except in such circumstances as may be specified in, or determined in accordance with, the regulations;” .

### **Consultation of schools by sampling**

**27.**—(1) In Article 31 of the 1989 Order (provision of information) in paragraph (4) (persons and bodies to be consulted before regulations are made under that Article) for the words “every grant-aided school appearing to it to be affected” there shall be substituted “a sample of affected schools” .

(2) After that paragraph there shall be inserted—

“(4A) In paragraph (4) “a sample of affected schools” means a number of grant-aided schools selected by the Department as being a representative sample of all such schools affected by the regulations.” .

(3) In Article 11 of the 1998 Order (school performance targets) in paragraph (3) (persons and bodies to be consulted before regulations are made under that Article) in sub-paragraph (c) for the words “every grant-aided school appearing to it to be affected” there shall be substituted “a sample of affected schools”.

(4) After that paragraph there shall be inserted—

“(3A) In paragraph (3)(c) “a sample of affected schools” means a number of grant-aided schools selected by the Department as being a representative sample of all such schools affected by the regulations.”.

### **Costs under approved contracts**

**28.** In Article 25(4) of the 1997 Order (definition of costs of relevant authority on foot of an approved contract) for the words from “the payments made” to the end there shall be substituted “all sums paid or payable by the relevant authority under the contract, whether so paid or payable during the term of the contract or on or after its termination”.

## **PART V**

### **MISCELLANEOUS AND SUPPLEMENTARY**

#### *Amendments to the 1986 Order*

### **Determination of travelling and subsistence allowances**

**29.**—(1) In Article 79 of the 1986 Order in paragraph (1) (travelling and subsistence payments to members of boards and others to be on such conditions and at such rates as the Department may determine) the words “, on such conditions and at such rates as the Department may determine,” shall be omitted.

(2) After that paragraph there shall be inserted—

“(1A) Payments under paragraph (1) shall be made at such rates and on such conditions as may be—

- (a) determined by the board; and
- (b) approved by the Department.”.

(3) In Article 80 of the 1986 Order (payments in respect of official visits to be at rates determined by the Department) for the words from the beginning to “travelling” there shall be substituted—

“(1) A board may—

- (a) defray any travelling”.

(4) At the end of that Article there shall be added—

“(2) Payments under paragraph (1)(a) shall be made at such rates and on such conditions as may be—

- (a) determined by the board, after consultation with the Staff Commission; and
- (b) approved by the Department.”.

(5) In Article 92(2)(b) of the 1986 Order (payments in respect of attendance at conferences to be at such rates as the Department may determine) the words “at such rates as the Department may determine,” shall be omitted.

(6) At the end of that Article there shall be added—

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“(3) Payments under paragraph (2)(b) shall be made at such rates and on such conditions as may be—

- (a) determined by the board, after consultation with the Staff Commission; and
- (b) approved by the Department.” .

## **Officers of boards**

**30.** For Article 83 of the 1986 Order (officers of boards) there shall be substituted—

### **“Officers of boards**

**83.—**(1) A board shall appoint a fit person to be—

- (a) the chief executive of the board who shall also be the chief education officer of the board and act as secretary to the board; and
- (b) the chief librarian of the board who shall also act as secretary to the library committee of the board.

(2) In connection with making an appointment to any post under paragraph (1), a board shall consult the Staff Commission as to—

- (a) the qualifications and previous experience to be required of candidates for appointment;
- (b) the arrangements for advertising the post; and
- (c) the terms and conditions on which the appointment is to be made.

(3) A board shall not appoint—

- (a) a person as chief executive unless the Department approves the appointment;
- (b) a person as chief librarian unless the Department of Culture, Arts and Leisure approves the appointment.

(4) In order to obtain such approval, the board shall send to the department concerned the names, qualifications and previous experience of those applicants considered by the board to be suitable for appointment, indicating the name of the person whom the board proposes to appoint.

(5) Where a board makes an appointment under paragraph (1) it shall notify each of the funding departments of—

- (a) the name of the person appointed; and
- (b) the date on which the appointment is to take effect.

(6) The Department may direct that the terms and conditions relating to remuneration of —

- (a) chief executives and chief librarians of boards; and
- (b) other officers of boards of such class or description as may be specified in the direction,

shall not be fixed or altered without the approval of the Department.

(7) Before granting its approval under paragraph (6), the Department shall consult the Staff Commission.

(8) Two or more boards may arrange for the appointment of the same person to be an officer of both or all those boards; but the boards concerned shall notify each of the funding departments of any such arrangement.”.



### **Principals on teaching appointments committee**

**31.**—(1) Part I of Schedule 3 to the 1986 Order (teaching appointments committees) shall be amended as follows.

(2) In paragraph 1(a) (committee to include two principals of controlled schools under the management of the board) the words “under the management of the board” shall be omitted.

(3) In paragraph 2(1) for head (b) (selection of principals to attend committee from panel appointed under head (a)) there shall be substituted—

- “(b) subject to head (c), two principals from that panel shall be appointed by the board to attend each meeting of the teaching appointments committee;
- (c) where it is not practicable to make any appointment in accordance with head (b) (whether because of unavailability or otherwise), the board may instead appoint one or (as the case may require) two principals from a panel prepared by any other board under head (a);
- (d) different principals may be appointed under head (b) or (c) to attend different meetings of the committee.” .

### *Amendments to the 1989 Order*

### **Programme of training by boards**

**32.**—(1) Article 149 of the 1989 Order (programmes of training by boards) shall be amended as follows.

(2) In paragraph (1) (board to prepare and submit programme to Department at such times and in such form as the Department may direct) the following shall be omitted—

- (a) the words “, at such times and in such form as the Department may direct,”; and
- (b) the words “and submit to the Department”.

(3) Paragraph (3) (power of Department to request information in connection with submitted programme) and paragraph (4) (power of Department to approve submitted programme) shall be omitted.

(4) In paragraph (5) (duty to give effect to approved programme) for “approved by the Department” substitute “prepared by it”.

(5) For paragraph (6) (revision or amendment of programme) there shall be substituted—

- “(6) A board may at any time prepare a revised programme or an amendment to an existing programme; and paragraphs (2) and (5) apply in relation to any such revised programme or amendment as they apply in relation to the original programme.” .

### **Terms of appointment of members of CCMS**

**33.**—(1) In paragraph 5 of Schedule 8 to the 1989 Order (terms of appointment of members of Council for Catholic Maintained Schools), sub-paragraph (2) (which provides for certain members of the Council to be appointed at a different time from the other members) shall cease to have effect.

(2) In consequence of paragraph (1), the following provisions of that Schedule shall cease to have effect—

- (a) in paragraph 3(11) the words “(except paragraph 5(2))”;
- (b) in paragraph 5(1) the words “Subject to sub-paragraph (2),”;
- (c) in paragraph 5(3) the words “or (2)” and “or (as the case may be) sub-paragraph (2)”.

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(3) The term of office of a person who immediately before the coming into operation of this Article is a member of the Council appointed in accordance with paragraph 5(2) of Schedule 8 to the 1989 Order shall expire on the day preceding that from which the first of the next subsequent appointments made to the Council in accordance with paragraph 5(1) of that Schedule are effective.

#### *Amendments to the 1998 Order*

#### **Provision of secondary education for pupils by institutions of further education**

**34.** In Article 83 of the 1998 Order for paragraph (2) there shall be substituted—

“(2) A board may arrange for secondary education to be provided by an institution of further education—

- (a) on behalf of the Board of Governors of a grant-aided school in its area, to meet the needs of any registered pupils at the school who are in key stage 4; or
- (b) to meet the needs of any child over the age of 14 but under compulsory school age who is resident in its area and is not a registered pupil at any grant-aided school.”.

#### **The General Teaching Council for Northern Ireland: fees and procedures**

**35.**—(1) Chapter I of Part VI of the 1998 Order (the General Teaching Council for Northern Ireland) shall be amended as follows.

(2) In Article 35(3) (person not to be employed as teacher unless registered) at the beginning there shall be inserted “ Subject to such exceptions as may be provided for by or under regulations, ”.

(3) In Article 36(3)(f)(iii) (procedures in connection with cases of misconduct to be specified in regulations) after the words “specified in” there shall be inserted “ or determined under ”.

(4) After Article 36(4) (regulations to authorise charging of fees by Council in respect of certain matters) there shall be inserted—

“(4A) The Council, in exercising any power to fix fees authorised by virtue of paragraph (4), shall have regard to the expenditure of the Council in exercising—

- (a) its functions under this Order relating to registration; and
- (b) all other functions conferred on it under this Order or any other statutory provision.”.

#### *Miscellaneous*

#### **Abolition of corporal punishment**

**36.**—(1) Corporal punishment given by, or on the authority of, a member of staff to a child—

- (a) for whom education is provided at any school or institution of further education, or
- (b) for whom education is provided, otherwise than at school, under any arrangements made by a board under Article 86 of the 1998 Order,

cannot be justified in any proceedings on the ground that it was given in pursuance of a right exercisable by the member of staff by virtue of his position as such.

(2) Paragraph (1) applies to corporal punishment so given to a child at any time, whether at the school, institution or other place at which education is provided for the child, or elsewhere.

(3) In this Article any reference to giving corporal punishment to a child is to doing anything for the purpose of punishing that child (whether or not there are other reasons for doing it) which, apart from any justification, would constitute battery.

(4) However, corporal punishment shall not be taken to be given to a child by virtue of anything done for reasons that include averting—

- (a) an immediate danger of personal injury to, or
- (b) an immediate danger to the property of,

any person (including the child himself).

(5) In this Article—

“child” means a person under the age of 18;

“member of staff”, in relation to the child concerned, means—

- (a) any person who works as a teacher at the school, institution or other place at which education is provided for the child, or
- (b) any other person who (whether in connection with the provision of education for the child or otherwise)—
  - (i) works at that school, institution or place, or
  - (ii) otherwise provides his services there (whether or not for payment), and has lawful control or charge of the child.

### **Reports and returns**

**37.—**(1) A body to which this paragraph applies shall—

- (a) make such reports and returns; and
- (b) give such information,

to the Department as the Department may reasonably require for the purposes of its functions under any statutory provision.

(2) Paragraph (1) applies to—

- (a) a board;
- (b) the trustees of a school;
- (c) the Board of Governors of a grant-aided school;
- (d) the proprietor of an independent school;
- (e) the Council for Catholic Maintained Schools;
- (f) the Staff Commission; and
- (g) the Northern Ireland Council for the Curriculum, Examinations and Assessment.

(3) A body to which this paragraph applies shall—

- (a) make such reports and returns; and
- (b) give such information,

to a board as the board may reasonably require for the purposes of its functions under any statutory provision.

(4) Paragraph (3) applies to—

- (a) the trustees of a school;
- (b) the Board of Governors of a grant-aided school; and
- (c) the proprietor of an independent school.

(5) A body to which this paragraph applies shall—

- (a) make such reports and returns; and

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(b) give such information,

to the Department of Culture, Arts and Leisure as that Department may reasonably require for the purposes of its functions under any statutory provision.

(6) Paragraph (5) applies to—

- (a) a board; and
- (b) the Staff Commission.

(7) A body to which this paragraph applies shall—

- (a) make such reports and returns; and
- (b) give such information,

to the Department for Employment and Learning as that Department may reasonably require for the purposes of its functions under any statutory provision.

(8) Paragraph (7) applies to—

- (a) a board;
- (b) the managers of a college of education;
- (c) the governing body of a university; and
- (d) the Northern Ireland Council for the Curriculum, Examinations and Assessment.

(9) In Article 21 of the Further Education (Northern Ireland) Order 1997 (NI 15) in paragraph (1) (b) (duty of governing body of institution of further education to provide information to a board for the purposes of its functions under the Education Orders) for the words “the Education Orders” there shall be substituted “ any statutory provision ”.

### **Annual report of boards**

**38.**—(1) A board shall in respect of each financial year prepare a report on the exercise of its functions in that year.

(2) A report shall—

- (a) be published; and
- (b) be laid before the Assembly,

by the board by such date as the Department may direct.

(3) Subject to Article 12(5) (report under this Article to contain annual statement of accounts of board and report thereon), a report under this Article shall contain such information as the Department may direct.

(4) Before giving a direction under this Article, the Department shall consult the other funding departments.

### *Supplementary provisions*

### **Regulations**

**39.**—(1) Regulations under this Order shall be subject to negative resolution.

(2) Regulations under this Order may contain such incidental, supplementary and transitional provisions as appear to the Department to be appropriate.

*Article 40—Amendments and repeals*

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*Schedule 1—Amendments*

*Schedule 2—Amendments*

*Schedule 3—Repeals*

**Status:**

Point in time view as at 01/01/2006.

**Changes to legislation:**

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