
STATUTORY INSTRUMENTS

1996 No. 274

The Education (Northern Ireland) Order 1996

PART I
INTRODUCTORY

Title and commencement

1.—(1) This Order may be cited as the Education (Northern Ireland) Order 1996.

(2) Except as provided by paragraph (3), this Order shall come into operation on the expiration of two months from the day on which it is made.

(3) The following provisions, namely —

- (a) Part II and Schedules 1 and 2;
- (b) Articles 31 and 34;
- (c) Article 35(1) to (5) and Schedule 3;
- (d) Articles 40 and 41 and Schedule 4;
- (e) Part I of Schedule 5 and so much of, Article 43 as relates thereto;
- (f) Part I of Schedule 6 and so much of Article 44 as relates thereto;

shall come into operation on such day or days as the Department may by order appoint.

(4) An order under paragraph (3) may make such transitional provision as appears to the Department to be necessary or expedient in connection with the provisions brought into operation by the order.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

“the 1986 Order” means the Education and Libraries (Northern Ireland) Order 1986;

“the 1989 Order” means the Education Reform (Northern Ireland) Order 1989.

(3) This Order shall be construed as one with the 1986 Order, the 1989 Order and the Education and Libraries (Northern Ireland) Order 1993; and accordingly Article 2(2) of the 1986 Order, in so far as it relates to the definition of words or expressions used in that Order and in this Order, shall apply for the purposes of this Order as it applies for the purposes of that Order.

PART II

CHILDREN WITH SPECIAL EDUCATIONAL NEEDS

Introductory

Meaning of “special educational needs” and “special educational provision” etc.

3.—(1) For the purposes of the Education Orders, a child has “special educational needs” if he has a learning difficulty which calls for special educational provision to be made for him.

(2) For the purposes of this Part, subject to paragraph (3), a child has a “learning difficulty” if—

- (a) he has a significantly greater difficulty in learning than the majority of children of his age,
- (b) he has a disability which either prevents or hinders him from making use of educational facilities of a kind generally provided for children of his age in ordinary schools, or
- (c) he has not attained the lower limit of compulsory school age and is, or would be if special educational provision were not made for him, likely to fall within sub-paragraph (a) or (b) when he is of compulsory school age.

(3) A child is not to be taken as having a learning difficulty solely because the language (or form of, the language) in which he is, or will be, taught is different from a language (or form of a language) which has at any time been spoken in his home.

(4) In the Education Orders, “special educational provision” means—

- (a) in relation to a child who has attained the age of two years, educational provision which is additional to, or otherwise different from, the educational provision made generally for children of his age in ordinary schools, and
- (b) in relation to a child under that age, educational provision of any kind.

(5) In the Education Orders, “special school” means a controlled or voluntary school which is specially organised to make special educational provision for pupils with special educational needs and is recognised by the Department as a special school.

(6) In this Part, “ordinary school” means a grant-aided school which is not a special school.

(7) In this Part, “child” includes any person who has not attained the age of nineteen years and is a registered pupil at a school.

(8) For the purposes of paragraph (7) a person who attains the age of nineteen years at any time during a school term at any school shall be deemed not to have attained that age until the day after the end of that school term.

(9) In this Part, “the Tribunal” has the meaning assigned to it by Article 22(1).

Code of practice

Code of practice

4.—(1) The Department shall issue, and may from time to time amend, a code of practice giving practical guidance in respect of the discharge by boards and the Boards of Governors of grant-aided schools of their functions under this Part.

(2) It shall be the duty of—

- (a) boards and Boards of Governors of grant-aided schools exercising functions under this Part, and

(b) any other person exercising any function for the purpose of the discharge by boards and Boards of Governors of grant-aided schools of functions under this Part, to have regard to the provisions of the code.

(3) On any appeal, the Tribunal shall have regard to any provision of the code which appears to the Tribunal to be relevant to any question arising on the appeal.

(4) The Department shall publish the code as for the time being in force.

Making and amendment of code

5.—(1) Where the Department proposes to issue or amend a code of practice, it shall prepare a draft of the code (or amendment).

(2) The Department shall consult such persons about the draft as the Department thinks fit and shall consider any representations made by them.

(3) If the Department determines to proceed with the draft (either in its original form or with such modifications as the Department thinks fit), the Department shall issue the code or amendment to the code in the form of the draft and the code or amendment shall come into force on such day as the Department may by order appoint.

Special educational provision: general

Review of arrangements

6.—(1) A board shall—

(a) determine, and keep under review, its policy in relation to special educational provision; and

(b) keep under review the arrangements made by it for special educational provision.

(2) In exercising its functions under paragraph (1)(a), a board shall consult—

(a) the Boards of Governors of grant-aided schools in its area;

(b) other boards;

(c) the Council for Catholic Maintained Schools; and

(d) such other persons as it thinks fit.

Qualified duty to secure education in ordinary school of child for whom board maintains statement of special educational needs

7.—(1) Any person exercising any functions under this Part in respect of a child—

(a) for whom a board maintains a statement under Article 16, and

(b) who should be educated in a grant-aided school,

shall secure that, if the conditions mentioned in paragraph (2) are satisfied, the child is educated in an ordinary school.

(2) The conditions are that—

(a) the board is not required under Schedule 2 to specify in the statement under Article 16 the name of a special school, and

(b) educating the child in an ordinary school is compatible with—

(i) his receiving the special educational provision which his learning difficulty calls for,

- (ii) the provision of efficient education for the children with whom he will be educated, and
- (iii) the efficient use of resources.

Duties in relation to pupils with special educational needs in ordinary schools

8.—(1) The Board of Governors of an ordinary school shall—

- (a) use its best endeavours, in exercising its functions in relation to the school, to secure that if any registered pupil has special educational needs the special educational provision which his learning difficulty calls for is made,
- (b) secure that, where a registered pupil has special educational needs, those needs are made known to all who are likely to teach him, and
- (c) secure that the teachers in the school are aware of the importance of identifying, and providing for, those registered pupils who have special educational needs.

(2) Where a child who has special educational needs is being educated in an ordinary school, those concerned with making special educational provision for the child shall secure, so far as is reasonably practicable and is compatible with—

- (a) the child receiving the special educational provision which his learning difficulty calls for,
- (b) the provision of efficient education for the children with whom he will be educated, and
- (c) the efficient use of resources,

that the child engages in the activities of the school together with children who do not have special educational needs.

(3) The annual report for an ordinary school prepared under Article 125 of the 1989 Order shall describe—

- (a) any special arrangements made for the admission of pupils to whom paragraph (4) applies;
- (b) the steps taken to prevent pupils with special educational needs from being treated less favourably than other pupils;
- (c) the facilities provided to assist access to the school by pupils with special educational needs.

(4) This paragraph applies to a pupil if—

- (a) he has special educational needs; but
- (b) no statement is maintained in respect of him under Article 16.

Determination by Boards of Governors of policy in relation to provision of education for children with special educational needs

9.—(1) The Board of Governors of a grant-aided school shall determine, and keep under review, its policy in relation to the provision of education for children with special educational needs.

(2) In exercising its functions under paragraph (1), a Board of Governors of a school shall, to the extent that it may appear necessary or desirable for the purpose of co-ordinating provision for children with special educational needs, consult with—

- (a) the board for the area in which the school is situated;
- (b) the Boards of Governors of other grant-aided schools; and
- (c) the Council for Catholic Maintained Schools (in the case of a Catholic maintained school).

(3) The policy determined by a Board of Governors under paragraph (1) shall be compatible with the statutory provisions relating to education (including, in particular, those relating to children with special educational needs).

(4) In carrying out its functions under the Education Orders in relation to a school under its management, a Board of Governors shall have regard to its policy in relation to the provision of education for children with special educational needs.

(5) The annual report for a grant-aided school prepared under Article 125 of the 1989 Order shall describe what steps have been taken by the Board of Governors to secure the implementation of its policy in relation to the provision of education for children with special educational needs.

Special educational provision otherwise than in a grant-aided school

Special educational provision otherwise than in a grant-aided school

10.—(1) Subject to paragraphs (2) and (3) and to Articles 11 and 12, a board may arrange for the special educational provision (or any part of it) which any learning difficulty of a child in its area calls for to be made—

- (a) in an institution outside Northern Ireland, or
 - (b) in Northern Ireland otherwise than in a grant-aided school.
- (2) A board shall not make any arrangements under paragraph (1) unless it is satisfied that—
- (a) the interests of the child require such arrangements to be made; and
 - (b) those arrangements are compatible with the efficient use of resources.
- (3) Before making any arrangements under this Article, a board shall consult the child's parent.
- (4) This Article is without prejudice to any other powers of a board.

Special educational provision in institutions outside Northern Ireland

11.—(1) No person shall so exercise his functions under this Part that the special educational provision (or any part of it) which any learning difficulty of a child calls for is made in an institution outside Northern Ireland unless the institution is one which specialises in providing for children with special needs.

(2) In paragraph (1), “children with special needs” means children who have particular needs which would be special educational needs if those children were in Northern Ireland.

(3) Where a board arranges under Article 10(1)(a) for special educational provision in respect of a child to be made in an institution outside Northern Ireland, the board shall pay—

- (a) the fees charged by the institution;
- (b) the expenses reasonably incurred in maintaining him while he is at the institution or travelling to or from it;
- (c) his reasonable travelling expenses; and
- (d) the expenses reasonably incurred by any person accompanying him while he is travelling or staying at the institution.

Special educational provision in institutions in Northern Ireland other than grant-aided schools

12.—(1) No person shall so exercise his functions under this Part that the special educational provision (or any part of it) which any learning difficulty of a child calls for is made in an institution in Northern Ireland other than a grant-aided school unless—

- (a) the institution is for the time being approved by the Department under Article 26 as suitable for the admission of children with special educational needs, or
 - (b) the Department consents to the child being educated there.
- (2) Where a board arranges under Article 10(1)(b) for special educational provision in respect of a child to be made at an independent school in Northern Ireland, the board—
- (a) shall pay the fees payable in respect of the education provided for the child at the school;
 - (b) may pay any fees payable in respect of board and lodging provided for the child at the school; and
 - (c) may provide transport for the child to facilitate his attendance at the school.
- (3) Where a board arranges under Article 10(1)(b) for special education provision in respect of a child to be made at an institution in Northern Ireland other than a school, the board may contribute to the costs of providing education to the child at the institution or assist the institution in the provision of that education, and may in particular—
- (a) pay the fees payable in respect of the education provided for the child at the institution;
 - (b) pay any fees payable in respect of board and lodging provided for the child at the institution;
 - (c) provide transport for the child to facilitate his attendance at the institution; and
 - (d) provide equipment and services to the institution.

Identification and assessment of children with special educational needs

General duty of board towards children for whom it is responsible

- 13.**—(1) A board shall exercise its powers with a view to securing that, of the children for whom it is responsible, it identifies those to whom paragraph (2) applies.
- (2) This paragraph applies to a child if—
- (a) he has special educational needs, and
 - (b) it is necessary for the board to determine the special educational provision which any learning difficulty he may have calls for.
- (3) For the purposes of this Part a board is responsible for a child if he is in the area of the board and—
- (a) he is a registered pupil at a grant-aided school, or
 - (b) he has attained the age of two years, is not over compulsory school age and has been brought to the attention of the board as having, or probably having, special educational needs.

Duties of health and social services boards and health and social services trusts

- 14.**—(1) If a health and social services authority, in the course of exercising any of its functions in relation to a child who has not attained the lower limit of compulsory school age, forms the opinion that he has, or probably has, special educational needs, that authority shall—
- (a) inform the child's parent of its opinion and of its duty under this paragraph and paragraph (2); and
 - (b) after giving the parent an opportunity to discuss that opinion with an officer of the authority, bring it to the attention of the appropriate board.

(2) If, in a case falling within paragraph (1), the health and social services authority is of the opinion that a particular voluntary organisation is likely to be able to give the parent advice or assistance in connection with any special educational needs that the child may have, that authority shall inform the parent accordingly.

(3) Where it appears to a board that any health and social services authority could, by taking any specified action, help in the exercise of any of the board's functions under this Part, the board may request the help of the authority, specifying the action in question.

(4) A health and social services authority whose help is so requested shall comply with the request unless it considers that—

- (a) the help requested is not necessary for the purpose of the exercise by the board of those functions, or
- (b) having regard to the resources available to it for the purpose of the exercise of its functions, it is not reasonable for it to comply with the request, or
- (c) compliance with the request is not compatible with its own statutory or other duties or obligations or unduly prejudices the discharge of any of its functions.

(5) Regulations may provide that, where a health and social services authority is under a duty by virtue of paragraph (4) to comply with a request to help a board in the making of an assessment under Article 15 or a statement under Article 16, it must, subject to prescribed exceptions, comply with the request within the prescribed period.

(6) In this Article "health and social services authority" means—

- (a) a health and social services board; or
- (b) a Health and Social Services trust established under the Health and Personal Social Services (Northern Ireland) Order 1991.

Assessment of educational needs

15.—(1) Where a board is of the opinion that a child for whom it is responsible falls, or probably falls, within paragraph (2), it shall serve a notice on the child's parent informing him—

- (a) that the board proposes to make an assessment of the child's educational needs,
- (b) of the procedure to be followed in making the assessment,
- (c) of the name of the officer of the board from whom further information may be obtained, and
- (d) of the parent's right to make representations, and submit written evidence, to the board within such period (which shall not be less than twenty-nine days beginning with the date on which the notice is served) as may be specified in the notice.

(2) A child falls within this paragraph if—

- (a) he has special educational needs, and
- (b) it is necessary for the board to determine the special educational provision which any learning difficulty he may have calls for.

(3) Where—

- (a) a board has served a notice under paragraph (1) and the period specified in the notice in accordance with paragraph (1)(d) has expired, and
- (b) the board remains of the opinion, after taking into account any representations made and any evidence submitted to it in response to the notice, that the child falls, or probably falls, within paragraph (2),

the board shall make an assessment of his educational needs.

(4) Where a board decides to make an assessment under this Article, it shall give notice in writing to the child's parent of that decision and of the board's reasons for making it.

(5) Schedule 1 (which makes provision in relation to the making of assessments under this Article) shall have effect.

(6) Where, at any time after serving a notice under paragraph (1), a board decides not to assess the educational needs of the child concerned it shall give notice in writing to the child's parent of the board's decision and the reasons for making it.

Statement of special educational needs

16.—(1) If, in the light of an assessment under Article 15 of any child's educational needs and of any representations made by the child's parent, it is necessary for the board to determine the special educational provision which any learning difficulty he may have calls for, the board shall make and maintain a statement of his special educational needs.

(2) The statement shall be in such form and contain such information as may be prescribed.

(3) In particular, the statement shall—

- (a) give details of the board's assessment of the child's special educational needs, and
- (b) specify the special educational provision to be made for the purpose of meeting those needs, including the particulars required by paragraph (4).

(4) The statement shall—

- (a) specify the type of school or other institution which the board considers would be appropriate for the child,
- (b) if the board is not required under Schedule 2 to specify the name of any grant-aided school in the statement, specify the name of any school or institution (whether in Northern Ireland or elsewhere) which it considers would be appropriate for the child and should be specified in the statement, and
- (c) indicate any provision for the child for which it makes arrangements under Article 10(1) (b) otherwise than in a school or institution and which it considers should be indicated in the statement.

(5) Where a board maintains a statement under this Article—

- (a) unless the child's parent has made suitable arrangements, the board—
 - (i) shall arrange that the special educational provision indicated in the statement is made for the child, and
 - (ii) may arrange that any non-educational provision indicated in the statement is made for him in such manner as it considers appropriate, and
- (b) if the name of a grant-aided school is specified in the statement, the Board of Governors of the school shall admit the child to the school.

(6) Paragraph (5)(b) does not affect any power to suspend or expel from a school a pupil who is already a registered pupil there.

(7) Schedule 2 (which makes provision in relation to the making and maintenance of statements under this Article) shall have effect.

Appeal against decision not to make statement

17.—(1) If, after making an assessment under Article 15 of the educational needs of any child for whom no statement is maintained under Article 16, the board does not propose to make such a

statement, it shall give notice in writing of its decision, of the reasons for making it and of the effect of paragraph (2), to the child's parent.

- (2) In such a case, the child's parent—
 - (a) shall have the right to receive, on request, a copy of any advice given to the board on which the decision is based; and
 - (b) may appeal to the Tribunal against the decision.
- (3) On an appeal under this Article, the Tribunal may—
 - (a) dismiss the appeal,
 - (b) order the board to make and maintain such a statement, or
 - (c) remit the case to the board for it to reconsider whether, having regard to any observations made by the Tribunal, it is necessary for the board to determine the special educational provision which any learning difficulty the child may have calls for.

Appeal against contents of statement

- 18.**—(1) The parent of a child for whom a board maintains a statement under Article 16 may—
 - (a) when the statement is first made,
 - (b) where the description in the statement of the board's assessment of the child's special educational needs, or the special educational provision specified in the statement, is amended, or
 - (c) where, after conducting an assessment of the educational needs of the child under Article 15, the board determines not to amend the statement,

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 indicated in the statement or, if no school is named in the statement, that fact.

(2) Paragraph (1)(b) does not apply where the amendment is made in pursuance of paragraph 8 or 11(3)(b) of Schedule 2 or directions under paragraph 2 of Schedule 13 to the 1986 Order; and paragraph (1)(c) does not apply to a determination made following the service of notice under paragraph 10 of Schedule 2 of a proposal to amend the statement.

- (3) On an appeal under this Article, the Tribunal may—
 - (a) dismiss the appeal,
 - (b) order the board to amend the statement, so far as it describes the board's assessment of the child's special educational needs or specifies the special educational provision, and make such other consequential amendments to the statement as the Tribunal thinks fit, or
 - (c) order the board to cease to maintain the statement.

(4) On an appeal under this Article the Tribunal shall not order the board to specify the name of any school in the statement (either in substitution for an existing name or in a case where no school is named) unless—

- (a) the parent has expressed a preference for the school in pursuance of arrangements under paragraph 3 of Schedule 2, or
- (b) in the proceedings the parent, the board or both have proposed the school.

(5) Before determining any appeal under this Article the Tribunal may, with the agreement of the parties, correct any deficiency in the statement.

Reviews of statements

- 19.**—(1) A statement under Article 16 shall be reviewed by the board—
- (a) on the making of an assessment in respect of the child concerned under Article 15, and
 - (b) in any event, within the period of twelve months beginning with the making of the statement or, as the case may be, with the previous review.
- (2) Regulations may make provision—
- (a) as to the manner in which reviews of such statements are to be conducted,
 - (b) as to the participation in such reviews of such persons as may be prescribed, and
 - (c) in connection with such other matters relating to such reviews as the Department considers appropriate.

Assessment of educational needs at request of child's parent

- 20.**—(1) Where—
- (a) the parent of a child for whom a board is responsible asks the board to arrange for an assessment to be made in respect of the child under Article 15,
 - (b) such an assessment has not been made within the period of six months ending with the date on which the request is made, and
 - (c) it is necessary for the board to make an assessment under that Article,
- the board shall comply with that request.
- (2) Paragraph (1) applies whether or not the board is maintaining a statement under Article 16 for the child.
- (3) If in any case where paragraph (1)(a) and (b) applies the board decides not to comply with the request—
- (a) it shall give notice to the child's parent of that decision, the reasons for making it and the effect of sub-paragraph (b), and
 - (b) the parent may appeal to the Tribunal against the decision.
- (4) On an appeal under paragraph (3) the Tribunal may—
- (a) dismiss the appeal, or
 - (b) order the board to arrange for an assessment to be made in respect of the child under Article 15.

Assessment of educational needs of children under two

- 21.**—(1) Where a board is of the opinion that a child in its area who is under the age of two years falls, or probably falls, within paragraph (2)—
- (a) it may, with the consent of his parent, make an assessment of the child's educational needs, and
 - (b) it shall make such an assessment at the request of his parent.
- (2) A child falls within this paragraph if—
- (a) he has special educational needs, and
 - (b) it is necessary for the board to determine the special educational provision which any learning difficulty he may have calls for.
- (3) An assessment under this Article shall be made in such manner as the board considers appropriate.

- (4) After making an assessment under this Article, the board—
- (a) may make a statement of the child’s special educational needs, and
 - (b) may maintain that statement,
- in such manner as it considers appropriate.

Special Educational Needs Tribunal for Northern Ireland

Constitution of Tribunal

22.—(1) There shall be established a tribunal, to be known as the Special Educational Needs Tribunal for Northern Ireland (referred to in this Part as “the Tribunal”), to exercise the jurisdiction conferred on it by this Part.

- (2) There shall be—
- (a) a President of the Tribunal appointed by the Lord Chancellor;
 - (b) a panel appointed by the Lord Chancellor of persons who may serve as chairman of the Tribunal; and
 - (c) a panel appointed by the Department of persons who may serve as the other two members of the Tribunal apart from the chairman.
- (3) No person may be appointed—
- (a) President or member of the panel mentioned in paragraph (2)(b) unless he possesses such legal qualifications as the Lord Chancellor considers suitable;
 - (b) member of the panel mentioned in paragraph (2)(c) unless he satisfies such requirements as may be prescribed.
- (4) The President—
- (a) may be removed from office by the Lord Chancellor if the Lord Chancellor is of the opinion that the President is unfit to continue in office or is incapable of performing his duties;
 - (b) may resign office by notice in writing to the Lord Chancellor; and
 - (c) is eligible for re-appointment if he ceases to hold office.
- (5) A person appointed member of either panel shall hold office subject to such conditions as to the period of his appointment and otherwise as may be determined by the person or body appointing him, but may resign office by notice in writing to that person or body.
- (6) The Department may—
- (a) pay to the President, and to any other person in respect of his service as a member of the Tribunal, such remuneration and expenses as it may, with the approval of the Department of Finance and Personnel, determine;
 - (b) defray the expenses of the Tribunal to such amount as the Department may, with the approval of the Department of Finance and Personnel, determine;
 - (c) provide for the Tribunal such staff and accommodation as the Tribunal may require.
- (7) The jurisdiction of the Tribunal shall be exercised by such number of tribunals as may be determined from time to time by the President.

Tribunal procedure

23.—(1) Regulations may make provision about the proceedings of the Tribunal on an appeal under this Part and the initiation of such an appeal.

- (2) The regulations may, in particular, include provision—
- (a) as to the period within which, and the manner in which, appeals are to be instituted,
 - (b) where the jurisdiction of the Tribunal is being exercised by more than one tribunal—
 - (i) for determining by which tribunal any appeal is to be heard, and
 - (ii) for the transfer of proceedings from one tribunal to another,
 - (c) for enabling any functions which relate to matters preliminary or incidental to an appeal to be performed by the President, or by the chairman,
 - (d) for the holding of hearings in private, except in prescribed circumstances,
 - (e) for hearings to be conducted in the absence of any member, other than the chairman,
 - (f) as to the persons who may appear on behalf of the parties,
 - (g) for granting any person such discovery or inspection of documents or right to further particulars as might be granted by a county court,
 - (h) requiring persons to attend to give evidence and produce documents,
 - (i) for authorising the administration of oaths to witnesses,
 - (j) for the determination of appeals without a hearing in prescribed circumstances,
 - (k) as to the withdrawal of appeals,
 - (l) for the award of costs or expenses,
 - (m) for taxing or otherwise settling any such costs or expenses (and, in particular, for enabling such costs to be taxed in the county court),
 - (n) for the registration and proof of decisions and orders, and
 - (o) for enabling the Tribunal to review its decisions, or revoke or vary its orders, in such circumstances as may be determined in accordance with the regulations.
- (3) The Department may pay such allowances for the purpose of or in connection with the attendance of persons at the Tribunal as it may with the approval of the Department of Finance and Personnel determine.
- (4) The Arbitration Act (Northern Ireland) 1937 shall not apply to any proceedings before the Tribunal but regulations may make provision corresponding to any provision of that Act.
- (5) Any person who without reasonable excuse fails to comply with—
- (a) any requirement in respect of the discovery or inspection of documents imposed by the regulations by virtue of paragraph (2)(g), or
 - (b) any requirement imposed by the regulations by virtue of paragraph (2)(h),
- is guilty of an offence.
- (6) A person guilty of an offence under paragraph (5) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Appeals from Tribunal

24. Where a person who appeals to the Tribunal is dissatisfied in point of law with a decision of the Tribunal, that person may, according as rules of court may provide, either appeal therefrom to the High Court or require the Tribunal to state and sign a case for the opinion of the High Court.

Special schools and other institutions

Religious education in special schools

25.—(1) Article 21 of the 1986 Order (religious education in grant-aided schools other than nursery or special schools) shall apply in relation to special schools as it applies in relation to ordinary schools.

(2) Accordingly—

- (a) in paragraphs (1) and (7) of that Article the words “or special” and in paragraph (9) of that Article the words “and special” shall cease to have effect;
- (b) in Article 22(1) of the 1986 Order the words “or special” shall cease to have effect; and
- (c) in Article 12 of the 1989 Order (which provides for the kind of religious education to be included in the curriculum of a school) for paragraph (1) there shall be substituted—

“(1) The religious education for which provision is required by Article 5(1)(a) to be included in the curriculum for any particular grant-aided school shall be religious education of the kind required by such of the provisions of Article 21 of the 1986 Order as apply in the case of that school.”.

Approval of institutions in Northern Ireland other than grant-aided schools

26.—(1) The Department may approve an institution in Northern Ireland other than a grant-aided school as suitable for the admission of children with special educational needs.

(2) An approval under this Article may be given subject to such conditions as the Department sees fit to impose.

(3) In any case where there is a failure to comply with such a condition imposed under paragraph (2), the Department may withdraw its approval.

School attendance orders

School attendance orders

27. For paragraphs 1 and 2 of Schedule 13 to the 1986 Order (school attendance orders) there shall be substituted—

“**1.**—(1) If it appears to a board that a parent of a child of compulsory school age in its area is failing to perform the duty imposed on him by Article 45, it shall serve a notice in writing on the parent requiring him to satisfy the board, within such period (not being less than fourteen days beginning with the day on which the notice is served) as is specified in the notice, that the child is, by regular attendance at school or otherwise, receiving suitable education.

(2) If—

- (a) a parent on whom a notice has been served under sub-paragraph (1) fails to satisfy the board, within the period specified in the notice, that the child is receiving suitable education, and
- (b) in the opinion of the board it is expedient that the child should attend school,

the board shall serve in the prescribed manner on the parent an order (referred to in this Order as a “school attendance order”), in the prescribed form, requiring him to cause the child to become a registered pupil at a school named in the order.

(3) Unless it is revoked by the board or a direction is made in respect of it by a court under paragraph 6, a school attendance order shall (subject to any amendment made by the board) continue in force—

- (a) where the school named in the order provides education for pupils up to the upper limit of compulsory school age or beyond, for so long as the child is of compulsory school age;
- (b) where the school does not provide education up to or beyond that age, until the pupil has reached the age at which he would normally leave that school.

(4) Where a grant-aided school is named in a school attendance order the Board of Governors of the school shall admit the child to the school.

(5) Sub-paragraph (4) does not affect any power to suspend or expel from a school a pupil who is already a registered pupil there.

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

1A.—(1) Sub-paragraphs (2) to (5) apply where a board is required by virtue of paragraph 1(2) to serve a school attendance order in respect of a child, other than a child for whom it maintains a statement under Article 16 of the Education (Northern Ireland) Order 1996.

(2) Before serving the order, the board shall serve on the parent a notice in writing—

- (a) informing him of its intention to serve the order,
- (b) specifying the school which the board intends to name in the order and, if it thinks fit, one or more other schools which it regards as suitable alternatives, and
- (c) stating the effect of sub-paragraphs (4) and (5).

(3) A voluntary or grant-maintained integrated school shall not be specified in a notice under sub-paragraph (2) unless the board has consulted the managers of the school.

(4) If the notice specifies one or more alternative schools and the parent selects one of them and notifies the board accordingly before the expiration of the period of fourteen days beginning with the day on which the notice is served, the school selected by him shall be named in the order.

(5) If before the expiration of the period mentioned in sub-paragraph (4) the parent—

- (a) applies for the child to be admitted to a school other than the school or schools specified in the notice; and
- (b) notifies the board accordingly,

then, if as a result of the application the child is offered a place at that school, that school shall, subject to sub-paragraph (7), be named in the order.

(6) If at any time while a school attendance order is in force with respect to a child, other than a child for whom the board maintains a statement under Article 16 of the Education (Northern Ireland) Order 1996.

- (a) the parent applies for the child to be admitted to a school other than the school named in the order; and
- (b) as a result of the application the child is offered a place at a school, the board shall, subject to sub-paragraph (7), at the request of the parent amend the order by substituting that school for the one previously named.

(7) Sub-paragraphs (5) and (6) do not apply where the school at which the child is offered a place is an independent school unless, in the opinion of the board, the school is suitable to his age, ability and aptitude and to any special educational needs he may have.

1B.—(1) Sub-paragraphs (2) and (3) apply where a board is required by virtue of paragraph 1(2) to serve a school attendance order in respect of a child for whom it maintains a statement under Article 16 of the Education (Northern Ireland) Order 1996.

(2) Where the statement specifies the name of a School that school shall be named in the order.

(3) Where the statement does not specify the name of a school—

(a) the board shall, in accordance with paragraph 10 of Schedule 2 to the Education (Northern Ireland) Order 1996, amend the statement so that it specifies the name of a school, and

(b) that school shall then be named in the order.

(4) Where—

(a) a school attendance order is in force in respect of a child for whom the board maintains a statement under Article 16 of the Education (Northern Ireland) Order 1996, and

(b) the name of the school specified in the statement differs (for whatever reason) from that specified in the order,

the board shall amend the order so that it names the school specified in the statement.

2.—(1) This paragraph applies where a school attendance order is in force in respect of a child.

(2) If at any time the parent applies to the board requesting that the order be revoked on the ground that arrangements have been made for the child to receive suitable education otherwise than at school, the board shall comply with the request, unless it is of the opinion that no satisfactory arrangements have been made for the education of the child otherwise than at school.

(3) If a parent is aggrieved by a refusal of the board to comply with a request under sub-paragraph (2), he may refer the question to the Department.

(4) Where a question is referred to the Department under sub-paragraph (3), it shall give such direction determining the question as it thinks fit.

(5) Where the child in question is one for whom the board maintains a statement under Article 16 of the Education (Northern Ireland) Order 1996.

(a) sub-paragraphs (2) to (4) do not apply if the name of a school is specified in the statement, and

(b) in any other case a direction under sub-paragraph (4) may require the board to make such amendments in the statement as the Department considers necessary or expedient in consequence of its determination.”.

Supplementary

Regulations and orders

28.—(1) Regulations and orders made by the Department under this Part (other than orders under Article 5(3)) shall be subject to negative resolution.

(2) Regulations and orders made by the Department under this Part may contain such incidental, supplementary and transitional provisions as the Department thinks fit.

PART III

MISCELLANEOUS

Withdrawal of school from maintained status

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

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

Independent schools

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

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

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

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

- (a) in paragraph (1) for the words from “appeal” to the end there shall be substituted the words “appeal therefrom to the Independent Schools Tribunal constituted in accordance with regulations under paragraph (8)”;
- (b) after paragraph (7) there shall be added—

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

- (a) shall provide for the membership of the tribunal and may provide for disqualifying prescribed persons or descriptions of persons for membership of the tribunal;
- (b) may provide that all matters relating to the procedure on appeals which are not specifically regulated by the regulations shall be determined by the tribunal.

(9) The Department may—

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

Date of commencement of secondary education

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

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

(3) At the end there shall be added—

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

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

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

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

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

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

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

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

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

- (a) require the Board of Governors of a school in forming an opinion for the purposes of paragraph (2) or (3) to take into account the advice of the principal of the school (or, in the case of a grammar school providing both primary and secondary education, the teacher in charge of that part of the school in which primary education is provided);
- (b) require the Board of Governors of a school in forming an opinion for the purposes of paragraph (3) to take into account the advice of the relevant board;
- (c) specify the matters or descriptions of matters which are, or are not, to be taken into account by a Board of Governors in forming an opinion for the purposes of paragraph (2) or (3);
- (d) specify the administrative procedures to be followed by a Board of Governors in exercising its functions under this Article; and
- (e) prohibit the delegation by the Board of Governors (notwithstanding anything in the scheme of management of the school) of such functions under this Article as are specified in the guidance.

(7) The Department shall issue such guidance as it thinks fit as to—

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

Corporal punishment

- 32.**—(1) Article 49A of the 1986 Order (corporal punishment) shall be amended as follows.
- (2) In paragraph (1) after the word “pupil” there shall be inserted the words “to whom this paragraph applies”.
- (3) After paragraph (1) there shall be inserted—
- “(1A) Where, in any proceedings, it is shown that corporal punishment has been given to a pupil by or on the authority of a member of the staff, giving the punishment cannot be justified if the punishment was inhuman or degrading.
- (1B) In determining whether punishment is inhuman or degrading regard shall be had to all the circumstances of the case, including the reason for giving it, how soon after the event it is given, its nature, the manner and circumstances in which it is given, the persons involved and its mental and physical effects.”.
- (4) For paragraph (5) there shall be substituted—
- “(5) In this Article “pupil” does not include any person who has attained the age of 18 years.
- (5A) Paragraph (1) applies to a pupil for whom education—
- (a) is provided at a grant-aided school; or
 - (b) is secured, otherwise than at such a school, by a board.”.

School inspections

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

“Inspection of educational and other establishments by Department

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

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

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

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

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

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

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

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

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

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

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

Lay persons

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

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

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

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

- (a) the establishment in question;
- (b) any person who is employed at that establishment;
- (c) any person who is a member of the managing body of that establishment;
- (d) where the establishment is an independent school, the proprietor of the school, of a kind which might reasonably be taken to raise doubts about his ability to act impartially in relation to that establishment.

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

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

Key stages

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

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

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

Compulsory contributory subjects in key stage 4

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

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

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

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

““assessment arrangements”—

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

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

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

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

“Home Economics

Economics

Social and Environmental Studies”.

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

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

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

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

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

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

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

“to—

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

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

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

Proposals for acquisition of grant-maintained integrated status

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- “(ii) the educational achievements of students on entry to the institution and the educational achievements of students while at the institution (including in each case the results of examinations, tests and other assessments of those students);
 - (iii) the resources of the institution (including the sums put at the disposal of its governing body under Article 109(2) of the 1989 Order) and the effectiveness of the use made of such resources; and
 - (iv) the careers of students of the institution after completing any course or leaving the institution; and”;
- (b) after paragraph (6) there shall be inserted—
- “(6A) For the purposes of paragraph (6)(a)(iv), a person’s career includes any education, training, employment or occupation; and the regulations may in particular require the published information to show—
 - (a) the numbers of students not undertaking any career, and
 - (b) the persons providing students with education, training or employment.”;
- (c) after paragraph (7) there shall be added—
- “(8) The published information shall not name any student to whom it relates.
 - (9) The Department may by regulations require the Board of Governors of any secondary school to provide such persons as may be prescribed with such categories of information falling within paragraph (10) as may be prescribed.
 - (10) Information falls within this paragraph if it is—
 - (a) published under paragraph (6)(a); and
 - (b) made available to Boards of Governors for distribution.
 - (11) Information provided under paragraph (9) shall be provided in such form and in such manner as may be prescribed.”.

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

- 39.**—(1) This Article applies where, at any time after it comes into operation—
- (a) any premises (“the relevant premises”) of a voluntary school—
 - (i) cease to be used for approved purposes of the school; and
 - (ii) are disposed of by the trustees of the school; and
 - (b) no provision is made by any trust deed executed in relation to the relevant premises for the application of the residual proceeds of the disposal of those premises.
- (2) Where this Article applies, any trust deed executed in relation to the relevant premises shall have effect as if it authorised the trustees of the school to apply any residual proceeds of the disposal of the relevant premises for general educational purposes.
- (3) In the case of the trustees of a Catholic maintained school, the reference in paragraph (2) to general educational purposes shall be construed as a reference to general educational purposes in the Roman Catholic diocese in which the school is situated.
- (4) In paragraph (2) “residual proceeds of the disposal of the relevant premises” means the amount of the proceeds of the disposal of the relevant premises less the amount of any liabilities or expenses of the trustees arising in respect of, or in connection with, the relevant premises or the disposal thereof, including in particular (but without prejudice to the generality of the foregoing)—
- (a) the amount of any expenses of the trustees in respect of the disposal; and

(b) any amounts payable or repayable to the Department under Article 116 of the 1986 Order in consequence of the disposal of the relevant premises.

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

Incorporation of Boards of Governors

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

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

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

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

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

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

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

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

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

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

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

together with the signature of any other member.

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

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

Incorporation of governing bodies of institutions of further education

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

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

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

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

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

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

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

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

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

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

together with the signature of any other member.

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

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

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

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

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

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

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

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

Direction to admit child to specified school

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

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

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

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

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

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

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

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

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

(7) In this Article—

“school” does not include a special school;

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

PART IV

AMENDMENTS AND REPEALS

Amendments

43. The statutory provisions specified in Schedule 5 shall have effect subject to the amendments specified in that Schedule.

Repeals

44. The statutory provisions set out in Schedule 6 are hereby repealed to the extent specified in the third column of that Schedule.

N. H. Nicholls
Clerk of the Privy Council