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STATUTORY INSTRUMENTS

1998 No. 1759 (N.I. 13)

Education (Northern Ireland) Order 1998

- - - - - 21st July 1998

PART I INTRODUCTORY

Title and commencement

1.—(1) This Order may be cited as the Education (Northern Ireland) Order 1998.

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

(3) The following provisions come into operation on such day or days as the Department may by order appoint, namely—

- (a) Chapter I of Part III;
- (b) Articles 13 and 16;
- (c) Chapter I of Part VI;
- (d) Part VII;
- (e) Article 81(2), (3) and (6);
- (f) Article 88(3) and Schedule 4;
- (g) Part II of Schedule 5 and so much of Article 91(1) as relates thereto;
- (h) Part II of Schedule 6 and so much of Article 91(2) as relates thereto.

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

Subordinate Legislation Made

- P1** [Art. 1\(3\)](#) power partly exercised: 31.12.1998 appointed for specified provisions by [S.R. 1998/456](#), [art. 2](#)
[Art. 1\(3\)](#) power partly exercised: 1.9.1999 appointed for specified provision by [S.R. 1999/337](#), [art. 2](#)
[Art. 1\(3\)](#) power partly exercised: 30.11.1999 appointed for specified provisions by [S.R. 1999/439](#), [art. 2](#)
[Art. 1\(3\)](#) power partly exercised: 19.10.2000 appointed for specified provisions by [S.R. 2000/302](#), [art. 2](#)

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Art. 1(3) power partly exercised: 29.4.2005 appointed for specified provisions by S.R. 2005/245, art. 2
Art. 1(3) power partly exercised: 31.5.2009 appointed for specified provisions by S.R. 2009/183, art. 3

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 and the 1989 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, shall apply for the purposes of this Order as it applies for the purposes of that Order.

PART II DISCIPLINE

Responsibility of Board of Governors and principal for discipline

3.—(1) The scheme of management for every grant-aided school shall provide for it to be the duty of the Board of Governors to ensure that policies designed to promote good behaviour and discipline on the part of its pupils are pursued at the school.

(2) In particular the scheme of management shall require the Board of Governors—

(a) to make, and from time to time review, a written statement of general principles to which the principal is to have regard in determining any measures under paragraph (3)(a);

(b) before making or revising that statement—

(i) to consult (in such manner as appears to it to be appropriate) the principal and^[F1] the registered pupils at the school and the parents of those pupils; and

(ii) to consider 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; and

(c) where it considers it desirable that any particular measures should be determined by the principal under paragraph (3)(a) or that he should have regard to any particular matters—

(i) to notify him of those measures or matters; and

(ii) to give him such guidance as it considers appropriate.

(3) The scheme of management for every grant-aided school shall provide for it to be the duty of the principal—

(a) to determine measures (which may include the making of rules and provision for enforcing them) to be taken with a view to—

(i) promoting, among pupils, self-discipline and proper regard for authority;

(ii) encouraging good behaviour and respect for others on the part of pupils^[F1] and, in particular, preventing all forms of bullying among pupils;

(iii) securing that the standard of behaviour of pupils is acceptable; and

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- (iv) otherwise regulating the conduct of pupils;
 - [^{F1}(aa) before determining such measures, to consult the registered pupils at the school and the parents of those pupils;]
 - (b) in determining such measures—
 - (i) to act in accordance with the current statement made by the Board of Governors under paragraph (2)(a); and
 - (ii) to have regard to any notification or guidance given to him under paragraph (2)(c);
 - (c) 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
 - (ii) copies of the statement are available for inspection (at all reasonable times and free of charge) at the school.
- (4) The scheme of management for every grant-aided school shall provide for the standard of behaviour which is to be regarded as acceptable at the school to be determined by the principal so far as it is not determined by the Board of Governors.
- (5) This Article does not apply to a school established in a hospital.

F1 2003 NI 12

Power of member of staff to restrain pupils

4.—(1) A member of the staff of a grant-aided school may use, in relation to any pupil at the school, such force as is reasonable in the circumstances for the purpose of preventing the pupil from doing (or continuing to do) any of the following, namely—

- (a) committing any offence;
 - (b) causing personal injury to, or damage to the property of, any person (including the pupil himself); or
 - (c) engaging in any behaviour prejudicial to the maintenance of good order and discipline at the school or among any of its pupils, whether that behaviour occurs during a teaching session or otherwise.
- (2) Paragraph (1) applies where a member of the staff of a grant-aided school is—
- (a) on the premises of the school; or
 - (b) elsewhere at a time when, as a member of its staff, he has lawful control or charge of the pupil concerned;

but it does not authorise anything to be done in relation to a pupil which constitutes the giving of corporal punishment within the meaning of^{F2} Article 36 of the Education and Libraries (Northern Ireland) Order 2003].

(3) Paragraph (1) shall not be taken to prevent any person from relying on any defence available to him otherwise than by virtue of this Article.

(4) In this Article—

“member of the staff”, in relation to a grant-aided school, means any teacher who works at the school and any other person who, with the authority of the principal, has lawful control or charge of pupils at the school;

“offence” includes anything that would be an offence but for the operation of any presumption that a person under a particular age is incapable of committing an offence.

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F2 2003 NI 12

Detention of pupil outside school hours

5.—(1) Where a pupil to whom this Article applies is required on disciplinary grounds to spend a period of time in detention at his school after the end of any school session, his detention shall not be rendered unlawful by virtue of the absence of his parent's consent to it if the conditions set out in paragraph (3) are satisfied.

(2) This Article applies to any pupil who—

- (a) is attending a grant-aided school; and
- (b) has not attained the age of 18.

(3) The conditions referred to in paragraph (1) are as follows—

- (a) the principal of the school must have previously determined, and have—
 - (i) generally made known within the school; and
 - (ii) taken steps to bring to the attention of the parent of every person who is for the time being a pupil there,

that the detention of pupils after the end of a school session is one of the measures that may be taken with a view to regulating the conduct of pupils;

- (b) the detention must be imposed by the principal or by another teacher at the school specifically or generally authorised by him for the purpose;
- (c) the detention must be reasonable in all the circumstances; and
- (d) the pupil's parent must have been given at least 24 hours' notice in writing that the detention was due to take place.

(4) In determining for the purpose of paragraph (3)(c) whether a pupil's detention is reasonable, the following matters in particular shall be taken into account—

- (a) whether the detention constitutes a proportionate punishment in the circumstances of the case; and
- (b) any special circumstances relevant to its imposition on the pupil which are known to the person imposing it (or of which he ought reasonably to be aware) including in particular—
 - (i) the pupil's age;
 - (ii) any special educational needs he may have;
 - (iii) any religious requirements affecting him; and
 - (iv) where arrangements have to be made for him to travel from the school to his home, whether suitable alternative arrangements can reasonably be made by his parent.

(5) Without prejudice to section^[F3 24] of the Interpretation Act (Northern Ireland) 1954 (which provides for the methods by which documents may be served) notice under this Article may be given to a pupil's parent by any other effective method.

F3 2003 NI 12

Duty of board to prepare plan relating to children with behavioural difficulties

6.—(1) Every board shall prepare a statement setting out the arrangements made or proposed to be made by the board in connection with the education of children with behavioural difficulties.

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- (2) The arrangements to be covered by the statement include in particular—
- (a) the arrangements made or to be made by the board for the provision of advice and resources to grant-aided schools situated in its area, and other arrangements made or to be made by the board with a view to—
 - (i) meeting requests by such schools for support and assistance in connection with the promotion of good behaviour and discipline on the part of their pupils; and
 - (ii) assisting such schools to deal with general behavioural problems and the behavioural difficulties of individual pupils;
 - (b) the arrangements made or to be made by the board in pursuance of Article 86(1); and
 - (c) any other arrangements made or to be made by the board for assisting children with behavioural difficulties to find places at suitable schools.
- (3) The statement shall also deal with the interaction between the arrangements referred to in paragraph (2) and those made by the board in relation to pupils with behavioural difficulties who have special educational needs.
- (4) A board—
- (a) shall at least once in every year review the statement; and
 - (b) may at any time revise the statement.
- (5) In the course of preparing the statement or reviewing it a board shall consult—
- (a) the other boards;
 - (b) the Board of Governors of all grant-aided schools situated in its area;
 - (c) the Council for Catholic Maintained Schools; and
 - (d) such other bodies or persons as the board considers appropriate.
- (6) A board shall—
- (a) publish the current statement under this Article;
 - (b) send a copy of the current statement to the Board of Governors of every grant-aided school situated in its area; and
 - (c) secure that copies of the current statement are available for inspection (at all reasonable times and free of charge) at the headquarters of the board.
- (7) In discharging its functions under this Article a board shall have regard to any guidance given from time to time by the Department.

PART III

ASSESSMENT AND PUPILS' PERFORMANCE

CHAPTER I

BASELINE ASSESSMENTS

Introductory

7.—(1) In this Chapter—

“baseline assessment” means the assessment of pupils in their first year of compulsory education for the purpose of assisting the future planning of their education and the measurement of their future educational achievements;

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“baseline assessment arrangements” means the arrangements specified in an order under Article 9(1);

“school year” means a year ending on 31st July.

(2) For the purposes of this Chapter the first year of compulsory education of a child is the school year in which he attains the lower limit of compulsory school age.

Assessment of pupils in accordance with baseline assessment arrangements

8.—(1) Subject to the following provisions of this Article, all pupils at a primary school who are in their first year of compulsory education must be assessed in accordance with the baseline assessment arrangements.

(2) The assessment must be completed before the end of that first year.

(3) Paragraph (1) does not apply to a pupil if it appears to the principal from a record of a previous assessment under that paragraph that such an assessment has already been carried out in relation to that pupil at another school.

(4) Regulations may enable the principal of a primary school, in such cases or circumstances and subject to such conditions as may be prescribed, to direct—

- (a) that paragraph (1) is not to apply to a particular pupil at the school; or
- (b) that, for the purposes of the assessment under that paragraph of a particular pupil at the school, the baseline assessment arrangements are to have effect with such modifications as are specified in the direction.

(5) The special educational provision for any pupil specified in a statement under Article 16 of the Education (Northern Ireland) Order 1996 of his special educational needs may include provision directing—

- (a) that paragraph (1) is not to apply to the pupil; or
- (b) that, for the purposes of the assessment under that paragraph of that pupil, the baseline assessment arrangements are to have effect with such modifications as are specified in the direction.

(6) Where the principal gives a direction under regulations made under paragraph (4) he shall—

- (a) notify the Board of Governors of the matters set out in paragraph (7); and
- (b) take such steps as are prescribed to notify the parent of the pupil concerned of those matters.

(7) The matters referred to in paragraph (6) are—

- (a) the fact that the principal has given the direction in question and his reasons for doing so;
- (b) in the case of a direction under paragraph (4)(b), the effect of the modifications specified in the direction;
- (c) whether the direction is to have permanent effect (and, if not, the period for which it is to have effect).

(8) In relation to any primary school, it shall be the duty of—

- (a) the Board of Governors to exercise its functions with a view to securing; and
- (b) the principal to secure,

that paragraph (1) is complied with.

(9) It shall be the duty of—

- (a) the Department and the boards in relation to all primary schools; and
- (b) the Council for Catholic Maintained Schools in relation to Catholic maintained schools,

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to exercise their functions with a view to ensuring that the Boards of Governors and principals of primary schools are in a position to fulfil their duty under paragraph (8).

- (10) The Department may by regulations provide that the preceding provisions of this Article—
- (a) shall apply with such modifications as may be prescribed; or
 - (b) shall not apply,

in such circumstances as may be prescribed.

Baseline assessment arrangements

9.—(1) The Department shall by order specify the arrangements for baseline assessment.

(2) An order under paragraph (1) may, instead of containing the provision to be made, refer to provisions in an approved document and direct that those provisions are to have effect or, as the case may be, are to have effect as amended by the order.

(3) In paragraph (2) “approved document” means a document which has been—

- (a) prepared by the Northern Ireland Council for the Curriculum, Examinations and Assessment (“the Council”);
- (b) approved by the Department; and
- (c) published by the Council.

(4) It shall be the duty of the Council to send to the Board of Governors of every primary school with pupils who are required to be assessed under Article 8 a copy of every document published by it under paragraph (3)(c).

(5) An order under paragraph (1) may impose such duties on—

- (a) the Boards of Governors and principals of primary schools; and
- (b) the Council,

as appear to the Department to be necessary or expedient for the purpose of implementing the arrangements specified by the order.

CHAPTER II

ASSESSMENT ARRANGEMENTS AND PUPILS' PERFORMANCE

Assessment arrangements

Assessment arrangements

10. In Article 7 of the 1989 Order for paragraph (6) (orders specifying assessment arrangements) there shall be substituted—

“(6) An order under paragraph (1)(b) may, instead of containing the provision to be made, refer to provisions in an approved document and direct that those provisions are to have effect or, as the case may be, are to have effect as amended by the order.

(7) In paragraph (6) “approved document” means a document which has been—

- (a) prepared by the Northern Ireland Council for the Curriculum, Examinations and Assessment (“the Council”);
- (b) approved by the Department; and
- (c) published by the Council.

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(8) It shall be the duty of the Council to send to the Board of Governors of every grant-aided school which appears to the Council to be affected a copy of every document published by it under paragraph (7)(c).

(9) An order under paragraph (1)(b) may impose such duties on the Boards of Governors and principals of grant-aided schools as appear to the Department to be necessary or expedient for the purpose of implementing the assessment arrangements specified by the order.” .

Pupils' performance

School performance targets

11.—(1) The Department may by regulations make such provision as it considers appropriate for requiring the Boards of Governors of grant-aided schools to secure that annual targets are set in respect of the performance of pupils at such schools—

- (a) in public examinations or in assessments conducted under Article 6(3) of the 1989 Order at or near the end of key stages 1, 2 and 3, in the case of pupils of compulsory school age; and
- (b) in public examinations or in connection with the attainment of other academic or vocational qualifications, in the case of pupils of any age over that age.

(2) Regulations under this Article may require—

- (a) such targets; and
- (b) the past performance of pupils in the particular examinations or assessments, or in connection with the attainment of the particular qualifications, to which such targets relate,

to be published in such manner as is specified in the regulations.

(3) Before making any regulations under this Article the Department shall consult—

- (a) the boards;
- (b) the Council for Catholic Maintained Schools;
- (c) the Board of Governors and principal of^[F4] a sample of affected schools]; and
- (d) any other person with whom consultation appears to it to be desirable.

[^{F4}(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.]

(4) This Article does not apply to—

- (a) a school established in a hospital; or
- (b) a school of such class or description as may be specified in regulations under this Article.

F4 [2003 NI 12](#)

Provision of information on individual performance of pupils

12.—(1) The Department may by regulations make provision requiring the Board of Governors of each grant-aided school to provide to the Department such individual performance information relating to pupils or former pupils at the school as may be prescribed.

(2) In this Article “individual performance information” means information about the performance of individual pupils (identified in the prescribed manner)—

- (a) in any assessment made—

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- (i) under Article 6(3) of the 1989 Order; or
 - (ii) under Article 8(1);
 - (b) in any prescribed public examination;
 - (c) in connection with the attainment of any vocational qualification; or
 - (d) in any such other assessment or examination, or in connection with the attainment of any such other qualification, as may be prescribed.
- (3) The Department may provide any information received by it under paragraph (1)—
- (a) to any prescribed body or person;
 - (b) to any body or person falling within a prescribed category.
- (4) Any body or person holding any individual performance information may provide that information to any body to which this paragraph applies; and any body to which this paragraph applies—
- (a) may provide any information received by it under this paragraph—
 - (i) to the Department; or
 - (ii) to the Board of Governors of the school attended by the pupil or pupils to whom the information relates; and
 - (b) may, at such times as the Department may determine, provide to any prescribed body such information received by it under this paragraph as may be prescribed.
- (5) Paragraph (4) applies to any body which, for the purposes of or in connection with the functions of the Department relating to education, is responsible for collating or checking information relating to the performance of pupils—
- (a) in any assessment or examination falling within paragraph (2)(a), (b) or (d); or
 - (b) in connection with the attainment of any qualification falling within paragraph (2)(c) or (d).
- (6) No individual performance information received under this Article shall be published in any form which includes the name of the pupil or pupils to whom it relates.
- (7) References in this Article to the attainment of a qualification of any description include references to the completion of any module or part of a course leading to any such qualification.

PART IV

PERFORMANCE AND MANAGEMENT OF SCHOOLS

School development plans

13.—(1) The scheme of management for each grant-aided school shall provide for it to be the duty of the Board of Governors of the school to prepare, and from time to time revise, a school development plan.

- (2) In preparing or revising a school development plan, the Board of Governors shall—
- (a) consult the principal of the school;
 - (b) consider—
 - (i) 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; and

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- (ii) the findings of any inspection of the school under Article 102 of the principal Order.
- (3) Regulations shall—
 - (a) prescribe the matters to be dealt with by a school development plan;
 - (b) prescribe the period for which a plan is to have effect;
 - (c) prescribe the manner in which a plan is to be published;
 - (d) provide for the revision of a plan.

Appointment of additional governors for school not providing acceptable standard of education

14.—(1) Where a report made under Article 102 of the 1986 Order (inspections) in relation to a grant-aided school—

- (a) states that—
 - (i) the school is failing to give its pupils an acceptable standard of education; and
 - (ii) that failure is due (in whole or in part) to the management of the school by the Board of Governors; and
- (b) recommends that the power of the Department under this Article should be exercised in relation to the school,

the Department may appoint such number of additional voting members to the Board of Governors of the school as it thinks fit.

(2) Where it appoints any additional voting members to the Board of Governors of a school under this Article, the Department may appoint one of those additional members as chairman of the Board of Governors.

(3) In relation to any appointment made by the Department under this Article to the Board of Governors of a school—

- (a) the scheme of management of the school; and
- (b) any other instrument of government of the school,

shall have effect as if, notwithstanding anything in Article 10 or 11 of the 1986 Order or Article 66 of the 1989 Order, the scheme and the instrument authorised the Department—

- (i) to appoint such number of additional voting members to the Board of Governors as it thinks fit; and
- (ii) to appoint one of those additional members as chairman of the Board of Governors.

(4) Before making any appointment under this Article in relation to the Board of Governors of a school, the Department shall consult—

- (a) the trustees of the school;
- (b) the board for the area in which the school is situated; and
- (c) (in the case of a Catholic maintained school), the Council for Catholic Maintained Schools.

(5) Any additional voting members or chairman appointed under this Article shall hold and vacate office in accordance with the terms of their appointment.

(6) In this Article “voting members” has the same meaning as in Article 122 of the 1989 Order.

Contents of annual report

15. In Article 125(2) of the 1989 Order (annual report of Board of Governors) after subparagraph (g) there shall be added—

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- “(ga) to describe in general terms—
- (i) the arrangements made for the security of the pupils and staff at the school and the school premises; and
 - (ii) any changes to those arrangements since the last report was prepared;” .

Limits on class sizes in key stage 1

- 16.—(1) This Article applies to pupils at a primary school who are in key stage 1.
- (2) The Board of Governors of a primary school shall not cause or permit the number of pupils in a class at any time to exceed the statutory limit.
- (3) In this Article—
- “the statutory limit”, in relation to any description of pupils, means the number for the time being prescribed in relation to pupils of that description;
 - “class”, in relation to the statutory limit for any description of pupils, means a teaching group in which—
 - (a) pupils of that description are regularly taught; and
 - (b) the majority of pupils are pupils of that description.
- (4) Paragraph (2) shall not apply to a school in such cases or circumstances as the board may direct.
- (5) Regulations may require a board in exercising its powers under paragraph (4) to have regard to such matters as may be prescribed.
- (6) Before exercising its powers under paragraph (4) in relation to a school, a board shall consult—
 - (a) such bodies or persons as may be prescribed; and
 - (b) where the school is a Catholic maintained school, the Council for Catholic Maintained Schools.
- (7) It shall be the duty of boards to exercise their functions with a view to ensuring that the Boards of Governors of grant-aided schools are in a position to fulfil their duty under this Article.
- (8) In Article 12(2) of the Education (Northern Ireland) Order 1997 (determination of admissions number for school) at the end add
- “and
- (c) the requirements of Article 16 of the Education (Northern Ireland) Order 1998 (limit on class sizes)” .

PART V

PRE-SCHOOL EDUCATION

CHAPTER I

PROVISION OF PRE-SCHOOL EDUCATION

Plans for pre-school education

- 17.—(1) Within such time after the coming into operation of this Article as the Department may direct, each board shall prepare and submit to the Department a plan for the provision (whether by

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the board or by other persons) of pre-school education for children resident in the area of the board in such period as may be specified in the plan.

(2) In preparing a plan under paragraph (1) a board shall, in accordance with arrangements approved by the Department, consult bodies and persons likely to be affected by the plan.

(3) In preparing a plan under paragraph (1) a board shall take into account any guidance given by the Department as to the provisions it regards as appropriate for inclusion in a plan under that paragraph.

(4) The Department may, after making such modifications (if any) in a plan submitted to it by a board as after consultation with the board it considers necessary or expedient, approve the plan.

(5) It shall be the duty of a board to give effect to the provisions of a plan under paragraph (1) as approved by the Department.

(6) Where—

- (a) a board fails to submit a plan to the Department under paragraph (1) by the date directed by the Department; or
- (b) it appears to the Department that a plan submitted by the board as required by that paragraph does not accord with any guidance given by the Department under paragraph (3) and cannot be made to do so merely by modifying it,

the Department may, after consultation with the board and such other persons as appear to the Department to be concerned, make a plan which shall be treated for the purposes of paragraphs (5) and (7) as if it had been prepared by the board and approved by the Department under this Article.

(7) A board may at any time, and shall if the Department so directs, prepare and submit to the Department a revised plan and paragraphs (2) to (6) shall apply in relation to any revised plan as they apply in relation to the original plan.

(8) In this Part “pre-school education” means education provided for a child (whether at a school or any other premises) at any time—

- (a) after he has attained the age of 2 years; and
- (b) before he has attained compulsory school age,

otherwise than in a reception class as defined by Article 18(4)(b) of the Education (Northern Ireland) Order 1997.

Grants in respect of pre-school education

18.—(1) Subject to the following provisions of this Article, a board may make grants to any person in respect of pre-school education provided by that person.

(2) A board shall not make a grant to a person under paragraph (1) unless that person complies with such requirements as are specified by the Department.

(3) Grants under paragraph (1) shall be of such amount as the Department may determine.

(4) Grants under paragraph (1)—

- (a) shall be paid at such times and in such manner; and
- (b) shall be subject to such conditions,

as the board may determine.

(5) Conditions imposed under paragraph (4)(b)—

- (a) may be imposed on, or at any time after, the making of any grant by reference to which they are imposed;
- (b) may at any time be varied, waived or revoked; and

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- (c) may, in particular, require repayment of the whole or any part of the grant to which they relate in such circumstances as are specified in the conditions.

Inspection of pre-school education

19. Any premises in which is provided—

- (a) pre-school education in respect of which a board is making, or is to make, grants under Article 18(1); or
- (b) pre-school education in respect of which a board is considering whether to make such grants,

shall, if they would not otherwise fall within the definition of a “relevant establishment” for the purposes of Articles 102 and 102A of the 1986 Order (establishments to be open to inspection at all reasonable times), be treated as a relevant establishment for the purposes of those Articles.

Nursery schools to be eligible for grant maintained integrated and controlled integrated status

20. The following provisions of the 1989 Order are hereby repealed, namely—

- (a) Article 68(2)(a) (nursery schools not eligible for grant-maintained integrated status); and
- (b) Article 90(2)(a) (nursery schools not eligible for controlled integrated status).

Information as to funded pre-school education provided otherwise than in a grant-aided school

21.—(1) Every board shall, for each school year, publish at such time and in such manner as the Department may direct, particulars of the arrangements for the admission of children to funded pre-school education.

(2) In this Article “funded pre-school education”, in relation to a board, means pre-school education—

- (a) which is provided otherwise than at a grant-aided school; and
- (b) in respect of which the board is making, or is to make, grants under Article 18(1).
- (3) The particulars to be published under paragraph (1) shall include particulars of—
- (a) the persons providing funded pre-school education;
- (b) the number of children for whom such education is to be provided by each such person; and
- (c) the criteria to be applied by each such person in selecting children for admission to such education.

(4) Every board shall publish such information as may be required by regulations with respect to its policy and arrangements in respect of any matter relating to funded pre-school education.

CHAPTER II

ADMISSION TO PRE-SCHOOL EDUCATION AT GRANT-AIDED SCHOOLS

Introductory

Application and interpretation of this Chapter

22.—(1) Subject to paragraphs (2) and (3), this Chapter applies in relation to the admission of children to pre-school education at grant-aided schools.

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(2) This Chapter applies in relation to the admission of a child to pre-school education at a grant-aided school taking effect, or proposed admission which would take effect, in the school year ending on 31st July 2000 and in any subsequent school year.

(3) This Chapter does not apply in relation to—

- (a) special schools;
- (b) schools established in hospitals; or
- (c) the admission to pre-school education at grant-aided schools of children in respect of whom statements are maintained under Article 16 of the Education (Northern Ireland) Order 1996.

(4) In this Chapter—

- (a) any reference to a school is a reference to a grant-aided school at which pre-school education is provided;
- (b) any reference to full-time pre-school education is a reference to pre-school education normally provided for at least 4 hours and 30 minutes on each school day, and any reference to part-time pre-school education is a reference to pre-school education normally provided for less than that amount of time but for at least 2 hours and 30 minutes on each school day;
- (c) any reference to full-time pupils registered at a school is a reference to pupils registered at a school who are receiving full-time pre-school education, and any reference to part-time pupils registered at a school is a reference to pupils registered at a school who are receiving part-time pre-school education;
- (d) any reference to an appeal tribunal is a reference to an appeal tribunal constituted in accordance with regulations under Article 15(8) of the Education (Northern Ireland) Order 1997;
- (e) any reference to a school year is a reference to a year ending on 31st July.

(5) The Department may by order amend paragraph (4)(b).

(6) Directions and approvals of the Department under this Chapter shall be given in writing.

Arrangements for admission to pre-school education at grant-aided schools

23.—^{F5}(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)—

- (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

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(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.]

(3) Subject to Article 32(4) (children resident outside Northern Ireland), this Chapter applies in relation to an application for admission of a child to pre-school education at a school whether or not the child is resident in the area of the board in which that school is situated.

(4) It shall be the duty of the Board of Governors of a school to make arrangements for the admission of children—

- (a) to full-time pre-school education at the school, in accordance with Articles 24 to 27, 32 and 33; and
- (b) to part-time pre-school education at the school, in accordance with Articles 28 to 31, 32 and 33.

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Admission to full-time pre-school education

Duties of Board of Governors in relation to admission to full-time pre-school education

24.—(1) The Board of Governors of a school shall not cause or permit the number of full-time registered pupils at the school at any time to exceed the school's full-time enrolment number.

(2) In calculating for the purposes of paragraph (1) the number of full-time registered pupils at a school at any time, no account shall be taken of any child registered at the school in compliance with—

- (a) a direction of an appeal tribunal; or
- (b) a direction under Article 42 of the Education (Northern Ireland) Order 1996.

Determination of full-time enrolment number for a school

25.—(1) In this Chapter any reference to a school's full-time enrolment number is a reference to the number for the time being applying under the following provisions of this Article to the school.

(2) The full-time enrolment number applying to a school shall be such number as the Department may determine having regard in particular to—

- (a) the requirements of directions under Article 18 of the 1986 Order which apply in relation to the school;
- (b) the accommodation available for use by pupils in pre-school education at the school; and
- (c) the extent to which part-time pre-school education is to be provided in the school.

(3) The full-time enrolment number of a school may be nil.

(4) The Department may at any time vary a school's full-time enrolment number.

(5) Before making any determination under paragraph (2) or variation under paragraph (4) in relation to a school, the Department shall consult the bodies mentioned in paragraph (8).

(6) Paragraph (5) does not require consultation with the Board of Governors of a school in relation to a variation of the school's full-time enrolment number made by the Department at the request of the Board of Governors.

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(7) After making any determination under paragraph (2) or variation under paragraph (4) in relation to a school, the Department shall send notice of the determination or variation to the bodies mentioned in paragraph (8).

(8) The bodies referred to in paragraphs (5) and (7) are—

- (a) the Board of Governors of the school;
- (b) the board for the area in which the school is situated; and
- (c) where the school is a Catholic maintained school, the Council for Catholic Maintained Schools.

Admission decisions in relation to full-time pre-school education

26.—(1) In this Article and Article 27 any reference to the admission of a child to a school is a reference to the admission of a child to full-time pre-school education at the school.

(2) In this Article—

- (a) paragraph (3) applies to an application for the admission of a child to a school where the proposed admission is to take effect at the beginning of the first term of the school year; and
- (b) paragraph (4) applies to an application for the admission of a child to a school where the proposed admission is to take effect at any later time in the school year.

(3) Where an application to which this paragraph applies is made, the Board of Governors—

- (a) shall admit the child to the school if the total number of such applications does not exceed the full-time enrolment number of the school;
- (b) in any other case, shall—
 - (i) apply the criteria drawn up under Article 32(1) to select for admission to the school a number of children equal to the school's full-time enrolment number; and
 - (ii) admit, or refuse to admit, the child to the school accordingly.

(4) Where an application to which this paragraph applies is made, the Board of Governors shall—

- (a) if, at the time the application is considered there are vacant full-time places at the school—
 - (i) admit the child to the school, if the total number of such applications falling to be considered at that time does not exceed the number of vacant full-time places;
 - (ii) in any other case, apply the criteria drawn up under Article 32(1) to select for admission to the school a number of children equal to the number of vacant full-time places and admit, or refuse to admit, the child to the school accordingly;
- (b) if, at that time, there are no vacant full-time places at the school refuse to admit the child to the school.

(5) For the purposes of this Article—

- (a) there are vacant full-time places at a school at any time if at that time the full-time enrolment number of the school exceeds the number of full-time pupils registered at the school;
- (b) the number of vacant full-time places at a school at any time is the number obtained by subtracting the number of full-time pupils registered at the school at that time from the full-time enrolment number of the school.

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Appeals against certain admission decisions under Article 26

27.—(1) Every board shall make arrangements for enabling the parent of a child to appeal against any decision made under Article 26 by the Board of Governors of a school situated in the area of the board refusing the child admission to the school.

(2) An appeal under this Article shall be to an appeal tribunal constituted in accordance with regulations under paragraph (8) of Article 15 of the Education (Northern Ireland) Order 1997; and paragraphs (9) to (11) of that Article apply in relation to appeals under this Article as they apply in relation to appeals under that Article.

(3) An appeal under this Article may be brought only on the ground that the criteria drawn up under Article 32(1) by the Board of Governors of a school—

- (a) were not applied; or
- (b) were not correctly applied,

in deciding to refuse the child admission to the school.

(4) On the hearing of an appeal under this Article—

- (a) if it appears to the tribunal that the criteria were not applied, or were not correctly applied, in deciding to refuse the child admission to the school, the tribunal shall, subject to paragraph (5), allow the appeal and direct the Board of Governors of the school to admit the child to the school;
- (b) in any other case, the tribunal shall dismiss the appeal.

(5) If, in any case mentioned in paragraph (4)(a), it appears to the tribunal that had the criteria been applied, or (as the case may be) been correctly applied, the child would have been refused admission to the school, the tribunal shall dismiss the appeal.

(6) It shall be the duty of the Board of Governors of a school to comply with any direction given under paragraph (4)(a).

Admission to part-time pre-school education

Duties of Board of Governors in relation to admission to part-time pre-school education

28.—(1) The Board of Governors of a school shall not cause or permit the number of part-time registered pupils at the school at any time to exceed the school's part-time enrolment number.

(2) In calculating for the purposes of paragraph (1) the number of part-time registered pupils at a school at any time, no account shall be taken of any child registered at the school in compliance with—

- (a) a direction of an appeal tribunal; or
- (b) a direction under Article 42 of the Education (Northern Ireland) Order 1996.

Determination of part-time enrolment number for a school

29.—(1) In this Chapter any reference to a school's part-time enrolment number is a reference to the number for the time being applying under the following provisions of this Article to the school.

(2) The part-time enrolment number applying to a school shall be such number as the Department may determine having regard in particular to—

- (a) the requirements of directions under Article 18 of the 1986 Order which apply in relation to the school;
- (b) the accommodation available for use by pupils in pre-school education at the school; and

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- (c) the extent to which full-time pre-school education is to be provided at the school.
- (3) The part-time enrolment number of a school may be nil.
- (4) The Department may at any time vary a school's part-time enrolment number.
- (5) Before making any determination under paragraph (2) or variation under paragraph (4) in relation to a school, the Department shall consult the bodies mentioned in paragraph (8).
- (6) Paragraph (5) does not require consultation with the Board of Governors of a school in relation to a variation of the school's part-time enrolment number made by the Department at the request of the Board of Governors.
- (7) After making any determination under paragraph (2) or variation under paragraph (4) in relation to a school, the Department shall send notice of the determination or variation to the bodies mentioned in paragraph (8).
- (8) The bodies referred to in paragraphs (5) and (7) are—
 - (a) the Board of Governors of the school;
 - (b) the board for the area in which the school is situated; and
 - (c) where the school is a Catholic maintained school, the Council for Catholic Maintained Schools.

Admission decisions in relation to part-time pre-school education

30.—(1) In this Article and Article 31 any reference to the admission of a child to a school is a reference to the admission of a child to part-time pre-school education at the school.

- (2) In this Article—
 - (a) paragraph (3) applies to an application for the admission of a child to a school where the proposed admission is to take effect at the beginning of the first term of the school year; and
 - (b) paragraph (4) applies to an application for the admission of a child to a school where the proposed admission is to take effect at any later time in the school year.
- (3) Where an application to which this paragraph applies is made, the Board of Governors—
 - (a) shall admit the child to the school if the total number of such applications does not exceed the part-time enrolment number of the school;
 - (b) in any other case, shall—
 - (i) apply the criteria drawn up under Article 32(1) to select for admission to the school a number of children equal to the school's part-time enrolment number; and
 - (ii) admit, or refuse to admit, the child to the school accordingly.
- (4) Where an application to which this paragraph applies is made, the Board of Governors shall—
 - (a) if, at the time the application is considered there are vacant part-time places at the school—
 - (i) admit the child to the school, if the total number of such applications falling to be considered at that time does not exceed the number of vacant part-time places;
 - (ii) in any other case, apply the criteria drawn up under Article 32(1) to select for admission to the school a number of children equal to the number of vacant part-time places and admit, or refuse to admit, the child to the school accordingly;
 - (b) if, at that time, there are no vacant part-time places at the school refuse to admit the child to the school.
- (5) For the purposes of this Article—

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- (a) there are vacant part-time places at a school at any time if at that time the part-time enrolment number of the school exceeds the number of part-time pupils registered at the school;
- (b) the number of vacant part-time places at a school at any time is the number obtained by subtracting the number of part-time pupils registered at the school at that time from the part-time enrolment number of the school.

Appeals against certain admission decisions under Article 30

31.—(1) Every board shall make arrangements for enabling the parent of child to appeal against any decision made under Article 30 by the Board of Governors of a school situated in the area of the board refusing the child admission to the school.

(2) An appeal under this Article shall be to an appeal tribunal constituted in accordance with regulations under paragraph (8) of Article 15 of the Education (Northern Ireland) Order 1997; and paragraphs (9) to (11) of that Article apply in relation to appeals under this Article as they apply in relation to appeals under that Article.

(3) An appeal under this Article may be brought only on the ground that the criteria drawn up under Article 32(1) by the Board of Governors of a school—

- (a) were not applied; or
- (b) were not correctly applied,

in deciding to refuse the child admission to the school.

(4) On the hearing of an appeal under this Article—

- (a) if it appears to the tribunal that the criteria were not applied, or were not correctly applied, in deciding to refuse the child admission to the school, the tribunal shall, subject to paragraph (5), allow the appeal and direct the Board of Governors of the school to admit the child to the school;
- (b) in any other case, the tribunal shall dismiss the appeal.

(5) If, in any case mentioned in paragraph (4)(a), it appears to the tribunal that had the criteria been applied, or (as the case may be) been correctly applied, the child would have been refused admission to the school, the tribunal shall dismiss the appeal.

(6) It shall be the duty of the Board of Governors of a school to comply with any direction given under paragraph (4)(a).

General

Admission criteria

32.—(1) Subject to the following provisions of this Article, the Board of Governors of each school shall draw up, and may from time to time amend, the criteria to be applied in selecting children for admission to the school under Article 26 or 30.

(2) When drawing up or amending criteria under paragraph (1)—

- (a) the Board of Governors of a controlled school shall consider any representations made to it by the board responsible for the management of the school;
- (b) the Board of Governors of a Catholic maintained school shall consider any representations made to it by the Council for Catholic Maintained Schools.

(3) Where the criteria to be applied in respect of any school year have been published under Article 33(2), the Board of Governors shall not amend those criteria in respect of that school year without the approval of the Department.

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(4) The criteria drawn up by the Board of Governors of a school under paragraph (1) shall provide for all children resident in Northern Ireland at the time of their proposed admission to the school to be selected for admission to the school before any child not so resident may be selected for admission.

(5) The criteria drawn up under paragraph (1) shall be such as to ensure that the Board of Governors by applying those criteria can comply with Article 26 or 30 before the criteria are exhausted.

(6) Regulations may provide that the criteria drawn up under paragraph (1)—

- (a) shall include such matters or matters of such description as are specified in the regulations;
- (b) shall not include such matters or matters of such description as are so specified.

Information as to schools and admission arrangements

33.—(1) Every board shall, for each school year, publish at such time and in such manner as the Department may direct, particulars of—

- (a) the arrangements made by the board under Articles 23(1), 27(1) and 31(1);
- (b) the arrangements for the admission of children to pre-school education at each school in its area.

(2) The particulars to be published under paragraph (1)(b) for each school year in relation to a school shall include particulars of—

- (a) the school's full-time and part-time enrolment numbers;
- (b) the respective functions of the Board of Governors and the principal in relation to admissions to the school; and
- (c) the criteria drawn up under Article 32(1) for the school.

(3) The Board of Governors of every school shall, as respects that school, publish—

- (a) such information as may be required by regulations;
- (b) such other information, if any, as the Board of Governors thinks fit.

(4) Every board shall publish such information as may be required by regulations with respect to its policy and arrangements in respect of any matter relating to pre-school education at grant-aided schools in its area.

(5) A board may, with the agreement of the Board of Governors of any school situated in the area of the board, publish on behalf of the Board of Governors, the information relating to the school referred to in paragraph (3).

(6) References in paragraphs (3) and (5) to publication are references to publication at such times and in such manner as may be required by regulations.

PART VI

TEACHERS

CHAPTER I

THE GENERAL TEACHING COUNCIL FOR NORTHERN IRELAND

The General Teaching Council for Northern Ireland

34.—(1) There shall be established a body to be known as the General Teaching Council for Northern Ireland (referred to in this Chapter as “the Council”).

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(2) Schedule 1 shall have effect in relation to the Council.

(3) The functions of the Council under this Chapter shall be exercisable by the Council in relation to—

- (a) teachers in grant-aided schools; and
- (b) peripatetic teachers;

and references in this Chapter to “teachers” and “teaching” shall be construed accordingly.

Registration of teachers

35.—(1) The Council shall establish and maintain a register of teachers (“the register”).

(2) The register shall contain the name of every person who in accordance with regulations under Article 36—

- (a) is eligible for registration; and
- (b) applies to be registered.

(3) [^{F6}Subject to such exceptions as may be provided for by or under regulations,] An employing authority shall not employ a person as a teacher unless he is registered under this Article.

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Modifications etc. (not altering text)

C1 Art. 35 modified by S.R. 2004/38, reg. 3 (as substituted (21.12.2009) by Education (General Teaching Council for Northern Ireland) (Miscellaneous Amendments) Regulations (Northern Ireland) 2009 (S.R. 2009/370), reg. 3(2))

Regulations as to registration

36.—(1) The Department may by regulations make provision as to—

- (a) the eligibility of persons for registration;
- (b) the form and manner in which the register is to be kept and other matters relating to registration.

(2) Regulations under paragraph (1)(a) may in particular provide that a person shall not be eligible for registration unless he—

- (a) has such qualifications as may be approved by the Department; and
- (b) complies with such requirements as may be imposed by or under the regulations in relation to—
 - (i) age;
 - (ii) health;
 - (iii) physical capacity; and
 - (iv) any other matter specified in the regulations.

(3) Regulations under paragraph (1)(b) may in particular make provision as to—

- (a) the form and manner in which applications for registration are to be made;
- (b) the documentary or other evidence which is to accompany applications for registration;
- (c) the registration, on the establishment of the register, of persons who have not made such applications;

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- (d) the matters which are to be recorded in the register against the names of those registered in it;
- (e) the charging by the Council of fees authorised by virtue of paragraph (4);
- (f) the removal of entries from the register in circumstances where the persons concerned—
 - (i) have ceased to be eligible for registration;
 - (ii) have failed to pay any such fee; or
 - (iii) have in accordance with procedures specified in^{[F7} or determined under] the regulations been found guilty of misconduct;
 or in such other circumstances as may be specified in the regulations;
- (g) the restoration and alteration of entries;
- (h) the issue and form of certificates of registration;
- (i) the information contained in the register which may be made available for inspection by members of the public, and the circumstances in which and the conditions subject to which that information may be made available.

(4) For the purposes of paragraph (3)(e) regulations under this Article may authorise the Council (subject to such exceptions as may be provided for by or under the regulations) to charge fees fixed by the Council with the approval of the Department in respect of —

- (a) applications for registration or for the restoration of entries to the register;
- (b) registration in accordance with paragraph (3)(c); or
- (c) the retention of entries in the register,

and the regulations may accordingly authorise the Council to refuse an application falling within sub-paragraph (a) until the appropriate fee has been paid.

^{[F7}(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.]

(5) Regulations under this Article may authorise the Council to make provision in relation to any matter.

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Advisory functions of the Council

37.—(1) The Council shall advise—

- (a) the Department; and
- (b) employing authorities,

on such matters falling within paragraph (3) as the Council thinks fit.

(2) The Council shall also advise the Department—

- (a) on such matters falling within paragraph (3); or
- (b) on such other matters relating to teaching,

as the Department may from time to time require.

(3) The matters referred to in paragraphs (1) and (2) are—

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- (a) any matter relating to teachers which is dealt with (or which could be dealt with) by regulations under Article 36;
 - (b) the training, career development and performance management of teachers;
 - (c) standards of teaching;
 - (d) standards of conduct for teachers.
- (4) The Council may publish advice given by it under this Article.

Additional and ancillary functions

38.—(1) The Department may by order confer or impose on the Council such additional functions as the Department considers the Council may appropriately discharge in conjunction with any of its other functions under this Chapter.

(2) Before making an order under paragraph (1), the Department shall consult the Council and such other bodies and persons as appear to the Department to be appropriate.

(3) An order under paragraph (1) may in particular require the Council to maintain records relating to such categories of persons (including persons not eligible to be registered under Article 35) as may be specified in the order; and the records shall contain such information relating to those persons and be kept in such manner as may be so specified.

(4) The Council shall carry out such ancillary activities as the Department may direct.

(5) For the purposes of paragraph (4) activities are ancillary activities in relation to the Council if the Department considers it is appropriate for the Council to carry out those activities for the purposes of or in connection with the carrying out by the Council of any of its other functions under this Chapter.

Deduction of fees from salary of teachers

39.—(1) The Department may make regulations requiring issuing authorities, or authorising the Department where it is the issuing authority—

- (a) to deduct from the salary of teachers any fee payable by virtue of Article 36 in respect of the registration of, or retention of an entry on the register relating to, any teacher; and
- (b) to remit that fee to the Council.

(2) The regulations may make provision with respect to—

- (a) the arrangements to be adopted by issuing authorities for the deduction and remittance of fees; and
- (b) the notification to the Council by issuing authorities of such particulars relating to teachers as the regulations may specify.

(3) In this Article “issuing authority”, in relation to any teacher, means the body which in accordance with Article 71 is responsible for issuing payment of his salary.

Supply of information relating to teachers

40.—(1) The Department may supply the Council with such information as the Department considers it to be necessary or desirable for the Council to have for the purposes of its functions under this Chapter.

(2) The Council shall supply the Department with such information as it may reasonably require for the purposes of its functions under the Education Orders.

(3) The Department may by regulations require or authorise the Council to supply information—

- (a) to such other body or person; and

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(b) for such purposes and subject to such conditions, as may be prescribed.

(4) Employing authorities shall supply the Council with such information as it may reasonably require for the purposes of its functions under this Chapter.

(5) This Article does not limit the circumstances in which information may be supplied apart from this Article.

Interpretation of this Chapter

41. In this Chapter—

“the Council” has the meaning assigned to it by Article 34(1);

“employing authority” means—

- (a) in relation to teachers employed in a controlled school, the board by which they are employed;
- (b) in relation to teachers employed in a Catholic maintained school, the Council for Catholic Maintained Schools;
- (c) in relation to teachers employed in any other voluntary school or in a grant-maintained integrated school, the Board of Governors of the school;
- (d) in relation to peripatetic teachers, the board by which they are employed;

“the register” has the meaning assigned by Article 35(1);

“teachers” and “teaching” shall be construed in accordance with Article 34(3).

CHAPTER II

EMPLOYMENT OF TEACHERS

Eligibility for employment as principal of grant-aided school

42.—(1) The Department may by regulations make provision as to the eligibility of persons to be employed as principals of grant-aided schools.

(2) Without prejudice to the generality of paragraph (1), regulations under that paragraph may include provision requiring persons employed as principals, subject to such exceptions as may be provided for by or under the regulations, to have a qualification approved by the Department for the purposes of this Article.

(3) Regulations under this Article shall apply to every person who is appointed as principal of a grant-aided school on or after the date on which the regulations come into operation, unless he has held such an appointment before that date.

(4) In this Article—

“principal”

- (a) includes, in the case of a grammar school having a preparatory department, the teacher in charge of that department;
- (b) does not include an acting principal;

“preparatory department” means that part of a grammar school in which primary education is provided.

Appointment of teachers

43.—(1) For Article 143 of the 1989 Order there shall be substituted—

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“Employment of teachers by the Council

143.—(1) The Council may employ all such teachers as are required on the staff of Catholic maintained schools.

(2) The Council shall prepare, and may from time to time revise, a scheme providing for the procedures to be followed by—

- (a) the Council;
- (b) the diocesan education committee established under paragraph 3 of Schedule 8; and
- (c) the Boards of Governors of Catholic maintained schools,

in relation to the appointment of teachers under paragraph (1).

(3) Before preparing a scheme under paragraph (2), the Council shall consult the Board of Governors of every Catholic maintained school.

(4) A scheme under paragraph (2) shall—

- (a) require the Council to appoint a panel of assessors in relation to each diocesan education committee; and
- (b) make provision for members of that panel to give advice and assistance to the diocesan education committee or the Board of Governors of a Catholic maintained school in relation to any functions of that committee or Board under the scheme.

(5) It shall be the duty of the bodies mentioned in paragraph (2) to give effect to a scheme for the time being in force under that paragraph.”

(2) For Article 153 of the 1989 Order there shall be substituted—

“Appointment of teachers by a board

153.—(1) Each board shall prepare, and may from time to time revise, a scheme providing for the procedures to be followed in relation to the appointment by the board of—

- (a) teachers to posts in controlled schools; and
- (b) peripatetic teachers.

(2) A scheme under paragraph (1) may provide for any specified functions of the board under the scheme to be performed by the teaching appointments committee of the board on behalf of, and in the name of, the board.

(3) Before preparing a scheme under paragraph (1), a board shall consult the Board of Governors of every controlled school managed by the board.

(4) It shall be the duty of the board to give effect to a scheme for the time being in force under paragraph (1).”

(3) Article 69(8) of the 1986 Order (terms and conditions of employment of certain teachers to be set out in an agreement in a form approved by the Department) shall cease to have effect.

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PART VII
FINANCING OF SCHOOLS
CHAPTER I
FINANCING OF SCHOOLS BY BOARDS

Schemes for financing schools

Arts. 44 - 54 rep. by 2003 NI 12

Suspension of financial delegation for mismanagement, etc.

55.—(1) [^{F8}Where it appears to a board, in the case of any relevant school with a delegated budget,] that the Board of Governors of the school—

- (a) has been guilty of a substantial or persistent failure to comply with any requirements or conditions applicable under the scheme; or
- (b) is not managing the appropriation or expenditure of the sum put at its disposal for the purposes of the school in a satisfactory manner,

the board may suspend the Board of Governors' right to a delegated budget by giving the Board of Governors (subject to paragraph (4)) not less than one month's notice of suspension.

(2) Any notice under paragraph (1) shall specify the grounds for the proposed suspension, giving particulars of any alleged failure on the part of the Board of Governors to comply with any requirements or conditions applicable under the scheme and of any alleged mismanagement on its part.

- (3) A copy of the notice shall be given to—
 - (a) the principal of the school;
 - (b) the Department; and
 - (c) where the school is a Catholic maintained school, the Council for Catholic Maintained Schools,

at the same time as the notice is given to the Board of Governors.

(4) A board may suspend the right mentioned in paragraph (1) of any Board of Governors to which it has given notice under that paragraph before the expiry of the period of notice if it appears to the board to be necessary to do so by reason of gross incompetence or mismanagement on the part of the Board of Governors or other emergency.

(5) A board may withdraw a notice given under paragraph (1) at any time before the expiry of the period of notice.

(6) If the board exercises its power under paragraph (4) or (5), it shall immediately give written notification of its action and, in the case of action under paragraph (4), of the reasons for it to—

- (a) the Board of Governors and principal of the school;
- (b) the Department; and
- (c) where the school is a Catholic maintained school, the Council for Catholic Maintained Schools.

(7) During any period when a Board of Governors' right to a delegated budget is suspended under this Article, the duty of the board under [^{F8} Article 6(1) of the 2003 Order] shall not apply in relation to that Board of Governors.

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F8 2003 NI 12

Review of suspension

56.—(1) It shall be the duty of the board concerned—

- (a) to review before the beginning of every financial year any suspension under Article 55 which is for the time being in force;
- (b) for the purposes of that review, to afford—
 - (i) the Board of Governors of the school concerned;
 - (ii) the principal of the school concerned; and
 - (iii) where the school is a Catholic maintained school, the Council for Catholic Maintained Schools,an opportunity for making representations with respect to the suspension and to have regard to any representations made by the Board of Governors, the principal or that Council;
- (c) to revoke any such suspension where the board considers it appropriate to do so.

(2) The board shall give—

- (a) the Board of Governors concerned;
- (b) the principal of the school concerned;
- (c) the Department; and
- (d) where that school is a Catholic maintained school, the Council for Catholic Maintained Schools,

written notification of its decision on any such review.

(3) The revocation of a suspension on a review under this Article shall take effect as from the beginning of the financial year next following the review.

Appeal against suspension or refusal to revoke it

57.—(1) A Board of Governors shall be entitled to appeal to the Department against—

- (a) the imposition of any suspension under Article 55; or
- (b) any refusal of a board to revoke any such suspension on a review under Article 56.

(2) On an appeal under this Article, the Department—

- (a) may allow or reject the appeal; and
- (b) shall have regard, in making its determination, to the gravity of the default on the part of the Board of Governors and the likelihood of its continuing or recurring.

Financial delegation: staff

58.—(1) The following matters in relation to staff at controlled and maintained schools with delegated budgets, namely—

- (a) the determination of staff complements;
- (b) the regulation of conduct and discipline of staff;
- (c) the suspension and dismissal of staff; and
- (d) the making of payments in respect of dismissals or resignations of staff,

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shall be subject to Schedule 2.

(2) A scheme may provide for applying this Article and Schedule 2 in relation to persons employed to work—

- (a) partly for the purposes of school activities and partly for the purposes of non-school activities (that is to say, activities, other than school activities, carried on on the school premises and wholly or mainly under the management or control of the Board of Governors of the school); or
- (b) solely for the purposes of non-school activities,

as if all such activities were school activities.

Financing by boards of special schools

Application of^{F9} the common funding scheme] to special schools

59.—(1) The Department may by regulations provide for requiring or authorising^{F9} the common funding scheme]

- (a) to cover controlled or maintained special schools;
- (b) to include provision, in the case of any such school which by virtue of any regulations made under sub-paragraph (a) is required or authorised to be covered by^{F9} the common funding scheme], for the delegation by the board concerned of the management of the school's budget share for any financial year to the Board of Governors of the school.

(2) Regulations under this Article—

- (a) may make in any provisions of this Chapter^{F9} or Part I of the 2003 Order] such amendments as appear to the Department to be required in consequence of any provision made in those regulations by virtue of paragraph (1); and
- (b) may provide that^{F9} the common funding scheme] shall have effect with such modifications as appear to the Department to be appropriate in consequence of any provision so made.

F9 [2003 NI 12](#)

Duty on board to make a sum of money available to Board of Governors of special school not covered by a scheme

60.—(1) Subject to paragraphs (4) and (12), in respect of any period during which any special school is not covered by a scheme, it shall be the duty of the board to make available a sum of money which the Board of Governors of the school is to be entitled to spend at its discretion during that period (but subject to paragraph (2)) on such heads of expenditure as the board may specify or as the Department may direct.

(2) A Board of Governors to which any sum is made available under this Article—

- (a) shall comply in spending that sum with such reasonable conditions as the board thinks fit to impose; and
- (b) may delegate to the principal, to such extent as it may specify, its powers in relation to that sum.

(3) 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 any power under paragraph (2).

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(4) Where a new special school is established and is not covered by a scheme, paragraph (1) shall not apply in relation to the school until such date as the Department may direct.

(5) Before specifying any heads of expenditure under paragraph (1), the board shall consult the Board of Governors of every special school appearing to it to be concerned and the Council for Catholic Maintained Schools and before giving any directions under paragraph (1), the Department shall consult all the boards, the Council for Catholic Maintained Schools and any other person with whom consultation appears to it to be desirable.

(6) Where it appears to a board that a Board of Governors to which any sum is made available under this Article—

- (a) has been guilty of a substantial or persistent failure to comply with any conditions imposed on it under paragraph (2)(a); or
- (b) is not managing the appropriation or expenditure of the sum in a satisfactory manner,

the board may suspend the Board of Governors' right under paragraph (1) to have a sum of money made available to it by giving the Board of Governors (subject to paragraph (8)) not less than one month's notice of suspension.

(7) A notice under paragraph (6) shall specify the grounds for the proposed suspension, giving particulars of any alleged failure on the part of the Board of Governors to comply with any conditions imposed on it under paragraph (2)(a) or of any alleged mismanagement on its part.

(8) A copy of the notice shall be given to—

- (a) the principal of the school;
- (b) the Department; and
- (c) where the school is a Catholic maintained school, the Council for Catholic Maintained Schools,

at the same time as the notice is given to the Board of Governors.

(9) A board may suspend the right mentioned in paragraph (6) of any Board of Governors to which it has given notice under that paragraph before the expiry of the period of notice if it appears to the board to be necessary to do so by reason of gross incompetence or mismanagement on the part of the Board of Governors or other emergency.

(10) A board may withdraw a notice given under paragraph (6) at any time before the expiry of the period of notice.

(11) If the board exercises its power under paragraph (9) or (10), it shall immediately give written notification of its action and, in the case of action under paragraph (9), of the reasons for it to—

- (a) the Board of Governors and principal of the school;
- (b) the Department; and
- (c) where the school is a Catholic maintained school, the Council for Catholic Maintained School.

(12) During any period when a Board of Governors' right mentioned in paragraph (6) is suspended under this Article, the duty of the board concerned under paragraph (1) shall not apply in relation to that Board of Governors.

(13) Articles 56 and 57 shall apply in relation to a suspension under this Article as they apply in relation to a suspension under Article 55.

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Financing by boards of voluntary grammar and grant-maintained integrated schools

Maintenance and other grants to voluntary grammar schools

61.—(1) Subject to the provisions of this Article and Article 62, a board shall in respect of each financial year make grants (known as maintenance grants) to the Board of Governors of a voluntary grammar school situated in its area in respect of expenditure incurred or to be incurred in that year in carrying on the school, except—

- (a) expenditure incurred or to be incurred for the provision or alteration of the premises of the school; and
- (b) expenditure incurred or to be incurred for the provision of equipment for the school which is approved expenditure for the purposes of Article 68(1)(b).

[^{F10}(2) The amount of the maintenance grant payable in respect of a voluntary grammar school for a financial year shall be the sum of—

- (a) an amount equal to the budget share of the school for that year; and
- (b) such other amount determined by or in accordance with the common funding scheme as, in accordance with that scheme, falls to be paid by way of maintenance grant.]

(3) A board shall make grants to the trustees of a voluntary grammar school situated in its area of amounts equal to the costs of the trustees on foot of an approved contract.

(4) Grants under this Article shall be made on such conditions (including conditions as to repayment) as the board may determine with the approval of the Department.

(5) The times at which, and the manner in which, payments are made in respect of grants under this Article shall be such as the board may determine with the approval of the Department.

(6) Subject to any conditions imposed under paragraph (4), the Board of Governors of a voluntary grammar school—

- (a) shall be entitled to spend any sums received by it by way of maintenance grants as it thinks fit for the purposes of the school; and
- (b) may delegate to the principal its power under sub-paragraph (a) in relation to any such sums.

(7) The members of the Board of Governors of a voluntary grammar 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 (6).

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Withdrawal of maintenance grants from voluntary grammar school

62.—(1) The Department may give to the Board of Governors of a voluntary grammar school a notice stating that the duty of the relevant board under Article 61 to pay maintenance grants to the Board of Governors of the school will cease on a date specified in the notice.

(2) Subject to the following provisions of this Article—

- (a) a notice under paragraph (1) may not specify as the date on which the duty of the relevant board under Article 61 to pay maintenance grants to the Board of Governors of the school will cease a date falling less than 2 years after the date on which the notice is given to the Board of Governors; and
- (b) before giving such a notice the Department shall consult—
 - (i) the Board of Governors of the school; and

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(ii) the relevant board.

(3) Paragraph (2) shall not apply where the Department is satisfied that the school as currently constituted or conducted is unsuitable to continue as a voluntary grammar school on all or any of the following grounds—

- (a) that the number of registered pupils at the school is too small for sufficient and suitable instruction to be provided for them at reasonable cost;
- (b) that the Board of Governors has failed for a significant period of time to carry out its duties under Part III of the 1989 Order;
- (c) that the Board of Governors has been guilty of substantial or persistent failure to comply or secure compliance with any other requirement imposed by or under the Education Orders or any other statutory provision.

(4) In any case within paragraph (3), the Department may give to the Board of Governors of the school a notice stating the grounds on which it considers that the school as currently constituted or conducted is unsuitable to continue as a voluntary grammar school together with full particulars of the matters relevant to each such ground.

(5) Where any of those matters are stated in the notice to be in the opinion of the Department irremediable, the notice shall also state that the duty of the relevant board under Article 61 to pay maintenance grants to the Board of Governors of the school will cease on a date specified in the notice.

(6) Where paragraph (5) does not apply, the notice under paragraph (4) shall—

- (a) state that the duty of the relevant board under Article 61 to pay maintenance grants to the Board of Governors of the school will cease unless the matters of which particulars are given in the notice are remedied;
- (b) specify the measures necessary in the opinion of the Department to remedy those matters; and
- (c) specify the time, not being less than three months after the date on which the notice is given to the Board of Governors, within which the Board of Governors is required to take those measures.

(7) Where the Board of Governors of a voluntary grammar school fails to take the measures required by a notice under paragraph (4) within the time specified in the notice or allowed by any previous notice under this paragraph, the Department shall within the period of 2 months beginning with the date next following the end of that time either—

- (a) give notice to the Board of Governors extending the time within which those measures are required to be taken; or
- (b) after consulting the relevant board, give a notice to the Board of Governors stating that the duty of the relevant board under Article 61 to pay maintenance grants to the Board of Governors will cease on a date specified in the notice.

(8) The Department may by notice given to the Board of Governors—

- (a) withdraw any notice under paragraph (1), (4) or (7)(b); or
- (b) vary—

- (i) any notice under paragraph (1) or (7)(b); or
- (ii) any notice under paragraph (4) to which paragraph (5) applies,

by substituting a later date for the date for the time being specified in the notice as the date on which the duty of the relevant board under Article 61 to pay maintenance grants to the Board of Governors of the school will cease; or

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- (c) vary any notice under paragraph (4) so far as relating to any measures specified in it by virtue of paragraph (6)(b).
- (9) If by virtue of paragraph (8)(c) the Department varies any notice under paragraph (4) so as to require different measures to be taken, it shall also substitute for the time specified in the notice by virtue of paragraph (6)(c) a time ending—
- (a) not less than 3 months after the date on which the notice of variation is given to the Board of Governors; and
 - (b) where the time so specified has been extended under paragraph (7)(a), not earlier than that time as so extended.
- (10) Any variation under paragraph (9) of the time specified in a notice under paragraph (4) is without prejudice to any further extension of that time under paragraph (7).
- (11) Where the Department gives a notice under this Article to the Board of Governors of a school, it shall give a copy of the notice to the relevant board.
- (12) Where the Department gives a notice under paragraph (1), (4) or (7)(b) which states that the duty of the relevant board under Article 61 to pay maintenance grants to the Board of Governors of a school will cease on a specified date, the board shall cease to be under a duty to make such grants to that Board of Governors in respect of any period beginning on or after that date.
- (13) In this Article—
- “notice” means notice in writing;
- “relevant board”, in relation to a voluntary grammar school, means the board for the area in which the school is situated.

Maintenance and other grants to grant-maintained integrated schools

63.—(1) Subject to the provisions of this Article and Article 64, a board shall in respect of each financial year make grants (known as maintenance grants) to the Board of Governors of a grant-maintained integrated school situated in its area in respect of expenditure incurred or to be incurred in that year in carrying on the school, other than expenditure of a capital nature.

[^{F11}(2) The amount of the maintenance grant payable in respect of a grant-maintained integrated school for a financial year shall be the sum of—

- (a) an amount equal to the budget share of the school for that year; and
- (b) such other amount determined by or in accordance with the common funding scheme as, in accordance with that scheme, falls to be paid by way of maintenance grant.]

(3) A board shall make grants to the Boards of Governors of a grant-maintained integrated school situated in its area of amounts equal to the costs of the trustees on foot of an approved contract.

(4) Grants under this Article shall be made on such conditions (including conditions as to repayment) as the board may determine, with the approval of the Department.

(5) The times at which, and the manner in which, payments are made in respect of grants under this Article shall be such as the board may determine with the approval of the Department.

(6) Subject to any conditions imposed under paragraph (4), the Board of Governors of a grant-maintained integrated school—

- (a) shall be entitled to spend any sums received by it by way of maintenance grants as it thinks fit for the purposes of the school; and
- (b) may delegate to the principal its power under sub-paragraph (a) in relation to any such sums.

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(7) The members of the Board of Governors of a grant-maintained integrated 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 (6).

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Withdrawal of maintenance grants from grant-maintained integrated school

64.—(1) The Department may give to the Board of Governors of a grant-maintained integrated school a notice stating that the duty of the relevant board under Article 63 to pay maintenance grants to the Board of Governors of the school will cease on a date specified in the notice.

(2) Subject to the following provisions of this Article—

- (a) a notice under paragraph (1) may not specify as the date on which the duty of the relevant board under Article 63 to pay maintenance grants to the Board of Governors of the school will cease a date falling less than 2 years after the date on which the notice is given to the Board of Governors; and
- (b) before giving such a notice the Department shall consult—
 - (i) the Board of Governors of the school;
 - (ii) the relevant board; and
 - (iii) the Council for Catholic Maintained Schools.

(3) Paragraph (2) shall not apply where the Department is satisfied that the school as currently constituted or conducted is unsuitable to continue as a grant-maintained integrated school on all or any of the following grounds—

- (a) that the number of registered pupils at the school is too small for sufficient and suitable instruction to be provided for them at reasonable cost;
- (b) that the Board of Governors has failed for a significant period of time to carry out its duties under Part III of the 1989 Order;
- (c) that the Board of Governors has been guilty of substantial or persistent failure to comply or secure compliance with any other requirement imposed by or under the Education Orders or any other statutory provision;
- (d) that the school is not attended by reasonable numbers of both Protestant and Roman Catholic pupils.

(4) In any case within paragraph (3), the Department may give to the Board of Governors of the school a notice stating the grounds on which it considers that the school as currently constituted or conducted is unsuitable to continue as a grant-maintained integrated school together with full particulars of the matters relevant to each such ground.

(5) Where any of those matters are stated in the notice to be in the opinion of the Department irremediable, the notice shall also state that the duty of the relevant board under Article 63 to pay maintenance grants to the Board of Governors of the school will cease on a date specified in the notice.

(6) Where paragraph (5) does not apply, the notice under paragraph (4) shall—

- (a) state that the duty of the relevant board under Article 63 to pay maintenance grants to the Board of Governors of the school will cease unless the matters of which particulars are given in the notice are remedied;
- (b) specify the measures necessary in the opinion of the Department to remedy those matters; and

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- (c) specify the time, not being less than three months after the date on which the notice is given to the Board of Governors, within which the Board of Governors is required to take those measures.
- (7) Where the Board of Governors of a grant-maintained integrated school fails to take the measures required by a notice under paragraph (4) within the time specified in the notice or allowed by any previous notice under this paragraph, the Department shall within the period of 2 months beginning with the date next following the end of that time either—
- (a) give notice to the Board of Governors extending the time within which those measures are required to be taken; or
 - (b) after consulting the relevant board, give a notice to the Board of Governors stating that the duty of the relevant board under Article 63 to pay maintenance grants to the Board of Governors will cease on a date specified in the notice.
- (8) The Department may by notice given to the Board of Governors—
- (a) withdraw any notice under paragraph (1), (4) or (7)(b); or
 - (b) vary—
 - (i) any notice under paragraph (1) or (7)(b); or
 - (ii) any notice under paragraph (4) to which paragraph (5) applies, by substituting a later date for the date for the time being specified in the notice as the date on which the duty of the relevant board under Article 63 to pay maintenance grants to the Board of Governors of the school will cease; or
 - (c) vary any notice under paragraph (4) so far as relating to any measures specified in it by virtue of paragraph (6)(b).
- (9) If by virtue of paragraph (8)(c) the Department varies any notice under paragraph (4) so as to require different measures to be taken, it shall also substitute for the time specified in the notice by virtue of paragraph (6)(c) a time ending—
- (a) not less than 3 months after the date on which the notice of variation is given to the Board of Governors; and
 - (b) where the time so specified has been extended under paragraph (7)(a), not earlier than that time as so extended.
- (10) Any variation under paragraph (9) of the time specified in a notice under paragraph (4) is without prejudice to any further extension of that time under paragraph (7).
- (11) Where the Department gives a notice under this Article to the Board of Governors of a school, it shall give a copy of the notice to the relevant board.
- (12) Where the Department gives a notice under paragraph (1), (4) or (7)(b) which states that the duty of the relevant board under Article 63 to pay maintenance grants to the Board of Governors of a school will cease on a specified date, the board shall cease to be under a duty to make such grants to that Board of Governors in respect of any period beginning on or after that date.
- (13) In this Article—
- “notice” means notice in writing;
 - “relevant board”, in relation to a grant-maintained integrated school, means the board for the area in which the school is situated.

Information

Arts. 65 and 66 rep. by 2003 NI 12

Financial statements in respect of special schools not covered by statements under^[F12] Article 7 of the 2003 Order]

67.—(1) Before the beginning of each financial year a board shall prepare a statement of the financial provision initially planned by the board in respect of that financial year for any special schools under the management of, or maintained by, the board, other than special schools in respect of which, by virtue of any provision made by regulations under Article 59, any information is required to be included in a statement prepared by the board in respect of that year under^[F12] Article 7 of the 2003 Order].

(2) A statement under paragraph (1) shall contain such information as the Department may direct.

(3) After the end of each financial year in respect of which a board is required to prepare a statement under paragraph (1), the board shall prepare a statement containing such information with respect to—

- (a) expenditure actually incurred in that year for the purposes of all schools required to be covered by the statement under paragraph (1); and
- (b) expenditure so incurred which was incurred, or is treated by the board as having been incurred, for the purposes of each such school,

as the Department may direct.

(4) A statement prepared under this Article shall be prepared in such form, and published in such manner and at such times, as the Department may direct.

(5) The board shall furnish—

- (a) the Board of Governors of any school required to be covered by a statement prepared under paragraph (1) in respect of any financial year; and
- (b) if any of those schools is a Catholic maintained school, the Council for Catholic Maintained Schools,

with a copy of each statement prepared by the board under this Article in relation to that year.

(6) 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.

F12 2003 NI 12

^[F13] Interpretation of this Chapter

67A.—(1) In this Chapter “the 2003 Order” means the Education and Libraries (Northern Ireland) Order 2003.

(2) In this Chapter—

- (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 common funding scheme;
- (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.

(3) In this Chapter—

“the common funding scheme” means the common funding scheme under Article 3 of the 2003 Order;

“the board”, in relation to a school, means the board for the area in which the school is situated.

(4) References in this Chapter—

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- (a) to a school's budget share are to be construed in accordance with Article 4(3) of the 2003 Order;
 - (b) to a relevant school are to be construed in accordance with Article 3(2) of that Order.
- (5) The Department may by order subject to affirmative resolution substitute for references in this Chapter to a financial year references to such other period as the Department may determine.
- (6) Directions and guidance given by the Department under this Chapter shall—
- (a) be in writing; and
 - (b) be published in such manner as the Department thinks fit.]

F13 2003 NI 12

CHAPTER II

FINANCING OF SCHOOLS BY DEPARTMENT

Building and equipment grants for voluntary schools

68.—(1) Subject to paragraph (2) and to regulations made with the approval of the Department of Finance and Personnel, the Department may pay to any person in respect of approved expenditure—

- (a) incurred for the provision or alteration of the premises of a voluntary school, a sum equal to—
 - (i) that expenditure where, when that expenditure is approved, the school is—
 - (A) a maintained school in relation to which an agreement under paragraph 1 of Schedule 5 to the 1986 Order is in force; or
 - (B) a voluntary grammar school in relation to which an agreement under paragraph 1(1)(a) of Schedule 6 to the 1986 Order is in force;
 - (ii) eighty-five per cent. of that expenditure where, when that expenditure is approved, the school is—
 - (A) a maintained school not falling within head (i)(A); or
 - (B) a voluntary grammar school in relation to which an agreement under paragraph 1(1)(b) of Schedule 6 to the 1986 Order is in force;
 - (iii) sixty-five per cent. of that expenditure in any other case;
- (b) incurred for the provision of equipment provided in connection with the provision or alteration of the premises of a voluntary grammar school, a sum equal to—
 - (i) that expenditure where, when that expenditure is approved, an agreement under paragraph 1(1)(a) of Schedule 6 to the 1986 Order is in force in relation to the school;
 - (ii) eighty-five per cent. of that expenditure where, when that expenditure is approved, an agreement under paragraph 1(1)(b) of Schedule 6 to the 1986 Order is in force in relation to the school;
 - (iii) sixty-five per cent. of that expenditure in any other case;

(2) No grant shall be paid under paragraph (1)(a)(iii) to a person in respect of expenditure incurred for the provision or alteration of any premises of a voluntary grammar school other than school meals premises.

(3) In paragraph (2) “schools meals premises” means premises used, or to be used, wholly or mainly for the carrying out of arrangements approved under Article 58(5) or (6) of the 1986 Order.

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(4) Where a contract entered into for the provision or alteration of the premises of a school provides for payment by instalments, the date on which an instalment is paid under the contract may, for the purposes of this Article, be taken as the date on which expenditure of the amount of that instalment has been incurred.

(5) For the purposes of this Article, any question as to the date on which any expenditure was incurred or approved shall be determined by the Department.

(6) Regulations under paragraph (1) may make provision for—

- (a) the repayment in such circumstances as are prescribed of the whole or part of any grant paid under this Article;
- (b) the reduction in such circumstances as are prescribed of the amount of grant which would otherwise be payable under this Article;
- (c) the payment to the Department by such person as may be prescribed of a sum where—
 - (i) any premises of a school in respect of which the Department has, at any time after 8th August 1978, paid a grant under paragraph (1)(a), cease to be used for approved purposes of a grant-aided school; or
 - (ii) any site in respect of which the Department has, at any time after that date, paid a grant under paragraph (1)(a), ceases, in the opinion of the Department, to be required for the purposes of a grant-aided school.

(7) Without prejudice to the generality of paragraph (6), regulations making any such provision as is mentioned in that paragraph may—

- (a) provide for any repayment, reduction or payment under the regulations to be of such amount as the Department considers equitable;
- (b) provide for any such repayment, reduction or payment not to exceed such amount as may be determined under or in accordance with the regulations;
- (c) provide for any amount determined as mentioned in sub-paragraph (b) to include an amount in respect of interest calculated in such manner as may be prescribed; and
- (d) apply, subject to paragraph (6)(c), to grants made before the coming into operation of this Article under Article 116 of the 1986 Order.

Capital and special purpose grants for grant-maintained integrated schools

69.—(1) Regulations may provide for the payment by the Department to the Board of Governors of a grant-maintained integrated school of grants (known as capital grants) in respect of approved expenditure of a capital nature, of any class or description specified in the regulations, incurred or to be incurred for the purposes of the school.

(2) Regulations may provide for the payment by the Department to the Board of Governors of a grant-maintained integrated school of grants (known as special purpose grants) in respect of approved expenditure of a class or description specified in the regulations—

- (a) which is incurred or to be incurred by the Board of Governors; and
- (b) which it appears to the Department the Board of Governors cannot reasonably be expected to meet from maintenance grant under Article 63.

(3) The amount of any capital or special purpose grant shall be equal to 100 per cent. of the approved expenditure in respect of which it is given.

(4) The descriptions of expenditure which are to be regarded for the purposes of this Article as expenditure of a capital nature shall be such as may be determined by or in accordance with regulations.

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(5) Capital and special purpose grants shall be made on such conditions (including conditions as to repayment) as the Department may determine.

(6) The times at which, and the manner in which, payments are made in respect of capital or special purpose grants shall be such as the Department may determine.

CHAPTER III

MISCELLANEOUS FINANCIAL PROVISIONS RELATING TO SCHOOLS

Duties of boards in relation to maintained schools

70.—(1) Subject to and in accordance with regulations, the board for the area in which a maintained school is situated shall be responsible for—

- (a) the maintenance of the school premises;
- (b) providing and replacing equipment;
- (c) employing in accordance with Article 88 of the 1986 Order persons, other than teachers, required in or about the school;
- (d) meeting the teaching costs of the school; and
- (e) meeting the cost of doing all such other things as may be necessary for the carrying on of the school, other than the cost of providing or altering the premises of the school.

(2) The responsibility of a board under paragraph (1) does not extend to—

- (a) any part of the premises of a school used wholly or mainly for boarding purposes; or
- (b) meeting any costs incurred in carrying on such part.

(3) Paragraph (1) does not impose on a board responsibility for any matter which under an approved contract entered into by the trustees of a maintained school is the responsibility of the contractor.

(4) The duty of a board under paragraph (1)(d) to meet the costs of a redundancy payment in respect of a teacher ceasing to be employed on the staff of a maintained school is a duty to pay to—

- (a) the Council for Catholic Maintained Schools, where the teacher was employed on the staff of a Catholic maintained school; and
- (b) the Board of Governors of the school, in any other case,

a sum equal to the amount of the redundancy payment.

(5) A board shall be responsible for meeting the costs of the trustees of a maintained school situated in its area on foot of an approved contract, and accordingly shall make grants to those trustees of amounts equal to those costs.

(6) Grants under paragraph (5) shall be made on such conditions (including conditions as to repayment) as the board may determine with the approval of the Department.

(7) A board shall pay to the Council for Catholic Maintained Schools an amount equal to the expenditure incurred or to be incurred by that Council in insuring against any liability for personal injury suffered by a teacher employed on the staff of a Catholic maintained school situated in its area and arising out of and in the course of his employment by that Council.

(8) Any question which may arise as to the responsibility of a board under this Article shall be referred to the Department whose decision thereon shall be final.

(9) In this Article “the teaching costs”, in relation to a maintained school, means the costs of—

- (a) the salaries and allowances of teachers employed on the staff of the school;

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- (b) secondary Class 1 contributions under the Social Security Contributions and Benefits (Northern Ireland) Act 1992 and employers' superannuation contributions in respect of such teachers;
 - (c) payments to which paragraph 7(1)(a) of Schedule 2 applies;
 - (d) redundancy payments under the Employment Rights (Northern Ireland) Order 1996 in respect of teachers ceasing to be employed on the staff of the school.
- (10) For the purposes of the Education Orders, a maintained school is maintained by a board if the board has the responsibilities mentioned in paragraph (1) in relation to the school.

Payment of salaries, etc of teachers

71.—(1) Except where regulations otherwise provide, the Department shall, on behalf of a board, issue payment of—

- (a) the salaries and allowances of—
 - (i) teachers employed by the board;
 - (ii) teachers employed on the staff of a maintained school maintained by the board; and
- (b) the relevant contributions in respect of such teachers.

(2) Except where regulations otherwise provide, the Department shall, on behalf of the Board of Governors of a grant-maintained integrated school, issue payment of—

- (a) the salaries and allowances of teachers employed by that Board of Governors; and
- (b) the relevant contributions in respect of such teachers.

(3) Regulations may provide for the Department, on behalf of the Board of Governors of a voluntary grammar school, to issue payment of—

- (a) the salaries and allowances of teachers employed by that Board of Governors; and
- (b) the relevant contributions in respect of such teachers.

(4) In this Article “relevant contributions” means—

- (a) secondary Class 1 contributions under the Social Security Contributions and Benefits (Northern Ireland) Act 1992; and
- (b) employers' superannuation contributions.

Charges for educational facilities and services

72.—(1) Notwithstanding anything in the instrument of government of the school—

- (a) the Board of Governors of a controlled school which has a delegated budget;
- (b) the managers of a voluntary school; and
- (c) the Board of Governors of a grant-maintained integrated school,

may make available educational facilities or services to any other school, institution, body or person and, subject to paragraphs (3) and (4), may make charges for any facilities or services made available under this paragraph.

(2) A board may make available educational facilities or services in a controlled school which is under the management of the board and does not have a delegated budget, to any school, institution, body or person and, subject to paragraphs (3) and (4), may make charges for any facilities or services made available under this paragraph.

(3) Charges under paragraphs (1) and (2)—

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- (a) shall not be made in such circumstances or for such educational facilities or services as may be prescribed;
- (b) shall not for any prescribed educational facility or service exceed such amount as may be prescribed,

but shall otherwise be of such amounts and be made in respect of such educational facilities and services as the body making the charges may determine.

(4) Nothing in paragraphs (1) to (3) applies to any charge which is prohibited or regulated by any provision of Chapter II of Part VIII of the 1989 Order.

(5) The scheme of management for every controlled school shall provide—

- (a) for the use of the school premises (other than so much as, in pursuance of an approved contract, is under the control of the contractor) to be under the control of the Board of Governors of the school at all times; and
- (b) for the Board of Governors to exercise control subject to any direction given to it by the board.

(6) Paragraph (5)(a) does not apply, in the case of a controlled school which does not have a delegated budget, to the extent necessary for the exercise by the board of its powers under—

- (a) paragraph (2); or
- (b) Article 32 of the Education and Libraries (Northern Ireland) Order 1993.

(7) In this Article—

“educational facilities” means the equipment, premises or other property of a school;

“educational services” includes services provided by teachers;

and references to a school which has a delegated budget shall be construed in accordance with^{F14} Article 67A(2)(a)].

F14 2003 NI 12

PART VIII

THE NORTHERN IRELAND COUNCIL FOR THE CURRICULUM, EXAMINATIONS AND ASSESSMENT

The Northern Ireland Council for the Curriculum, Examinations and Assessment

73.—(1) There shall continue to be a body known as the Northern Ireland Council for the Curriculum, Examinations and Assessment (referred to in this Part as “the Council”).

(2) Schedule 3 shall have effect in relation to the Council.

Duty of the Council to conduct examinations and assessments

74.—(1) The Council shall, subject to the following provisions of this Article—

- (a) conduct the relevant examinations;
- (b) conduct the relevant assessments, in accordance with such assessment arrangements as are specified under Article 7(1)(b) of the 1989 Order.

(2) For the purposes of this Article the power of the Council to conduct the relevant examinations includes power—

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- (a) to enter into arrangements for the conduct by any other person or body of all or any part of any such examinations on such terms and conditions (including conditions as to payment) as the Council may determine;
 - (b) to draw up and publish—
 - (i) rules and syllabuses;
 - (ii) specimen papers; and
 - (iii) such other material as it considers desirable, in connection with such examinations;
 - (c) to moderate, or arrange for the moderation of, such examinations;
 - (d) to award appropriate certificates in respect of such examinations.
- (3) For the purposes of this Article the power of the Council to conduct the relevant assessments includes power—
- (a) with the approval of the Department, to enter into arrangements for the conduct by any other person or body of all or any part of such assessments on such terms and conditions (including conditions as to payment) as the Council may determine;
 - (b) to draw up and publish—
 - (i) specimen papers; and
 - (ii) such other material as it considers desirable, in connection with such assessments;
 - (c) to moderate, or arrange for the moderation of, such assessments.
- (4) The Council may charge such fees in connection with relevant examinations as may be approved by the Department.
- (5) The Council shall make arrangements for the consideration by the Council of appeals against any decision or complaints against any action—
- (a) taken by the Council under this Article; or
 - (b) taken in accordance with arrangements entered into by the Council under paragraph (2) (a) or (3)(a).
- (6) In this Article—
- “examination” includes any examination, test or assessment for an academic or vocational qualification;
- “relevant assessments” means assessments of pupils required by Article 6(3) of the 1989 Order;
- “relevant examinations” means such examinations as the Department, after consultation with the Council, may determine.
- (7) The Department shall notify the Council in writing of any determination made by it under paragraph (6).

Functions of the Council in relation to accreditation and approval of certain external qualifications

- 75**^{F15}.—(1) The Council shall—
- (a) with the approval of the Department, develop and publish criteria for the accreditation of relevant external qualifications;
 - (b) accredit, where they meet such criteria, any such qualifications submitted for accreditation.
- (2) The Council shall advise the Department on the exercise of its powers under Article 81.
- (3) In this Article—

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“external qualification” means any academic or vocational qualification authenticated or awarded by an outside person;

“relevant external qualification” means an external qualification which—

- (a) is, or is to be, provided for—
 - (i) pupils in attendance at a grant-aided school; or
 - (ii) persons under the age of 19 in full-time attendance at an institution of further education; and
- (b) is designated by the Department for the purposes of this Article;

“outside person” means—

- (a) in relation to a school, a person other than a member of staff of the school;
- (b) in relation to an institution of further education, a person other than a member of staff of the institution.

(4) The Department shall notify the Council in writing of any designation made by it under paragraph (3).

F15 certain functions transf. by SR 1999/481
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Other functions of the Council in relation to the curriculum, examinations and assessment

76.—(1) The Council shall—

- (a) keep under review all aspects of the curriculum for grant-aided schools and all aspects of examinations and assessment;
- (b) advise the Department on such matters concerned with the curriculum for grant-aided schools or with examinations and assessment as the Department may refer to it or as it may see fit;
- (c) publish and disseminate, or secure or assist the publication and dissemination of, information relating to the curriculum for grant-aided schools or to examinations and assessment;
- (d) produce, or secure or assist the production of, teaching materials for use in connection with the curriculum for grant-aided schools.

(2)^{F16} The Council shall, with respect to persons under the age of 19 who are in full-time further education at an institution of further education—

- (a) keep under review all aspects of the curriculum for institutions of further education and all aspects of examinations and assessment;
- (b) advise the Department on such matters concerned with the curriculum for institutions of further education or with examinations and assessment as the Department may refer to it or as it may see fit;
- (c) publish and disseminate, or secure or assist the publication and dissemination of, information relating to the curriculum for institutions of further education or to examinations and assessment;
- (d) produce, or secure or assist the production of, teaching materials for use in connection with the curriculum for institutions of further education.

(3) The Council shall produce, or secure or assist the production of, guidance and teaching materials for use (whether at a school or any other premises) in connection with the curriculum for children who have attained the age of 2 but have not attained the lower limit of compulsory school age.

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(4) The Council shall in connection with baseline assessment arrangements (within the meaning of Article 7) have the functions conferred on it by or under Article 9.

(5) In this Article “examination” includes any examination, test or assessment for an academic or vocational qualification.

F16 functions transf. by SR 1999/481

Consultation by the Council

77.—(1) Before exercising its functions under Article 76(3) the Council shall consult with such bodies and persons as appear to it to be concerned.

(2) Where the Department proposes to exercise—

- (a) the power conferred by Article 7(1) of the 1989 Order to set in place or revise any programme of study or attainment target for any listed contributory subject; or
- (b) the power conferred by Article 8(2) of that Order to set in place or revise objectives for any educational theme,

the Department may refer the proposal to the Council.

(3) Where a proposal is referred to the Council under paragraph (2), the Council shall, before such date as the Department may direct—

- (a) consult, with regard to the proposal, with such bodies or persons as appear to the Council to be concerned; and
- (b) make a report to the Department containing—
 - (i) a summary of the views expressed during the consultations;
 - (ii) the Council's recommendations as to the proposal; and
 - (iii) such other advice relating to the proposal as the Council thinks fit.

Ancillary functions of the Council

78.—(1) The Council may, and shall if the Department so directs—

- (a) carry out; or
- (b) commission, or assist in any way, the carrying out by another body or person of,

any programme of research and development for purposes connected with the functions of the Council.

(2) The Council may enter into arrangements to perform functions on behalf of, or provide services to, any other examining body or authority; and such arrangements may provide for the payment by that body or authority of the whole or part of any expenditure incurred by the Council in carrying out the arrangements.

(3) The Council shall carry out such ancillary activities as the Department may direct.

(4) For the purposes of paragraph (3) activities are ancillary activities in relation to the Council if the Department considers it is appropriate for the Council to carry out those activities for the purposes of or in connection with the carrying out by the Council of any of its other functions under this Part.

(5) The Council shall make such reports and returns, and give such information, to the Department as the Department may reasonably require.

Discharge by the Council of its functions

79.—(1) In carrying out its functions under this Part the Council shall—

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- (a) comply with Article 80(7) (work programme);
 - (b) so far as relevant, have regard to—
 - (i) the requirements of industry, commerce and the professions regarding education; and
 - (ii) the requirements of persons with special learning needs; and
 - (c) seek to ensure that the standards of examinations and assessments conducted by bodies or authorities in Northern Ireland are recognised as equivalent to the standards of examinations and assessments conducted by bodies or authorities exercising similar functions elsewhere in the United Kingdom.
- (2) In paragraph (1) “persons with special learning needs” means—
- (a) children with special educational needs (as defined in Article 3 of the Education (Northern Ireland) Order 1996); and
 - (b) persons who have a learning difficulty (as defined in Article 3 of the Further Education (Northern Ireland) Order 1997).

Work programmes

80.—(1) The Council shall, at such time, in such form and in respect of such period as the Department may direct, prepare and submit to the Department a programme of its proposed activities in exercise of its functions (referred to in this Article as “a work programme”).

- (2) A work programme submitted to the Department under this Article shall include—
- (a) in respect of each activity mentioned in the programme, an estimate of the Council's expenditure and receipts;
 - (b) such other matters as the Department may direct.
- (3) Before submitting a work programme under this Article, the Council shall consult—
- (a) the boards; and
 - (b) such other bodies or persons as it thinks fit.

(4) The Department may request the Council to furnish such information in connection with any work programme submitted to the Department as the Department may require, including information as to the results of consultations under paragraph (3).

(5) The Department may, after making such modifications, if any, in the work programme as, after consultation with the Council, it considers necessary, approve any work programme submitted under this Article.

(6) The Council may at any time, and shall if the Department so directs, prepare and submit to the Department a revised work programme or an amendment to an existing work programme and paragraphs (2) to (5) shall apply in relation to any such revised work programme or amendment as they apply in relation to the original work programme.

- (7) It shall be the duty of the Council—
- (a) to carry out the activities in a work programme approved under this Article in accordance with that programme;
 - (b) not to carry out any activities or incur any expenditure in any period except in accordance with the work programme approved under this Article in respect of that period.

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Changes to legislation: Education (Northern Ireland) Order 1998 is up to date with all changes known to be in force on or before 22 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

PART IX

MISCELLANEOUS AND SUPPLEMENTARY

Miscellaneous

Approval of courses leading to external qualifications

81.—(1) No course of study leading to an external qualification shall be provided for pupils of compulsory school age by or on behalf of a grant-aided school unless the qualification is for the time being approved by the Department.

(2) No course of study leading to an external qualification shall be provided for pupils who have attained the upper limit of compulsory school age by or on behalf of a grant-aided school unless the qualification is for the time being approved by the Department.

(3)^{F17} No course of study leading to an external qualification shall be provided for persons under the age of 19 who are in full time attendance at an institution of further education by or on behalf of the institution unless the qualification is for the time being approved by the Department.

(4) An approval under this Article may be given generally or in relation to particular cases.

(5) In relation to any grant-aided school, it shall be the duty of the Board of Governors to exercise its functions with a view to securing and the duty of the principal to secure that paragraphs (1) and (2) are not contravened.

(6)^{F17} In relation to any institution of further education, it shall be the duty of the governing body to exercise its functions with a view to securing and the duty of the principal to secure that paragraph (3) is not contravened.

(7) In this Article—

“external qualification” means any academic or vocational qualification authenticated or awarded by an outside person;

“outside person” means—

- (a) in relation to a school, a person other than a member of staff of the school;
- (b) in relation to an institution of further education, a person other than a member of staff of the institution.

F17 functions transf. by SR 1999/481

Work experience for school children

82.—(1) Article 63 of the 1986 Order (employment of children for purposes of work experience) shall be amended as follows.

(2) In paragraph (2) for the words from “but may be so employed” to the end there shall be substituted the words

“but may be so employed only—

- (a) in the school year in which he ceases to be of compulsory school age; and
- (b) in the school year immediately preceding that year.” .

(3) In paragraph (3) the definition of “summer term” shall be omitted and before the definition of “work experience” there shall be inserted—

““school year” means a year ending on 31st July;” .

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Provision of secondary education for pupils in key stage 4 by institutions of further education

Para. (1) rep. by 2003 NI 12

[^{F18}(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.]

(3) Before making any arrangements under paragraph (2) in relation to a registered pupil at a Catholic maintained school, a board shall consult the Council for Catholic Maintained Schools.

F18 2003 NI 12

Recovery of wasted examination fees

84.—(1) Chapter II of Part VIII of the 1989 Order (charges in grant-aided schools) shall be amended as follows.

(2) After Article 136 there shall be inserted the following Article—

“Recovery of wasted examination fees

136A.—(1) Notwithstanding Article 128(5) or Article 133(3), where—

- (a) the Board of Governors of a grant-aided school has paid or is liable to pay a fee in respect of the entry of a registered pupil at the school for a public examination in any syllabus for that examination; and
- (b) the pupil fails without good reason to meet any examination requirement for that syllabus,

the Board of Governors may recover the amount of the fee from the pupil's parent.

(2) It shall be for the Board of Governors which has paid or is liable to pay the fee in question to determine for the purposes of this Article any question whether a pupil who has failed to meet an examination requirement had good reason for the failure.”.

(3) In Article 137(6) after “135” there shall be inserted “or 136A”.

Statement of special educational needs

85. In Schedule 2 to the Education (Northern Ireland) Order 1996 in paragraph 6 (statement of special educational needs to be accompanied by certain information) for sub-paragraph (b) there shall be substituted—

“(b) of the name of an officer of the board from whom further information may be obtained.” .

Exceptional provision of education

86.—(1) Each board shall make arrangements for the provision of suitable education at school or otherwise than at school for those children of compulsory school age who by reason of illness, expulsion or suspension from school or otherwise, may not for any period receive suitable education unless such arrangements are made for them.

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(2) A board may make arrangements for the provision of suitable education otherwise than at school for those children over compulsory school age who—

- (a) have not attained the age of 19; and
- (b) by reason of illness, expulsion or suspension from school or otherwise, may not for any period receive suitable education unless such arrangements are made for them.

(3) In determining what arrangements to make under this Article in the case of any child a board shall have regard to any guidance given from time to time by the Department.

(4) In this Article—

“child” has the same meaning as in Part II of the Education (Northern Ireland) Order 1996; “suitable education”, in relation to a child, means efficient education suitable to his age, ability and aptitude and to any special educational needs he may have.

Pupil referral units

87.—(1) In the Education Orders “pupil referral unit” means a controlled or maintained school (other than a special school or a school established in a hospital) which—

- (a) is specially organised to provide education for children to whom Article 86(1) applies; and
- (b) is approved by the Department as a pupil referral unit.

(2) The Department may by regulations subject to affirmative resolution—

- (a) provide for any statutory provision relating to grant-aided schools (or to a class or description of grant-aided schools)—
 - (i) not to apply in relation to pupil referral units; or
 - (ii) to apply in relation to such units with such modifications as may be prescribed; and
- (b) make such other provision in relation to pupil referral units or pupils attending such units as it thinks necessary or appropriate.

(3) A board may, in the case of any child registered at a grant-aided school in its area, give a direction that, for such period as may be specified in the direction, suitable education shall be provided for the child at a pupil referral unit so specified.

(4) A board may at any time amend or revoke a direction under paragraph (3).

(5) Where a pupil referral unit is specified in a direction for the time being in force under paragraph (3), it shall be the duty of the managers of the unit to comply with the direction.

(6) Before giving, amending or revoking any direction under paragraph (3), a board shall consult—

- (a) the parent of the child;
- (b) the managers of the pupil referral unit specified (or to be specified) in the direction;
- (c) if that unit is in the area of another board, the board for that area; and
- (d) if that unit is a Catholic maintained school, the Council for Catholic Maintained Schools.

(7) In this Article “child” and “suitable education” have the same meanings as in Article 86.

Power of boards to enter contracts for provision of assets or services

88.—(1) Every statutory provision conferring or imposing a function on a board confers power on the board to enter into a contract with another person for the provision or making available of assets or services, or both, for the purposes of, or in connection with, the discharge of the function by the board.

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(2) Where—

- (a) a board enters into a contract such as is mentioned in paragraph (1) (“the provision contract”) under any statutory provision; and
- (b) in connection with the provision contract, a person (“the financier”) makes a loan to, or provides any other form of finance for, a party to the provision contract other than the board,

the statutory provision also confers power on the board to enter into a contract with the financier, or any insurer of or trustee for the financier, in connection with the provision contract.

(3) Schedule 4 (which contains provision for the certification of contracts entered into by a board and the effect of such certification) shall have effect.

(4) This Article and Schedule 4 apply to any contract which a board enters into after 12th June 1997.

Irish-medium education

89.—(1) It shall be the duty of the Department to encourage and facilitate the development of Irish-medium education.

(2) The Department may, subject to such conditions as it thinks fit, pay grants to any body appearing to the Department to have as an objective the encouragement or promotion of Irish-medium education.

(3) The approval of the Department to a proposal under article 14 of the 1986 Order to establish a new Irish speaking voluntary school may be granted upon such terms and conditions as the Department may determine.

(4) In this article “Irish-medium education” means education provided in an Irish speaking school.

(5) Article 35(2) of the 1989 Order applies for the purposes of this Article as it applies for the purposes of Part III of that Order.

Supplementary

Regulations and orders

90.—(1) Subject to paragraph (2), regulations and orders made by the Department under this Order shall be subject to negative resolution.

(2) Paragraph (1) does not apply to—

- (a) orders under Article 1(3) (commencement orders);
- (b) orders under Article 44(6) (orders subject to affirmative resolution);
- (c) regulations under Article 87(2) or paragraph 2(7) of Schedule 4 (regulations subject to affirmative resolution).

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

Amendments, repeals and savings

Para. (1)—Amendments

Para. (2)—Repeals

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(3) The repeal of the statutory provisions set out in Part II of Schedule 6 does not affect their operation in relation to any financial year ending before the day on which the repeal of those provisions comes into operation.

Commencement Information

- II** Art. 91 partly in operation; art. 91(1)(2) in operation for certain purposes at 22.8.1998 and art. 91(3) in operation at 22.8.1998 see art. 1(2); art. 91(1)(2) in operation for certain purposes at 31.5.2009 by S.R. 2009/183, art. 3(a)(b)

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SCHEDULES

SCHEDULE 1

Article 34.

THE GENERAL TEACHING COUNCIL FOR NORTHERN IRELAND

Constitution

- 1.—(1) The Council shall be constituted in accordance with regulations.
- (2) Without prejudice to the generality of sub-paragraph (1), regulations under that sub-paragraph—
- (a) shall provide for the membership of the Council to include persons representative of—
 - (i) teachers;
 - (ii) employing authorities;
 - (iii) transferors and trustees of grant-aided schools;
 - (iv) institutions providing for the initial and further training of teachers;
 - (v) industry and commerce; and
 - (vi) such other interests as in the opinion of the Department will enable the Council to carry out its functions more effectively;
 - (b) shall provide for—
 - (i) the appointment or election and tenure of office of, and the vacation of office by, members of the Council;
 - (ii) the appointment or election of one of the members of the Council to be chairman of the Council and the period for which the chairman is to hold office;
 - (c) may enable or require the Council to establish committees for any purpose specified in the regulations and provide for the constitution of such committees.
- (3) Regulations under sub-paragraph (1) may authorise the Council to make provision with respect to any matter.

Status

- 2.—(1) The Council shall not be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown; and the property of the Council shall not be regarded as property of, or property held on behalf of, the Crown.
- (2) The Council shall be a body corporate to which, subject to the provisions of this Schedule, section 19 of the Interpretation Act (Northern Ireland) 1954 shall apply.

Powers

- 3.—(1) The Council may do anything which is calculated to facilitate, or is incidental or conducive to, the carrying out of any of its functions.
- (2) In particular the Council may—
- (a) invest sums not immediately required for the purpose of carrying out its functions;

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- (b) accept gifts of money, land or other property; and
- (c) charge for services provided by it.

Staff

4. The right of the Council under section 19(1)(a)(vi) of the Interpretation Act (Northern Ireland) 1954 to employ staff shall be exercised subject to paragraph 5 and to any directions given by the Department with respect to the number and terms and conditions of service of persons employed or to be employed by the Council.

The registrar

- 5.—(1) The Council shall have a chief officer (known as “the registrar”) who shall be appointed—
- (a) in the case of the first registrar, by the Department; and
 - (b) in the case of any subsequent registrar, by the Council with the approval of the Department.
- (2) The terms and conditions of service of the registrar shall—
- (a) in the case of the first registrar, be such as the Department may determine; and
 - (b) in the case of any subsequent registrar, be such as the Council may determine with the approval of the Department.
- (3) The registrar shall be entitled to attend and take part in meetings of the Council and its committees but not to vote on any question.

Assessors

- 6.—(1) The Department may appoint two assessors to the Council who shall be entitled to receive notice of, and attend and take part in, meetings of the Council and its committees, but not to vote on any question.
- (2) Section 18(2) of the Interpretation Act (Northern Ireland) 1954 (except so much thereof as relates to remuneration) shall apply to the appointment of assessors under sub-paragraph (1).

Delegation of functions

- 7.—(1) The Council may authorise the chairman, the registrar or any committee of the Council to exercise such of its functions as it may determine.
- (2) Sub-paragraph (1) is without prejudice to any power to authorise an officer of the Council to carry out any of the Council's functions on behalf of the Council.

Allowances to members

8. The Council may pay to any member of the Council or to any member of a committee of the Council (including persons who are not members of the Council) travelling, subsistence and other allowances at such rates as the Department may approve.

Procedure

- 9.—(1) The proceedings of the Council shall not be invalidated by any vacancy in the membership of the Council, or of any committee of the Council, or by any defect in the appointment of any member.
- (2) Without prejudice to section 19(1)(a)(v) of the Interpretation Act (Northern Ireland) 1954, the Council shall make standing orders relating to—
- (a) the convening of meetings of the Council and of committees of the Council;
 - (b) the fixing of the quorum for such meetings;

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- (c) the conduct of business at such meetings;
- (d) the keeping of minutes, accounts and other records;
- (e) the signing of cheques;
- (f) the custody of deeds and other documents;
- (g) the duties of officers of the Council; and
- (h) such other matters connected with the conduct of its business as it thinks fit.

(3) In making standing orders under this paragraph the Council shall take into account any guidance given by the Department as to the provisions it regards as appropriate for inclusion in the standing orders.

Application of seal and proof of instruments

10.—(1) The application of the seal of the Council shall be authenticated by the signature of—

- (a) the chairman of the Council or some other person authorised either generally or specially by the Council for that purpose; and
- (b) one other member.

(2) Every document purporting to be an instrument made or issued by or on behalf of the Council and to be duly executed under the seal of the Council, or to be signed or executed by a person authorised by the Council to act in that behalf, shall be received in evidence and be treated, without further proof, as being so made or issued unless the contrary is shown.

Finance

11. The Department may make grants to the Council of such amounts and subject to such terms and conditions as the Department may determine.

Accounts and audit

12.—(1) The Council shall keep, in such form as the Department may direct, accounts of all moneys received and all moneys paid out by it.

(2) In respect of each financial year—

- (a) the Council shall prepare and submit to the Comptroller and Auditor General and the Department a statement of accounts before such date, in such form and containing such information as the Department, with the approval of the Department of Finance and Personnel, may direct;
- (b) the Comptroller and Auditor General shall examine and certify the statement of accounts submitted to him by the Council; and
- (c) the Department shall lay before the Assembly a copy of the certified statement of accounts of the Council together with a copy of any report thereon of the Comptroller and Auditor General.

Sub-para. (3) rep. by 2003 NI 5

(4) In this paragraph “Comptroller and Auditor General” means the Comptroller and Auditor General for Northern Ireland.

Annual report

13.—(1) The Council shall, within such time after the end of each financial year as the Department may direct, prepare and submit to the Department a report on the exercise by the Council of its functions in that year.

(2) The Department shall—

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- (a) lay before the Assembly copies of every report received under sub-paragraph (1); and
- (b) arrange for every such report to be published in such form as the Department thinks appropriate.

VALID FROM 31/05/2009	
SCHEDULE 2	Article 58.
PROVISIONS RELATING TO THE STAFF OF CONTROLLED AND MAINTAINED SCHOOLS WITH DELEGATED BUDGETS	

SCHEDULE 3

Article 73.

THE NORTHERN IRELAND COUNCIL FOR THE
CURRICULUM, EXAMINATIONS AND ASSESSMENT

Constitution and status

1.—(1) The Council shall be a body corporate to which, subject to the following provisions of this Schedule, section 19 of the Interpretation Act (Northern Ireland) 1954 shall apply.

(2) The Council shall not be regarded as a servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown; and its property shall not be regarded as property of, or property held on behalf of, the Crown.

2.—(1) The Council shall consist of a chairman and not fewer than 9 or more than 17 other members.

(2) The chairman and other members of the Council shall be appointed by the Head of the Department and shall be persons appearing to the Head of the Department to have knowledge or experience relevant to the functions of the Council.

(3) The Council may elect a deputy chairman from among its members.

(4) The Department may appoint two assessors to the Council who shall be entitled to receive notice of, and to attend and speak at, meetings of the Council and of committees and sub-committees thereof, but shall not be entitled to vote.

(5) Section 18(2) of the Interpretation Act (Northern Ireland) 1954 (except so much thereof as relates to remuneration) shall apply to the appointment of assessors under sub-paragraph (4).

Qualifications of members and tenure of office

3.—(1) A person shall hold and vacate office as a member or as chairman of the Council in accordance with the terms of his appointment and shall, on ceasing to be a member, be eligible for re-appointment.

(2) A member shall be deemed to have vacated his office and the Council shall declare his place vacant in the following circumstances—

- (a) where he gives to the Head of the Department a notice in writing of his resignation;

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- (b) where he becomes bankrupt or makes a composition or arrangement with his creditors;
 - (c) where, in the opinion of the Head of the Department, he becomes unable or unfit to discharge the functions of a member and the Head of the Department so informs the Council in writing;
 - (d) where he is convicted of an indictable offence and is sentenced to a term of imprisonment of not less than 3 months; or
 - (e) where he fails, without leave of the Council, to attend any meetings of the Council or of a committee or sub-committee thereof for a period of 6 consecutive months.
- (3) If the chairman or deputy chairman of the Council ceases to be a member of the Council, he shall also cease to be chairman or deputy chairman.

Committees

- 4.—(1) The Council shall appoint a Finance Committee.
- (2) The Council may appoint such other committees as it thinks fit.
- (3) A committee appointed under sub-paragraph (2) may include persons who are not members of the Council.
- (4) The Council may delegate any of its functions to a committee, but functions which relate to finance may be delegated only to the Finance Committee.
- (5) The Council may authorise a committee to appoint sub-committees for such purposes as the Council may approve and the membership of such sub-committees may include persons who are not members of the Council or of the committee which appointed the sub-committee.
- (6) The powers of any committee or any sub-committee appointed under this paragraph shall be exercised, and the proceedings of the committee or sub-committee shall be regulated, in accordance with, and subject to, any directions given by the Council.

Procedure

5. The proceedings of the Council or of any committee or sub-committee shall not be invalidated by any vacancy in the membership of the Council, or of any committee or sub-committee, or by any defect in the appointment of a member.
6. Without prejudice to section 19(1)(a)(v) of the Interpretation Act (Northern Ireland) 1954, the Council shall make standing orders relating to the convening of meetings of the Council and of committees and sub-committees, the fixing of the quorum, the conduct of business at meetings, the keeping of minutes, accounts and other records, the signing of cheques, the custody of deeds and other documents, the duties of officers and such other matters connected with the conduct of its business as it thinks fit.
7. The application of the seal of the Council shall be authenticated by the signatures of any two members of the Council authorised by the Council to act for that purpose.
8. The power of the Council under section 19(1)(a)(iv) of the Interpretation Act (Northern Ireland) 1954 to acquire, hold, dispose of or charge real property shall not be exercised without the approval of the Department.

Staff

- 9.—(1) The right of the Council under section 19(1)(a)(vi) of the Interpretation Act (Northern Ireland) 1954 to employ staff shall be exercised subject to the following provisions of this paragraph and any directions which may be given by the Department with respect to the number and terms and conditions of service of persons employed or to be employed by the Council.

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(2) The officers of the Council (other than the chief executive) shall be appointed at such rates of remuneration as the Council may, with the consent of the Department, determine.

(3) The Council shall have a chief executive who shall be appointed—

(a) in the case of a person who is also chairman of the Council, by the Head of the Department;

(b) in any other case, by the Council with the approval of the Department.

(4) The appointment of the chief executive shall be on such terms and conditions as the Department (in the case of an appointment under sub-paragraph (3)(a)) or the Council after consultation with the Department (in the case of an appointment under sub-paragraph (3)(b)) may determine.

(5) No member of the Council other than the chairman shall be appointed as chief executive.

(6) A person who is an officer of the Council (other than the chief executive) shall not be qualified to be a member of the Council.

(7) The Council may, in accordance with arrangements determined by the Department, make provision for the payment on death or retirement of pensions, gratuities or other like benefits to or in respect of the service of officers of the Council.

Allowances

10. The Council may pay to any member of the Council or to any member of a committee or sub-committee thereof (including persons who are not members of the Council) travelling, subsistence and other allowances at such rates as the Department may approve.

Power to form bodies corporate

11. The Council may, in the exercise of any of its functions, form bodies corporate, but shall only do so with the approval of the Department and subject to such conditions as the Department may specify in granting any such approval.

Finance

12.—(1) The Department may pay to the Council grants equal to—

(a) approved expenditure incurred by the Council for the provision or alteration of premises for the use of the Council;

(b) approved expenditure incurred by the Council for the provision of equipment;

(c) other approved expenditure incurred by the Council in carrying out a work programme approved under Article 80.

(2) Grants under this paragraph shall be made on such conditions (including conditions as to repayment) and at such times as the Department may determine.

Accounts and audit

13.—(1) The Council shall keep, in such form as the Department may direct, accounts of all moneys received and all moneys paid out by it.

(2) In respect of each financial year—

(a) the Council shall prepare and submit to the Comptroller and Auditor General and the Department a statement of accounts before such date, in such form and containing such information as the Department, with the approval of the Department of Finance and Personnel, may direct;

(b) the Comptroller and Auditor General shall examine and certify the statement of accounts submitted to him by the Council; and

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- (c) the Department shall lay before the Assembly a copy of the certified statement of accounts of the Council together with a copy of any report thereon of the Comptroller and Auditor General.

Sub-para. (3) rep. by 2003 NI 5

- (4) In this paragraph “Comptroller and Auditor General” means the Comptroller and Auditor General for Northern Ireland.

SCHEDULE 4

Article 88(3).

CERTIFIED CONTRACTS OF A BOARD

Certified contracts assumed to be *intra vires*

1.—(1) Where a board has entered into a contract, the contract shall, if it is a certified contract, have effect (and be deemed always to have had effect) as if the board had had power to enter into it (and had exercised that power properly in entering into it).

(2) For the purposes of this Schedule a contract entered into by a board is a certified contract if (and, subject to sub-paragraphs (3) and (4), only if) the certification requirements have been satisfied by the board with respect to the contract and they were so satisfied before the end of the certification period.

(3) A contract entered into by a board shall be treated as a certified contract during the certification period if the contract provides that the certification requirements are intended to be satisfied by the board with respect to the contract before the end of that period.

(4) Where a board has entered into a contract which is a certified contract (“the existing contract”) and the existing contract is replaced by a contract entered into by it with a person or persons not identical with the person or persons with whom it entered into the existing contract, the replacement contract is also a certified contract if—

- (a) the period for which it operates or is intended to operate ends at the same time as the period for which the existing contract was to operate; and
- (b) apart from that, its provisions are the same as those of the existing contract.

(5) Subject to sub-paragraph (6), in this Schedule “the certification period”, in relation to a contract entered into by a board, means the period of 6 weeks beginning with the day on which the board entered into the contract.

(6) In relation to a contract entered into before the day on which this paragraph comes into operation, “the certification period” means the period of 6 weeks beginning with that day.

(7) Sub-paragraph (1) is subject to paragraph 3 (special provisions about judicial reviews).

(8) The application of sub-paragraph (1) in relation to a contract entered into by a board does not affect any claim for damages made by a person who is not (and has never been) a party to the contract in respect of a breach by the board of any duty to do, or not to do, something before entering into the contract (including, in particular, any such duty imposed by a statutory provision for giving effect to any Community obligation relating to public procurement or by Article 20 of the Education and Libraries (Northern Ireland) Order 1993).

The certification requirements

2.—(1) In this Schedule “the certification requirements”, in relation to a contract entered into by a board, means the requirements specified in sub-paragraphs (2) to (4).

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(2) The requirement specified in this sub-paragraph is that the board must have issued a certificate (whether before or after the contract is entered into)—

- (a) including details of the period for which the contract operates or is to operate;
- (b) describing the purpose of the contract;
- (c) containing a statement that the contract is or is to be a contract falling within sub-paragraph (5) or (6);
- (d) stating that the board had or has power to enter into the contract and specifying the statutory provision, or each of the statutory provisions, conferring the power;
- (e) stating that a copy of the certificate has been or is to be given to each person to whom a copy is required to be given by regulations;
- (f) dealing in a manner prescribed by regulations with any matters required by regulations to be dealt with in certificates under this paragraph; and
- (g) confirming that the board has complied with or is to comply with any requirement imposed by regulations with respect to the issue of certificates under this paragraph.

(3) The requirement specified in this sub-paragraph is that the board must have secured that the certificate is signed by any person who is required by regulations to sign it.

(4) The requirement specified in this sub-paragraph is that the board must have obtained consent to the issue of a certificate under this paragraph from each of the persons with whom the board has entered, or is to enter, into the contract.

(5) A contract entered into by a board falls within this sub-paragraph if—

- (a) it is entered into with another person for the provision or making available of services (whether or not together with assets) for the purposes of, or in connection with, the discharge by the board of any of its functions; and
- (b) it operates, or is intended to operate, for a period of at least 5 years.

(6) A contract entered into by a board falls within this sub-paragraph if it is entered into, in connection with a contract falling within sub-paragraph (5), with—

- (a) a person who, in connection with that contract, makes a loan to, or provides any other form of finance for, a party to that contract other than the board; or
- (b) any insurer of or trustee for such a person.

(7) The Department may by regulations subject to affirmative resolution amend sub-paragraph (5) or (6).

(8) Where the certification requirements have been satisfied in relation to a contract by a board, the certificate which has been issued shall have effect (and be deemed always to have had effect) as if the board had had power to issue it (and had exercised that power properly in issuing it); and a certificate which has been so issued is not invalidated by reason that anything in the certificate is inaccurate or untrue.

(9) Where the certification requirements have been satisfied in relation to a contract by a board, the board shall secure that throughout the period for which the contract operates—

- (a) a copy of the certificate which has been issued is open to inspection by members of the public at all reasonable times without payment; and
- (b) members of the public are afforded facilities for obtaining copies of that certificate on payment of a reasonable fee.

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Special provision for judicial review

3.—(1) Paragraph 1(1) does not apply for the purposes of determining any question arising on an application for judicial review as to whether a board had power to enter into a contract (or exercised any power properly in entering into a contract).

(2) Paragraph 1(1) has effect subject to any determination or order made in relation to a certified contract on an application for judicial review.

(3) Where, on an application for judicial review relating to a certified contract entered into by a board, a court—

- (a) is of the opinion that the board did not have power to enter into the contract (or exercised any power improperly in entering into it); but
- (b) (having regard in particular to the likely consequences for the financial position of the board, and for the provision of services to the public, of a decision that the contract should not have effect) considers that the contract should have effect,

the court may determine that the contract has (and always has had) effect as if the board had had power to enter into it (and had exercised that power properly in entering into it).

(4) In this paragraph and paragraphs 4 and 5 references to an application for judicial review include any appeal (or further appeal) against a determination or order made on such an application.

Relevant discharge terms

4.—(1) No determination or order made in relation to a certified contract on an application for judicial review shall affect the enforceability of any relevant discharge terms relating to the contract.

(2) In this paragraph and paragraph 5 “relevant discharge terms”, in relation to a contract entered into by a board, means terms—

- (a) which have been agreed by the board and any person with whom the board entered into the contract;
- (b) which either form part of the contract or constitute or form part of another agreement entered into by them not later than the day on which the contract was entered into; and
- (c) which provide for a consequence mentioned in sub-paragraph (3) to ensue in the event of the making of a determination or order in relation to the contract on an application for judicial review.

(3) Those consequences are—

- (a) the payment of compensatory damages (measured by reference to loss incurred or loss of profits or to any other circumstances) by one of the parties to the other;
- (b) the adjustment between the parties of rights and liabilities relating to any assets provided or made available under the contract; or
- (c) both of those things.

(4) Where a board has agreed relevant discharge terms with any person with whom it has entered into a contract and the contract is a certified contract, the relevant discharge terms shall have effect (and be deemed always to have had effect) as if the board had had power to agree them (and had exercised that power properly in agreeing them).

Absence of relevant discharge terms

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

- (a) the result of a determination or order made by a court on an application for judicial review is that a certified contract does not have effect; and

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- (b) there are no relevant discharge terms having effect between the board and a person who is a party to the contract.
- (2) That person shall be entitled to be paid by the board such sums (if any) as he would have been entitled to be paid by the board if the contract—
 - (a) had had effect until the time when the determination or order was made; but
 - (b) had been terminated at that time by acceptance by him of a repudiatory breach by the board.
- (3) For the purposes of this paragraph the circumstances in which there are no relevant discharge terms having effect between the board and a person who is a party to the contract include (as well as circumstances in which no such terms have been agreed) circumstances in which the result of a determination or order of a court, made (despite paragraph 4(4)) on an application for judicial review, is that such terms do not have effect.

Schedule 5—Amendments

Schedule 6—Repeals

Status:

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