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STATUTORY INSTRUMENTS

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**1998 No. 1759**

**Education (Northern Ireland) Order 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 90(1) as relates thereto;
- (h) Part II of Schedule 6 and so much of Article 90(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.

**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 the parents of registered pupils at the school; 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;
  - (iii) securing that the standard of behaviour of pupils is acceptable; and
  - (iv) otherwise regulating the conduct of 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.

### **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 Article 49A of the 1986 Order.

(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.

### **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 18 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. 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.

(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;

“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, 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.

(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 every grant-aided school appearing to it to be affected; and

- (d) any other person with whom consultation appears to it to be desirable.
- (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.

### **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—
  - (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

(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—

- “(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 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
- (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.

(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.**—(1) Every board shall make arrangements for the parent of a child resident in the area of the board to apply for admission of the child to pre-school education at a school if he wishes to do so.

(2) Such arrangements shall include provision—

- (a) for applications to be made by the parent directly to the Board of Governors of the school concerned; and

- (b) where the school provides both full-time and part-time pre-school education, for separate applications to be made for admission to full-time and part-time pre-school education.
- (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.

#### *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.
- (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.

### **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
- (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—

- (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.

(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”).

(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) An employing authority shall not employ a person as a teacher unless he is registered under this Article.

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

#### **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—
- (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
- (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—

#### **“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.

**PART VII****FINANCING OF SCHOOLS****CHAPTER I****FINANCING OF SCHOOLS BY BOARDS***Schemes for financing schools***Schemes for financing schools - introductory**

**44.**—(1) In this Chapter “scheme” means a scheme made (or treated as made), by a board under Article 46.

(2) In this Chapter “board”, in relation to a scheme, means the board which made (or is treated as having made) the scheme.

(3) For the purposes of this Chapter—

- (a) a board’s “general schools budget” for a financial year is the amount appropriated by the board for meeting expenditure in the year in respect of all schools required to be covered in the year by any scheme made by the board;
- (b) a board’s “aggregated budget” for a financial year under a scheme is the part (determined as mentioned in Article 49) of the board’s general schools budget for the year which is available for allocation to individual schools under the scheme; and
- (c) a school’s “budget share” for a financial year under a scheme is the share of the board’s aggregated budget for the year which is to be appropriated for the school under the scheme.

(4) In relation to any scheme any reference in paragraph (3) to an amount is a reference to an amount determined (and from time to time revised) in accordance with the scheme.

(5) In this Chapter references to a school’s budget share for a financial year include—

- (a) in a case where Article 51 applies, references to that share as reduced in pursuance of a direction under that Article;
- (b) in any case, references to that share as from time to time revised in accordance with the scheme under which it is determined.



(6) 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 may be specified in the order.

(7) Directions given under this Chapter by the Department—

- (a) shall be given in writing; and
- (b) shall, except for directions under Article 48(10), be published by the Department in such manner as it thinks fit.

### **Schools required to be covered by a scheme**

**45.**—(1) For the purposes of this Chapter, a school is required to be covered by a scheme in any financial year if either—

- (a) immediately before the beginning of that year it is a relevant school; or
- (b) at any time during that year it becomes a relevant school (whether by virtue of being newly established as such a school or by virtue of becoming such a school where it was previously an independent school).

(2) References in this Chapter to a relevant school in relation to a scheme made or to be made by a board are references to a grant-aided school situated in the area of the board, other than a special school or a school established in a hospital.

### **Duty of board to have scheme for financing schools**

**46.**—(1) Each board shall have a scheme prepared in accordance with this Chapter and submitted for the approval of the Department in accordance with Article 47.

(2) The scheme shall provide for—

- (a) the determination, in respect of each financial year of the board, of the budget share of each school required to be covered by the scheme in the year; and
- (b) in the case of controlled and maintained schools, the delegation by the board of the management of a school's budget share for a financial year to the Board of Governors of the school where such delegation is required by or under the scheme.

### **Preparation and imposition of schemes**

**47.**—(1) A scheme prepared by a board under Article 46 shall be submitted to the Department on or before such date as the Department may direct.

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

(3) The Department shall publish any guidance given by it for the purposes of this Article in such manner as it thinks fit.

(4) Before preparing such a scheme a board shall consult—

- (a) the Board of Governors of every relevant school;
- (b) the Council for Catholic Maintained Schools; and
- (c) such bodies or persons as appear to the board to represent the interests of the Boards of Governors of voluntary grammar schools and grant-maintained integrated schools.

(5) The Department may request a board to furnish such information in connection with any scheme submitted to the Department as the Department may require, including information as to the results of consultations under paragraph (4).

- (6) Such a scheme shall not come into operation until it has been approved by the Department or until such date as the Department may, in giving its approval, specify; and the Department may approve such a scheme—
- (a) either without modifications or with such modifications as it thinks fit after consulting the board concerned; and
  - (b) subject to such conditions as it may specify in giving its approval.
- (7) If in the case of any board either—
- (a) the board fails to submit a scheme as required by paragraph (1); or
  - (b) it appears to the Department that a scheme submitted by the board as required by that paragraph does not accord with any guidance given by it for the purposes of this Article and cannot be made to do so merely by modifying it, the Department may, after consulting the board and such other persons as it thinks fit, impose a scheme making such provision of a description required to be made by a scheme under Article 46 in relation to the financing by the board of relevant schools as it considers appropriate.
- (8) A scheme imposed by the Department by virtue of paragraph (7)—
- (a) shall be treated as if made under Article 46 by the board concerned; and
  - (b) shall come into operation on such date as may be specified in the scheme.

### **Replacement and variation of schemes**

**48.**—(1) Subject to the following provisions of this Article, a scheme may be replaced or varied by a subsequent scheme made under Article 46 by the board concerned.

(2) Subject to paragraph (5), Article 47(2) to (6) shall apply for the purposes of a scheme replacing or varying a previous scheme.

(3) A scheme prepared by a board under Article 46 which—

- (a) replaces a previous scheme; or
- (b) makes any significant variation of a previous scheme, shall be submitted to the Department for its approval.

(4) A scheme under Article 46 varying a previous scheme which is not required by paragraph (3) (b) to be submitted to the Department for its approval is referred to below in this Article as a “minor variation scheme”.

(5) Paragraphs (4) to (6) of Article 47 shall not apply in relation to a minor variation scheme and such a scheme shall come into operation on such date as is specified in the scheme.

(6) The Department may give directions specifying what descriptions of variation are to be regarded as significant for the purposes of paragraph (3)(b).

(7) Where a board proposes to make a scheme under Article 46 which in its opinion is a minor variation scheme, the board shall notify the Department in writing of its proposal, giving brief particulars of the nature of the variations proposed to be made by the scheme.

(8) If so required by the Department before the end of the period of two months beginning with the date on which it receives notification under paragraph (7) of the board’s proposal, the board shall send to the Department a copy of the board’s proposed scheme.

(9) It shall be for the Department to determine whether or not any variation proposed to be made by the scheme falls within any description of variation specified in directions under paragraph (6).

(10) A scheme made under Article 46 may also be varied by a direction given by the Department, as from such date as may be specified in the direction.

(11) Before giving such a direction the Department shall consult—

- (a) the board concerned;
- (b) the Council for Catholic Maintained Schools; and
- (c) such bodies or persons as appear to the Department to represent the interests of the Boards of Governors of voluntary grammar schools and grant-maintained integrated schools.

*Provision by a scheme for determination of budget shares*

**Calculation of board’s aggregated budget**

**49.**—(1) The part of a board’s general schools budget for a financial year which is available for allocation to individual schools under a scheme (and as such constitutes the board’s “aggregated budget” for the year under the scheme) is the amount remaining after deducting from the amount of the board’s general schools budget for the year the amount of any expenditure of the board in the year on excepted heads or items of expenditure.

(2) In paragraph (1) “amount” means an amount determined (and from time to time revised) in accordance with the scheme.

(3) In this Chapter “excepted heads or items of expenditure” means heads or items of expenditure which in accordance with the scheme fall to be left out of account in determining the board’s aggregated budget for the year.

**Application of the allocation formula**

**50.**—(1) The provision to be included in a scheme for determining the budget share for a financial year of each school required to be covered by the scheme in that year shall require that share to be determined (and from time to time revised) by the application of the allocation formula under the scheme.

(2) For the purposes of this Chapter the “allocation formula” under a scheme is a formula laid down by the scheme for the purpose of dividing among all schools required to be covered by the scheme in any financial year the board’s aggregated budget for the year.

(3) In paragraph (2) “formula” includes methods, principles and rules of any description, however expressed.

(4) The allocation formula under a scheme—

- (a) shall include provision for taking into account, in the case of each school required to be covered by the scheme in any financial year, the number and ages of pupils who are, or who the board expects to be, registered at the school on such date or dates (whether before or during that year) as may be determined by or under the scheme;
- (b) shall include provision for taking into account any factors affecting the particular needs of any class or description of school required to be covered by the scheme;
- (c) may include provision for taking into account any other factors affecting the needs of individual schools which are subject to variation from school to school (including, in particular, the number of registered pupils at a school who have special educational needs and the nature of the special educational provision required to be made for them).

(5) Notwithstanding anything in any other statutory provision (including any provision of the Education Orders), the allocation formula under a scheme may, in relation to a grammar school having a preparatory department, make special provision for the determination of the budget share of that school in so far as it relates to the preparatory department.

(6) The special provision made by virtue of paragraph (5) may include provision the effect of which is that the budget share of the school, in so far as it relates to the preparatory department, is substantially less than it would have been but for that provision.

(7) In paragraphs (5) and (6) “preparatory department”, in relation to a grammar school, means that part of the school in which primary education is provided.

(8) A scheme shall provide for all amounts relevant to the determination of a school’s budget share under the scheme for a financial year to be determined initially before the beginning of that year.

### **Premature retirement compensation costs**

**51.**—(1) This Article applies in any financial year if—

- (a) in the case of any board, the board’s financial provision for relevant schools is subject to regulation by a scheme; and
- (b) in accordance with that scheme, premature retirement compensation costs of the board in relation to members of the staff of relevant schools are not included in the board’s aggregated budget for that year.

(2) Premature retirement compensation costs of a board in relation to a member of the staff of a relevant school shall not be met from the budget share of that school, except in pursuance of, and in accordance with the terms of, a direction under paragraph (3).

(3) Where there appears to a board to be good reason to do so in relation to any school, the board may direct that—

- (a) a specified amount shall be deducted from the budget share of the school in any single specified financial year; or
- (b) a specified amount shall be deducted from the budget share of the school in each financial year for such period (not exceeding 10 years) as may be specified, in respect of premature retirement compensation costs of the board in relation to a member of the staff of the school; and in this paragraph “specified” means specified in a direction under this paragraph.

(4) Before giving a direction under paragraph (3) in relation to a Catholic maintained school, the board shall consult the Council for Catholic Maintained Schools.

(5) The amount or (in a case falling within sub-paragraph (b) of that paragraph) the total amount to be deducted from the budget share of a school in pursuance of a direction given under paragraph

(3) in relation to a member of the staff of a school shall not exceed such amount as appears to the board to represent the cost, capitalised as of the date on which the direction is given, of discharging the board’s liability to pay premature retirement compensation to, or in respect of, that member of staff.

(6) In relation to a controlled or maintained school, sub-paragraph (5) of paragraph 7 of Schedule 2 applies for the purposes of paragraph (3) of this Article as it applies for the purposes of sub-paragraph

(4) of that paragraph.

(7) In this Article—

“member of staff” includes former member of staff;

“premature retirement compensation” means compensation under Parts III and IV of the Teachers' (Compensation for Redundancy and Premature Retirement) Regulations (Northern Ireland) 1991;

“premature retirement compensation costs of a board”, in relation to any person, means the costs incurred or to be incurred by the board in paying premature retirement compensation to, or in respect of, that person.

*Financial delegation in respect of controlled and maintained schools*

**Provision by a scheme for financial delegation**

**52.**—(1) A scheme shall include provision for requiring, in the case of each controlled or maintained school required to be covered in any financial year by the scheme, the delegation by the board to the Board of Governors of the school of the management of the school’s budget share for that year.

(2) Any provision included in a scheme by virtue of paragraph (1) is referred to in this Chapter as the “delegation requirement” under the scheme.

(3) Where a new controlled or maintained school is established and is required to be covered by a scheme, then if apart from this paragraph the delegation requirement would apply in relation to that school, that requirement shall not apply in relation to the school until such date as may be specified in the scheme in relation to the school.

(4) In the following provisions of this Chapter—

- (a) references to a school in respect of which financial delegation is required for a financial year under a scheme are to a controlled or maintained school managed by a Board of Governors to which the board is for the time being required by or under the scheme to delegate the management of the school’s budget share for the year (and the Board of Governors of such a school is said to have a right to a delegated budget for the year); and
- (b) references to a school which has a delegated budget are to a controlled or maintained 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 for a financial year in pursuance of a scheme.

**Conditions as to delegation**

**53.** Any delegation under a scheme of the management of a school’s budget share shall be subject to such conditions—

- (a) as may be imposed by the scheme; or
- (b) as may be imposed under the scheme by the board with the approval of the Department.

**Effect of financial delegation**

**54.**—(1) This Article applies where a board’s financial provision for relevant schools is subject to regulation by a scheme.

(2) In the case of any controlled or maintained school in respect of which financial delegation is required for a financial year under the scheme, the board shall put at the disposal of the Board of Governors in respect of the year a sum equal to the school’s budget share for the year, to be spent for the purposes of the school.

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

(4) A board may not delegate to the Board of Governors of any controlled or maintained school required to be covered by the scheme in a financial year the power to spend any appropriated amount otherwise than as required under the scheme; and for this purpose “appropriated amount” means a sum appropriated by the board for the purposes of the school in that year.

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

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

(b) may delegate to the principal, to such extent as may be permitted by or under the scheme, its power under sub-paragraph

(a) in relation to any part of that sum.

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

### **Suspension of financial delegation for mismanagement, etc.**

**55.**—(1) Where it appears to the board, in the case of any school in respect of which financial delegation is required for the current financial year under a scheme, 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 Article 54(2) shall not apply in relation to that Board of Governors.

### **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, 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 schemes to special schools**

- 59.**—(1) The Department may by regulations provide for requiring or authorising schemes—
- (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 a 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 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 any scheme shall have effect with such modifications as appear to the Department to be appropriate in consequence of any provision so made. 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).

(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.

*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).
- (2) The amount of the maintenance grant payable in respect of a school for a financial year shall—
- (a) in so far as it derives from the aggregated budget of the board for that year, be an amount equal to the school's budget share;

- (b) in so far as it derives from excepted heads or items of expenditure of the board in that year, be such as the board may determine.
- (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).

#### **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
      - (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
- (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.

(2) The amount of the maintenance grant payable in respect of a school for a financial year shall—

- (a) in so far as it derives from the aggregated budget of the board for that year, be an amount equal to the school’s budget share;
- (b) in so far as it derives from excepted heads or items of expenditure of the board in that year, be such as the board may determine.

(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.

(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).

### **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
- (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*

#### **Publication of schemes**

**65.** A scheme shall be published in such manner as may be prescribed—

- (a) on its coming into operation; and
- (b) on such subsequent occasions as may be prescribed.

#### **Publication of financial statements**

**66.**—(1) This Article applies where a board’s financial provision for relevant schools is subject to regulation by a scheme.

(2) Before the beginning of each financial year the board shall prepare a statement of the financial provision it plans to make in that year for relevant schools.

(3) The statement shall contain the following particulars in relation to the financial year in question—

- (a) the amount of the general schools budget of the board for that year (as initially determined for the purposes of the scheme);
- (b) the amount of the board’s aggregated budget for that year under the scheme (as so determined);
- (c) such particulars as the Department may direct of amounts deducted in respect of excepted heads or items of expenditure in arriving at the amount specified in the statement by virtue of sub-paragraph (b);
- (d) such particulars of the allocation formula under the scheme as the Department may direct;
- (e) in the case of each school required to be covered by the scheme in that year, the planned expenditure per pupil arising from the division of the school’s budget share (as so determined) by the initial pupil number;

- (f) such further information with respect to the financial provision the board plans to make in that year for relevant schools as the Department may direct.
- (4) In paragraph (3)(e) “the initial pupil number” means, in relation to a financial year, the number of pupils at the school in question required under the scheme to be used in applying the allocation formula under the scheme for initial determination of the school’s budget share for that year.
- (5) After the end of each financial year 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 scheme; 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.
- (6) A statement under this Article shall be prepared in such form, and published in such manner and at such times, as the Department may direct.
- (7) The board shall furnish—
  - (a) the Board of Governors of each school required to be covered by the scheme in 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.
- (8) 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.

**Financial statements in respect of special schools not covered by statements under Article 66**

- 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 Article 66.
- (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.

## 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.

(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.

(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;
  - (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)—
- (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 Article 52(4)(b).

## 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—
- (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.**—(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—

“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).

### **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) 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.
- (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.

### **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—

- (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.

## 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) 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) 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.

### **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;”.

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

**83.**—(1) In Article 14(1) of the Further Education (Northern Ireland) Order 1997 (principal powers of governing body of institution of further education) after sub-paragraph (a) there shall be inserted—

- “(aa) to provide or secure the provision of secondary education for pupils in key stage 4—
  - (i) on behalf of the Board of Governors of a grant-aided school at which the pupils are registered; and
  - (ii) in pursuance of arrangements made with the board for the area in which that school is situated.”

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

(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.

### **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.

(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.

- (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**

**91.**—(1) The statutory provisions set out in Schedule 5 shall have effect subject to the amendments specified in that Schedule.

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

(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.

*N.H. Nicholls*  
Clerk of the Privy Council