



2016 CHAPTER 8

Duties of the Education Authority and Boards of Governors

Duty of Authority to have regard to the views of the child

1. After Article 5 of the 1996 Order (and after the cross-heading following that Article) insert—

“5A Duty of Authority to have regard to the views of the child

5A. In exercising its functions under this Part in relation to a particular child the Authority shall—

- (a) so far as reasonably practicable, seek and have regard to the views of that child;
- (b) have regard to—
 - (i) the importance of that child participating in decisions; and
 - (ii) the importance of that child being provided with the information and support necessary to enable participation in those decisions.”.

Duty of Authority to publish plans relating to its arrangements for special educational provision

2. After Article 6 of the 1996 Order insert—

“6A Duty to prepare and publish plan of arrangements for special educational provision

(1) The Authority shall prepare a plan setting out the arrangements made or proposed to be made by it for special educational provision.

- (2) The plan shall include, in particular, a description of—
 - (a) the resources and the advisory and support services the Authority proposes to make available for the purpose of discharging its functions in relation to special educational provision;
 - (b) the arrangements for securing the provision of any training for staff in grant-aided schools which is required for the effective discharge of their functions in relation to special educational provision.
- (3) The Authority—
 - (a) shall at least once in every year review the plan; and
 - (b) may at any time revise the plan.
- (4) In preparing, reviewing or revising the plan the Authority shall (subject to any provision made by regulations under paragraph (7)(c)) consult such bodies or persons as it considers appropriate.
- (5) In each year the Authority shall publish its plan on or before 31st July or such other date as may be prescribed.
- (6) Publication under paragraph (5) shall be in such manner as the Authority considers appropriate for the purpose of bringing the plan to the attention of persons likely to be affected by it.
- (7) Regulations shall make provision in relation to a plan under this Article and may, in particular, prescribe—
 - (a) the form and content of a plan;
 - (b) the procedure to be followed in connection with the preparation, reviewing or revision of a plan; and
 - (c) the persons to be consulted by the Authority under paragraph (4).”.

Duties of Boards of Governors in relation to pupils with special educational needs

- 3.—(1) Part 2 of the 1996 Order is amended as follows.
- (2) In Article 8(1) (duties in relation to pupils with special educational needs in ordinary schools)—
 - (a) in sub-paragraph (b) for the words “teach him” substitute “be concerned with the pupil’s education” and omit the word “and” at the end of the sub-paragraph;
 - (b) in sub-paragraph (c) for the words from “are aware” to “providing” substitute “take all reasonable steps to identify and provide”;
 - (c) after sub-paragraph (c) insert—
 - “(d) prepare and keep under review a programme of special educational provision (a “personal learning plan”) in respect of

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each registered pupil at the school who has special educational needs,

- (e) designate a teacher on the staff of the school (the “learning support co-ordinator”) as having responsibility for co-ordinating the provision of education for those pupils attending the school who have special educational needs, and
- (f) secure that—
 - (i) parents of registered pupils at the school who are of compulsory school age and have or may have special educational needs,
 - (ii) children over compulsory school age who are registered pupils at the school and have or may have special educational needs,

are informed of the arrangements made under Article 21B which relate to disagreements between the Board of Governors and those persons.”.

(3) In Article 8 after paragraph (1) insert—

“(1A) Paragraph (1B) applies where—

- (a) the Board of Governors of a grant-aided school (school A) has prepared a personal learning plan in respect of a registered pupil at the school, and
- (b) that pupil ceases to be a registered pupil at school A and becomes a registered pupil at another grant-aided school (school B).

(1B) The Board of Governors of school A shall—

- (a) seek to obtain the consent of the pupil concerned (if the pupil is over compulsory school age) or of the pupil’s parent (in any other case) to a copy of the personal learning plan being sent to the Board of Governors of school B; and
- (b) if it obtains that consent, send a copy of the plan to the Board of Governors of school B.

(1C) Nothing in paragraph (1A) or (1B) affects any duty of the Board of Governors of school B to prepare a personal learning plan in respect of the pupil under paragraph (1)(d) or (as the case may be) under Article 8ZA(1)(a).”.

(4) In Article 8 after paragraph (2) insert—

“(2A) Regulations may—

- (a) require the Board of Governors of an ordinary school to notify the Authority, in the prescribed manner, of any changes of a prescribed

kind affecting a child attending the school for whom the Authority is making special educational provision;

- (b) require the Board of Governors of such a school to ensure that a learning support co-ordinator has prescribed qualifications or prescribed experience (or both); and
- (c) confer on the Board of Governors of such a school other functions relating to learning support co-ordinators.”.

(5) After Article 8 insert—

“8ZA Duties in relation to pupils in special schools

- (1) The Board of Governors of a special school shall—
 - (a) prepare and keep under review a programme of special educational provision (a “personal learning plan”) in respect of each registered pupil at the school, and
 - (b) designate a teacher on the staff of the school (the “learning support co-ordinator”) as having responsibility for co-ordinating the provision of education for those pupils attending the school.
- (2) Regulations may—
 - (a) require the Board of Governors of a special school to ensure that a learning support co-ordinator has prescribed qualifications or prescribed experience (or both); and
 - (b) confer on the Board of Governors of such a school other functions relating to learning support co-ordinators.
- (3) Paragraph (4) applies where—
 - (a) the Board of Governors of a special school (school A) has prepared a personal learning plan in respect of a registered pupil at the school, and
 - (b) that pupil ceases to be a registered pupil at school A and becomes a registered pupil at another grant-aided school (school B).
- (4) The Board of Governors of school A shall—
 - (a) seek to obtain the consent of the pupil concerned (if the pupil is over compulsory school age) or of the pupil’s parent (in any other case) to a copy of the personal learning plan being sent to the Board of Governors of school B; and
 - (b) if it obtains that consent, send a copy of the plan to the Board of Governors of school B.
- (5) Nothing in paragraph (3) or (4) affects any duty of the Board of Governors of school B to prepare a personal learning plan in respect of the pupil under paragraph (1)(a) or (as the case may be) under Article 8(1)(d).”.

Co-operation to identify, assess, and provide services to, children with special educational needs

4. Before Article 13 of the 1996 Order (but after the cross-heading immediately before it) insert—

“12A Co-operation between the Authority and health and social services authorities

(1) In the exercise of their respective functions in accordance with the Children’s Services Co-operation Act (Northern Ireland) 2015 (“the 2015 Act”), the Authority and a health and social services authority (“the relevant bodies”) must in particular co-operate—

- (a) in the identification and assessment of children who have, or may have, special educational needs;
- (b) in providing to children with special educational needs the services which those special educational needs call for; and
- (c) in the preparation of a transition plan as defined by regulation 2 of the Education (Special Educational Needs) Regulations (Northern Ireland) 2005.

(2) In particular, the relevant bodies must in so exercising those functions—

- (a) share on request information about a child who has, or may have, special educational needs (but only with the permission of the child, if the child is over compulsory school age, or the parent of the child in any other case); and
- (b) prepare a joint plan for the exercise of those functions.

(3) A joint inspection team must, at intervals of not more than 3 years, conduct a review, and publish a report, on how the relevant bodies have co-operated with one another in relation to the matters mentioned in paragraphs (1) and (2).

(4) In this Article—

“health and social services authority” means—

- (a) the Regional Health and Social Care Board; or
- (b) a health and social care trust established under Article 10 of the Health and Personal Social Services (Northern Ireland) Order 1991;

“joint inspection team” means a group of persons consisting of—

- (a) inspectors appointed by the Department under Article 102 of the Education and Libraries (Northern Ireland) Order 1986; and

- (b) persons appointed by the Health and Social Care Regulation and Quality Improvement Authority.”.

Duty of Authority to request help from health and social care bodies

5.—(1) Article 14 of the 1996 Order (duties of health and social care bodies) is amended as follows.

- (2) In paragraph (3) for “may request” substitute “shall request”.

- (3) After paragraph (4) insert—

“(4A) If, in helping the Authority in the making of an assessment under Article 15, the health and social services authority identifies any relevant treatment or service likely to be of benefit in addressing the special educational needs of the child, the health and social services authority shall provide that treatment or service to the child.

(4B) In paragraph (4A) “relevant treatment or service” means a treatment or service normally provided by a health and social services authority as part of its statutory functions relating to the provision of health care (within the meaning of section 2(5) of the Health and Social Care (Reform) Act (Northern Ireland) 2009).”.

- (4) In paragraph (6) for sub-paragraphs (a) and (b) substitute—

“(a) the Regional Health and Social Care Board; or

(b) a health and social care trust established under Article 10 of the Health and Personal Social Services (Northern Ireland) Order 1991.”.

Time limits for assessment of educational needs

Assessment of needs: reduction in time limits

6.—(1) In Article 15 of the 1996 Order (assessment of educational needs by Authority)—

- (a) in paragraph (1)(d) for “twenty-nine days” substitute “22 days”;

- (b) in paragraph (3)(a) after the words “paragraph (1) and” insert “, subject to paragraph (3A),”;

- (c) after paragraph (3) insert—

“(3A) The Authority may proceed to make an assessment under paragraph (3) before the expiry of the period specified in the notice mentioned in sub-paragraph (a) of that paragraph if it has obtained the consent in writing of the person on whom the notice was served.”.

(2) In Article 20A of the 1996 Order (review or assessment of educational needs at request of responsible body)—

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- (a) in paragraph (4) for “29 days” substitute “22 days”;
- (b) at the beginning of paragraph (5) insert “Subject to paragraph (5A),”;
- (c) after paragraph (5) insert—

“(5A) The Authority may take a decision under paragraph (5) before the expiry of the specified period if it has obtained the consent in writing of the person on whom the notice under paragraph (3) was served.”.

Nature and extent of special educational provision

Nature and extent of special educational provision

7. In Article 16 of the 1996 Order (statement of special educational needs) in paragraph (3)(b), after “specify” insert “the nature and extent of”.

Appeals

Appeal following decision not to amend statement following review

8.—(1) Part 2 of the 1996 Order is amended as follows.

(2) In Article 18(1)(c) (appeal against contents of statement) after “Article 15” insert “or after conducting a review under Article 19”.

(3) In Article 19 (reviews of statements)—

- (a) after paragraph (1) insert—

“(1A) If after conducting a review of a statement maintained under Article 16 the Authority does not propose to amend the statement, it shall give notice in writing of its decision and the reasons for making it to—

- (a) the child concerned, if the child is over compulsory school age, or
- (b) the parent of the child concerned in any other case.

(1B) In such a case the person to whom the notice is given shall have the right to receive, on request, a copy of any advice given to the Authority on which the decision is based.

(1C) A notice under paragraph (1A) shall provide information as to the right of appeal under Article 18(1) and contain such other information as may be prescribed.”;

- (b) in paragraph (2)—

- (i) at the end of sub-paragraph (b) omit the word “and”;

- (ii) after sub-paragraph (b) insert—

“(ba) that where the Authority is under a duty under this Article to serve any notice, the duty must be performed within the prescribed period; and”.

Child under 2: appeals against contents of statement or failure to make statement

9.—(1) Part 2 of the 1996 Order is amended as follows.

(2) In Article 21 (assessment of educational needs of children under 2) at the end add—

“(5) If, after making an assessment under this Article, the Authority decides not to make a statement of the child’s special educational needs, it shall give written notice to the child’s parent—

- (a) of its decision and of the reasons for making it; and
- (b) of the right of appeal under Article 21ZA(1)(a).

(6) In such a case the child’s parent shall have a right to receive on request a copy of any advice given to the Authority on which the decision was based.

(7) Where the Authority makes or amends a statement under this Article it shall serve a copy of the statement, or the amended statement, on the parent of the child concerned.

(8) It shall, at the same time, give the parent written notice of the right to appeal under Article 21ZA(1)(b).

(9) A notice under paragraph (5) or (8) must contain such other information as may be prescribed.

(10) Regulations shall provide that where the Authority is under a duty to serve a notice under paragraph (5) or (8), the duty must be performed within the prescribed period.”.

(3) After Article 21 insert—

“21ZA Appeals against decisions under Article 21

(1) The parent of a child may appeal to the Tribunal against—

- (a) a decision of the Authority, following an assessment under Article 21, not to make a statement under that Article;
- (b) where the Authority does make such a statement—
 - (i) the description in the statement of the Authority’s assessment of the child’s special educational needs, or
 - (ii) the special educational provision specified in the statement.

(2) On an appeal under paragraph (1)(a) the Tribunal may—

- (a) dismiss the appeal;
- (b) order the Authority to make and maintain a statement under Article 21; or
- (c) remit the case to the Authority for it to reconsider whether, having regard to any observations made by the Tribunal, it is necessary for

the Authority to determine the special educational provision which any learning difficulty the child has may call for.

- (3) On an appeal under paragraph (1)(b) the Tribunal may—
- (a) dismiss the appeal; or
 - (b) order the Authority to amend the statement, so far as it describes the Authority’s assessment of the child’s special educational needs or specifies the special educational provision, and make such other consequential amendments to the statement as the Tribunal thinks fit.”.
- (4) In Article 18A (unopposed appeals)—
- (a) in paragraph (1)(a) for “or 20A” substitute “, 20A or 21ZA(1)(a)”; and
 - (b) in paragraph (4) after sub-paragraph (b) insert—
 - “(ba) in the case of an appeal under Article 21ZA(1)(a), make a statement under Article 2”;
 - (c) in paragraph (5) for “required by paragraph (4)(a) to make a statement under Article 16” substitute “required by paragraph (4) to make a statement” and omit “under that Article”.

Mediation in connection with appeals

- 10.—**(1) Part 2 of the 1996 Order is amended as follows.
- (2) In Article 21B (resolution of disputes) for paragraph (4) substitute—
- “(3A) The Authority shall make arrangements for the provision of mediation to a person who intends to appeal to the Tribunal.
 - (3B) Where a person requests mediation in accordance with such arrangements, the Authority must arrange for and participate in the mediation.
 - (4) Arrangements made by the Authority under this Article shall provide for the appointment of independent persons with the functions of facilitating the avoidance or resolution of disputes or (as the case may be) of acting as mediator; and for the purposes of this paragraph a person is not independent if he or she is employed by the Authority.”.
- (3) In Article 21B(7) at the beginning insert “Except as provided by Article 21C(3),”.
- (4) After Article 21B insert—

“21C Information and advice as to mediation in connection with certain appeals

- (1) Subject to paragraph (2), this Article applies where a person intends to appeal to the Tribunal under—

- (a) Article 17(2)(b);
- (b) Article 18(1);
- (c) Article 20(3)(b);
- (d) Article 20A(8)(b);
- (e) Article 21ZA(1);
- (f) paragraph 13(2)(b) of Schedule 2.

(2) But this Article does not apply in relation to an appeal which relates only to—

- (a) the school or other institution named in a statement maintained under Article 16;
- (b) the type of school or other institution named in a statement under that Article;
- (c) the fact that a statement does not name a school or other institution.

(3) The person may appeal only if a mediation adviser has issued to that person a certificate under paragraph (4); and any provision of this Part enabling a person to appeal has effect subject to this paragraph.

(4) A mediation adviser must issue a certificate under this paragraph to a person if the mediation adviser has provided that person with information and advice about pursuing mediation with the Authority.

(5) If the person has informed the mediation adviser that he or she wishes (or, as the case may be, does not wish) to pursue mediation, the certificate under paragraph (4) must state that fact.

(6) In this Article—

- (a) reference to mediation with the Authority is a reference to mediation in accordance with arrangements made under Article 21B(3A); and
- (b) “mediation adviser” means an independent person who can provide information and advice about pursuing mediation with the Authority;

and for the purposes of this Article a person is not independent if he or she is employed by the Authority.

(7) Regulations may make provision in relation to mediation with the Authority and in particular—

- (a) about giving notice;
- (b) imposing time limits;
- (c) about who may attend mediation;
- (d) where a child’s parent is a party to mediation, requiring the mediator to take reasonable steps to ascertain the views of the child;
- (e) about the provision of advocacy and other support services for a person pursuing mediation with the Authority;

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- (f) enabling the Authority to take prescribed steps following the conclusion of mediation;
- (g) about the training, qualifications and experience of mediation advisers and mediators.”.

Rights of child over compulsory school age

Rights of child over compulsory school age in relation to special educational provision

11.—(1) Part 2 of the 1996 Order is amended as set out in the Schedule for the purpose of conferring on a child over compulsory school age who has or may have special educational needs certain rights previously exercisable by the parent of that child.

(2) Regulations shall make provision about assistance and support to enable a child over compulsory school age to exercise any such right.

(3) Regulations shall make provision for cases where a child over compulsory school age lacks (or may lack) capacity to exercise any such right.

(4) Regulations made by virtue of subsection (3) may in particular make provision—

- (a) for, and in connection with, determining whether a child lacks capacity in relation to the exercise of any such right (including the criteria to be applied in making that determination);
- (b) for the exercise of any such right by the parent of the child in a case where it is determined that the child lacks capacity to exercise the right;
- (c) for Part 2 of the 1996 Order to have effect in such a case with such modifications as may be prescribed by the regulations.

(5) In this section “regulations” means—

- (a) in relation to the right to appeal to the Tribunal, regulations made by the Department of Justice under Article 23 of the 1996 Order; and
- (b) in relation to any other right mentioned in subsection (1), regulations made by the Department.

(6) Regulations made by the Department under this section are subject to negative resolution.

Rights of child over compulsory school age in relation to disability discrimination claims

12.—(1) In Article 22 of the Special Educational Needs and Disability (Northern Ireland) Order 2005 (jurisdiction and powers of the Tribunal) in paragraph (1) for “by A’s parent” substitute “—

- (i) by A, if A is over compulsory school age; or
 - (ii) by A's parent in any other case.”.
- (2) In Article 23 of that Order (Tribunal procedure) after paragraph (2) insert—

“(2A) In a case falling within Article 22(1)(i) where a claim is made by A, the regulations may in particular make provision—

- (a) about assistance and support to enable A to pursue the claim;
- (b) for cases where, in the opinion of the Tribunal, A lacks (or may lack) capacity to pursue the claim, including provision—
 - (i) for, and in connection with, determining whether A lacks capacity to pursue a claim (including the criteria to be applied in making that determination);
 - (ii) for A's parent to pursue the claim in a case where it is determined that A lacks capacity to do so;
 - (iii) for provisions of the regulations to apply with modifications in relation to such a claim.”.

Appeals and claims by children

Appeals and claims by children: pilot scheme

13.—(1) The Department may by regulations make a scheme (referred to in this section as a “pilot scheme”) for the purpose of enabling a child who has not attained the upper limit of compulsory school age to—

- (a) appeal to the Tribunal under any provision of the 1996 Order mentioned in subsection (2);
 - (b) make a claim to the Tribunal under Article 22 of the Special Educational Needs and Disability (Northern Ireland) Order 2005 (unlawful discrimination against disabled pupils).
- (2) The provisions are—
- (a) Article 17(2)(b) (appeal against decision not to make statement);
 - (b) Article 18(1) (appeal against contents of statement);
 - (c) Article 20(3)(b) (appeal against refusal to arrange assessment of educational needs);
 - (d) Article 20A(8)(b) (appeal against decision not to assess educational needs at request of responsible body);
 - (e) in Schedule 2—
 - (i) paragraph 11(3)(b) (appeal against refusal to substitute named school); and

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- (ii) paragraph 13(2)(b) (appeal against Authority ceasing to maintain a statement).
- (3) The pilot scheme may make provision—
- (a) about the age from which children may appeal or make a claim;
 - (b) in respect of appeals under subsection (1)(a), about mediation and the application of Article 21C;
 - (c) about the bringing of appeals or making of claims by a child and by his or her parent concurrently;
 - (d) about determining whether a child is capable of bringing an appeal or making a claim, and the assistance and support a child may require to enable the child to do so;
 - (e) enabling a person to exercise a child's rights under the scheme on behalf of the child;
 - (f) enabling children to have access to advice and information which is available to a parent in respect of an appeal or claim of a kind mentioned in subsection (1);
 - (g) about the provision of advocacy and other support services to children;
 - (h) requiring notices to be given to a child (as well as to his or her parent);
 - (i) applying any statutory provision (with or without modifications); and
 - (j) making consequential or transitional provision with respect to the cessation of the scheme.
- (4) The pilot scheme shall have a duration of at least 2 years.
- (5) This section is repealed at the end of 10 years beginning with the day on which this Act receives Royal Assent.
- (6) Regulations shall not be made under subsection (1) unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

Appeals and claims by children: follow-up provision

- 14.—**(1) The Department may by regulations provide that a child who has not attained the upper limit of compulsory school age may—
- (a) appeal to the Tribunal under any provision of the 1996 Order mentioned in subsection (2);
 - (b) make a claim to the Tribunal under Article 22 of the Special Educational Needs and Disability (Northern Ireland) Order 2005 (unlawful discrimination against disabled pupils).
- (2) The provisions are—
- (a) Article 17(2)(b) (appeal against decision not to make statement);
 - (b) Article 18(1) (appeal against contents of statement);

- (c) Article 20(3)(b) (appeal against refusal to arrange assessment of educational needs);
 - (d) Article 20A(8)(b) (appeal against decision not to assess educational needs at request of responsible body);
 - (e) in Schedule 2—
 - (i) paragraph 11(3)(b) (appeal against refusal to substitute named school); and
 - (ii) paragraph 13(2)(b) (appeal against Authority ceasing to maintain a statement).
- (3) The Department may not make regulations under subsection (1) before the end of a period of two years beginning with the coming into operation of regulations under section 13(1).
- (4) Regulations under subsection (1) may, in particular, make provision—
- (a) about the age from which children may appeal or make a claim;
 - (b) in respect of appeals under subsection (1)(a), about mediation and the application of Article 21C;
 - (c) about the bringing of appeals or making of claims by a child and by his or her parent concurrently;
 - (d) about determining whether a child is capable of bringing an appeal or making a claim, and the assistance and support a child may require to enable the child to do so;
 - (e) enabling a person to exercise a child’s rights under the scheme on behalf of the child;
 - (f) enabling children to have access to advice and information which is available to a parent in respect of an appeal or claim of a kind mentioned in subsection (1);
 - (g) about the provision of advocacy and other support services to children;
 - (h) requiring notices to be given to a child (as well as to his or her parent);
 - (i) amending, repealing or revoking a statutory provision (including a provision of this Act).
- (5) Regulations shall not be made under subsection (1) unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

Interpretation

Definition of “child” for purposes of special education

15.—(1) Article 3 of the 1996 Order (definitions relating to special educational needs and special educational provision) is amended as follows.

(2) In paragraph (8) (time when child is deemed to attain age of 19) for “school term” (twice) substitute “school year”.

Interpretation of this Act

16. In this Act—

- “child” has the same meaning as in Part 2 of the 1996 Order;
- “the Department” means the Department of Education;
- “statutory provision” has the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) 1954;
- “the 1996 Order” means the Education (Northern Ireland) Order 1996;
- “the Tribunal” has the meaning given by Article 22(1) of the Special Educational Needs and Disability (Northern Ireland) Order 2005.

Supplementary

Orders and regulations under Part 2 of the 1996 Order

17. For Article 28 of the 1996 Order substitute—

“28 Orders and regulations under this Part

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

(2) Regulations shall not be made under Article 8 or 8ZA unless a draft of the regulations has been laid before, and approved by resolution of, the Assembly.

(3) Subject to paragraph (4), all other regulations under this Part shall be subject to negative resolution.

(4) Regulations made under this Part which—

- (a) would otherwise be subject to negative resolution, but
- (b) are combined with regulations subject to the procedure mentioned in paragraph (2),

shall also be subject to that procedure.

(5) Regulations and orders made under this Part by a Northern Ireland department may contain such incidental, supplementary and transitional provisions as that department thinks fit.”

Commencement, transitional provisions, etc.

18.—(1) The following provisions come into operation on the day after that on which this Act receives Royal Assent—

- (a) section 15;
- (b) section 16;
- (c) this section; and
- (d) section 19.

(2) The other provisions of this Act come into operation on such day or days as the Department may by order appoint.

(3) An order under subsection (2) may contain such savings and such transitional, transitory or consequential provisions as appear to the Department to be appropriate.

Short title

19. This Act may be cited as the Special Educational Needs and Disability Act (Northern Ireland) 2016.