
STATUTORY INSTRUMENTS

1997 No. 866

The Education (Northern Ireland) Order 1997

PART I

INTRODUCTORY

Title and commencement

- 1.—(1) This Order may be cited as the Education (Northern Ireland) Order 1997.
- (2) In this Order—
- (a) Parts I and II shall come into operation on the expiration of 2 months from the day on which this Order is made;
 - (b) Part III shall come into operation on 1st October 1997 (subject to Article 19);
 - (c) Articles 23 to 25 shall come into operation on 1st August 1997;
 - (d) Article 26 shall come into operation on the day appointed under Article 1(3) of the Education (Northern Ireland) Order 1996 for the coming into operation of Article 24 of that Order.

Interpretation

- 2.—(1) The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.
- (2) In this Order—
- “the 1986 Order” means the Education and Libraries (Northern Ireland) Order 1986;
 - “the 1989 Order” means the Education Reform (Northern Ireland) Order 1989.
- (3) This Order shall be construed as one with the 1986 Order, the 1989 Order, the Education and Libraries (Northern Ireland) Order 1993 and the Education (Northern Ireland) Order 1996; and accordingly Article 2(2) of the 1986 Order, in so far as it relates to the definition of words or expressions used in that Order and in this Order, shall apply for the purposes of this Order as it applies for the purposes of that Order.
- (4) In Article 2(2) of the 1986 Order in the definition of “the Education Orders” for the words “and the Education (Northern Ireland) Order 1996” there shall be substituted the words “, the Education (Northern Ireland) Order 1996 and the Education (No. 2) (Northern Ireland) Order 1996”.

PART II

EDUCATION FOR PRE-SCHOOL CHILDREN

Grants in respect of pre-school education

- 3.—(1) The Department may make grants in respect of pre-school education.

(2) In this Part “pre-school education” means education provided for a child (whether at a school or any other premises) before he attains the lower limit of compulsory school age.

(3) Grants under this Article—

- (a) shall be made in respect of the education of children of such descriptions;
- (b) shall be of such amount; and
- (c) shall be paid at such times and in such manner,

as the Department may determine.

(4) A grant under this Article shall be made—

- (a) to a board if it is in respect of education provided at—
 - (i) a controlled school managed by the board; or
 - (ii) a maintained school maintained by the board;
- (b) to the person providing the education in any other case.

(5) Grants under this Article shall be subject to such requirements as may be imposed under Article 4.

(6) This Article does not affect any power of the Department to make grants in respect of pre-school education under any other statutory provision.

Grants requirements

4.—(1) A board or other person to whom a grant is made under Article 3 shall comply with such requirements as the Department may impose.

(2) Requirements under paragraph (1)—

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

(3) A requirement imposed under paragraph (1) may, in particular, if any conditions specified in the requirement are satisfied, require repayment of the whole or any part of the grant to which it relates.

Grants: delegation of functions

5.—(1) The Department may make arrangements for grants under Article 3 to be made, of other functions relating to such grants to be exercised, by another person or any employee of his on such terms as may be between the Department and that person.

(2) Any arrangements made under paragraph (1) may make provision for the functions concerned to be so exercised—

- (a) either wholly or to such an extent as may be specified in the arrangements; and
- (b) either generally or in such cases or circumstances as may be so specified,

but shall not prevent the functions concerned from being exercised by the Department.

Grants: disclosure of information

6.—(1) The Department of Health and Social Services may supply to any person to whom this Article applies any such social security information as the person may require for or in connection with the exercise of any function relating to grants in respect of pre-school education.

(2) This Article applies to—

- (a) civil servants in the Department and any other persons who carry out the administrative work of that Department;
 - (b) any person exercising any function by virtue of Article 5 and any persons who are employed by, or are directors or other officers of, any such person or who carry out the administrative work of any such person.
- (3) A person who is or has been a person to whom this Article applies is guilty of an offence if he discloses without lawful authority any social security information relating to a particular person which he acquired while acting as a person to whom this Article applies.
- (4) It is not an offence under paragraph (3)—
- (a) to disclose information in the form of a summary or collection of information so framed as not to enable social security information relating to any particular person to be ascertained from it; or
 - (b) to disclose social security information which has previously been disclosed to the public with lawful authority.
- (5) It is a defence for a person charged with an offence under paragraph (3) to prove that at the time of the alleged offence—
- (a) he believed that he was making the disclosure in question with lawful authority and had no reasonable cause to believe otherwise; or
 - (b) he believed that the information in question had previously been disclosed to the public with lawful authority and had no reasonable cause to believe otherwise.
- (6) For the purposes of this Article a disclosure is to be regarded as made with lawful authority if, and only if, it is made—
- (a) by a person in accordance with his official duty as a civil servant;
 - (b) by any other person either—
 - (i) for the purposes of the function in the exercise of which he holds the information and without contravening any restriction duly imposed by the Department or by any person authorised by the Department; or
 - (ii) to the Department or in accordance with an authorisation duly given by the Department or by any person authorised by the Department;
 - (c) in accordance with any statutory provision or order of a court;
 - (d) for the purposes of instituting, or otherwise for the purposes of, any proceedings before a court; or
 - (e) with the consent of the person to whom the information relates or of any person authorised to act on his behalf.
- (7) A person guilty of an offence under paragraph (3) is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both; or
 - (b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both.
- (8) In this Article “social security information” means information which—
- (a) is of a description prescribed by regulations made by the Department subject to negative resolution, and
 - (b) was obtained by reason of the exercise by the Department of Health and Social Services of any of its functions under the Social Security Contributions and Benefits (Northern Ireland) Act 1992 or the Social Security Administration (Northern Ireland) Act 1992.

Inspection of pre-school education

7. Any premises in which is provided—

- (a) pre-school education in respect of which the Department is making, or is to make, grants under Article 3, or
- (b) pre-school education in respect of which the Department 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.

Functions of Northern Ireland Council for the Curriculum, Examinations and Assessment in relation to nursery education

8. In Article 35(6) of the 1989 Order (provisions about the curriculum which apply to nursery education) before sub-paragraph (a) there shall be inserted—

- “(aa) Article 19;”.

PART III

ADMISSION OF CHILDREN TO GRANT-AIDED SCHOOLS

Parental preference

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

- (a) to express (in order of preference) his preferences as to the school at which he wishes education to be provided for his child; and
- (b) to give reasons for his preferences.

(2) Where the parent of a child has expressed his preferences under arrangements under paragraph (1), then for the purposes of this Part—

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

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

(3) Subject to Article 16(4) (children resident outside Northern Ireland), this Part applies in relation to an application for admission of a child to a school whether or not the child is resident in the area of the board in which that school is situated.

Duties of Board of Governors in relation to admissions

10.—(1) It shall be the duty of the Board of Governors of a grant-aided school to make arrangements for the admission of children to the school in accordance with the following provisions of this Part.

(2) The Board of Governors of a grant-aided school shall not—

- (a) admit to the school in any school year a number of children in the relevant age group which exceeds the school’s admissions number for that school year; or

(b) cause or permit the number of registered pupils at the school at any time to exceed the school's enrolment number.

(3) In calculating for the purposes of paragraph (2) the number of children in the relevant age group admitted to a school in any school year, no account shall be taken of any child in that age group admitted to the school in compliance with—

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

(4) In calculating for the purposes of paragraph (2) the number of registered pupils at a school at any time in a school year, no account shall be taken of any pupil first registered at the school in that school year in compliance with—

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

Determination of enrolment number for a school

11.—(1) In this Part any reference to a school's 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 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; and
- (b) the accommodation available for use by pupils at the school, other than—
 - (i) in the case of a boarding school, so much of the accommodation as is used wholly or mainly for boarding purposes; and
 - (ii) in the case of a grammar school, so much of the accommodation as is not available for use by pupils of the secondary department.

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

(4) Before making any determination under paragraph (2) or variation under paragraph (3) in relation to a school, the Department shall consult the bodies mentioned in paragraph (7).

(5) Paragraph (4) does not require consultation with the Board of Governors of a school in relation to a variation of the school's enrolment number made by the Department at the request of the Board of Governors.

(6) After making any determination under paragraph (2) or variation under paragraph (3) in relation to a school, the Department shall send notice of the determination or variation to the bodies mentioned in paragraph (7).

(7) The bodies referred to in paragraphs (4) and (6) 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.

Determination of admissions number for a school

12.—(1) In this Part any reference to a school's admissions number for a school year is a reference to the number for the time being applying under the following provisions of this Article to the school in relation to that school year.

(2) The admissions number applying to a school for any school year 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; and
- (b) the school's enrolment number.

(3) The Department may at any time vary a school's admissions number for a school year.

(4) Before making any determination under paragraph (2) or variation under paragraph (3) in relation to a school, the Department shall consult the bodies mentioned in paragraph (7).

(5) Paragraph (4) does not require consultation with the Board of Governors of a school in relation to a variation of the school's admissions number made by the Department at the request of the Board of Governors.

(6) After making any determination under paragraph (2) or variation under paragraph (3) in relation to a school, the Department shall send notice of the determination or variation to the bodies mentioned in paragraph (7).

(7) The bodies referred to in paragraphs (4) and (6) 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 to primary or secondary school (other than grammar school)

13.—(1) This Article applies to applications for the admission of a child to a primary school or a secondary school (other than a grammar school); and in this Article—

- (a) paragraph (2) applies to an application for the admission of a child in the relevant age group where the proposed admission is to take effect at the beginning of the first term of the school year;
- (b) paragraph (3) applies to an application for the admission of a child in the relevant age group where the proposed admission is to take effect at any later time in the school year; and
- (c) paragraphs (4) and (5) apply to an application for the admission of a child who is not in the relevant age group.

(2) 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 admissions number of the school; and
- (b) in any other case, shall—
 - (i) apply the criteria drawn up under Article 16(1) to select for admission to the school a number of children equal to the school's admissions number; and
 - (ii) admit, or refuse to admit, the child to the school accordingly.

(3) 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 places in the relevant age group 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 places;
 - (ii) in any other case, apply the criteria drawn up under Article 16(1) to select for admission to the school a number of children equal to the number of vacant places and admit, or refuse to admit, the child to the school accordingly;
 - (b) if, at that time, there are no vacant places in the relevant age group at the school, refuse to admit the child to the school.
- (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 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 places;
 - (ii) in any other case, apply the criteria drawn up under Article 16(1) to select for admission to the school a number of children equal to the number of vacant places and admit, or refuse to admit, the child to the school accordingly;
 - (b) if, at that time, there are no vacant places at the school, refuse to admit the child to the school.
- (5) The Board of Governors may refuse to admit a child to the school in the circumstances mentioned in paragraph (4)(a)(i) or (ii) where it is of the opinion that the admission of the child to the school would prejudice the efficient use of resources.

Admission to grammar schools

- 14.—**(1) This Article applies to applications for the admission of a child to a grammar school; and in this Article—
- (a) paragraphs (2) and (3) apply to an application for the admission of a child in the relevant age group where the proposed admission is to take effect at the beginning of the first term of the school year;
 - (b) paragraphs (4) and (5) apply to an application for admission of a child in the relevant age group where proposed admission is to take effect at any later time in school year; and
 - (c) paragraphs (6) and (7) apply to an application for admission of a child who is not in the relevant age group.
- (2) 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 admissions number of the school; and
 - (b) in any other case, shall—
 - (i) apply the criteria drawn up under Article 16(1) to select for admission to the school a number of children equal to the school's admissions number; and
 - (ii) admit, or refuse to admit, the child to the school accordingly.
- (3) The Board of Governors may refuse to admit a child to the school in the circumstances mentioned in paragraph (2)(a) or (b) where—
- (a) it is of the opinion that admission of the child to the school would be detrimental to the educational interests of the child; and
 - (b) it has obtained the approval of the Department to do so.
- (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 places in the relevant age group 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 places;
 - (ii) in any other case, apply the criteria drawn up under Article 16(1) to select for admission to the school a number of children equal to the number of vacant places and admit, or refuse to admit, the child to the school accordingly;
 - (b) if, at that time, there are no vacant places in the relevant age group at the school, refuse to admit the child to the school.
- (5) The Board of Governors may refuse to admit a child to the school in the circumstances mentioned in paragraph (4)(a)(i) or (ii) where it is of the opinion that the academic ability of the child is not of a standard equivalent to that of the pupils with whom he would be taught at the school.
- (6) 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 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 places;
 - (ii) in any other case, apply the criteria drawn up under Article 16(1) to select for admission to the school a number of children equal to the number of vacant places and admit, or refuse to admit, the child to the school accordingly;
 - (b) if, at that time, there are no vacant places at the school, refuse to admit the child to the school.
- (7) The Board of Governors may refuse to admit a child to the school in the circumstances mentioned in paragraph (6)(a)(i) or (ii) where it is of the opinion that—
- (a) the academic ability of the child is not of a standard equivalent to that of the pupils with whom he would be taught at the school; or
 - (b) the admission of the child to the school would prejudice the efficient use of resources.

Appeals against certain admission decisions under Articles 13 and 14

15.—(1) Subject to paragraph (2), every board shall make arrangements for enabling the parent of a child to appeal against any decision made under Article 13 or 14 by the Board of Governors of a grant-aided school situated in the area of the board refusing the child admission to the school.

- (2) Paragraph (1) does not apply to a decision made under—
- (a) Article 13(5) or 14(7)(b) (admission prejudicial to efficient use of resources);
 - (b) Article 14(3) (admission detrimental to educational interests of child); or
 - (c) Article 14(5) or (7)(a) (academic standards of grammar schools).

(3) An appeal under this Article shall be to an appeal tribunal constituted in accordance with regulations under paragraph (8).

(4) An appeal under this Article may be brought only on the ground that the criteria drawn up under Article 16(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.

- (5) On the hearing of an appeal under this Article—
- (a) if it appears to the appeal 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 (6), 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.

(6) If, in the case mentioned in paragraph (5)(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.

(7) It shall be the duty of the Board of Governors of a school to comply with any direction given under paragraph (5)(a).

(8) The Department shall by regulations provide for the constitution and procedure of appeal tribunals and, without prejudice to the generality of the foregoing, such regulations—

(a) shall provide for an appeal tribunal to consist of—

(i) a chairman, selected in the prescribed manner from a panel of persons appointed by the board to act as chairmen of appeal panels;

(ii) a prescribed number of other persons selected in the prescribed manner from a panel of persons appointed by the board to act as members of appeal tribunals;

(b) may prescribe qualifications for appointment to a panel mentioned in sub-paragraph (a)(i);

(c) may provide for disqualifying prescribed persons or persons of prescribed descriptions for membership of an appeal tribunal;

(d) may provide for two or more tribunals to sit at the same time;

(e) may provide that all matters relating to the procedure on appeals which are not specifically regulated by the regulations shall be determined by the board.

(9) An appeal tribunal shall not be regarded as a committee of the board.

(10) A board shall make payments by way of travelling allowance or subsistence allowance, on such conditions and at such rates as the Department may determine, to any member of an appeal tribunal who necessarily incurs expenditure on travelling or, as the case may be, subsistence for the purpose of enabling him to perform any duty specified in the conditions.

(11) A board may make payments to—

(a) the chairman of an appeal tribunal for or in relation to his functions as chairman, of amounts or at rates not exceeding such amounts or rates and on such conditions as the Department, with the approval of the Department of Finance and Personnel, may determine;

(b) the members of an appeal tribunal for or in relation to their functions as members, of amounts or at rates not exceeding such amounts or rates and on such conditions as the Department may determine.

Admission criteria

16.—(1) Subject to the following provisions of this Article the Board of Governors of each grant-aided 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 13 or (in the case of a grammar school) Article 14.

(2) When drawing up or amending criteria under this Article—

(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 17(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 13 or (in the case of a grammar school) Article 14 before the criteria are exhausted.

(6) The criteria drawn up under paragraph (1) and to be applied in selecting—

- (a) children for admission to a secondary school, other than a grammar school; or
- (b) children in the relevant age group for admission to a grammar school,

shall not include the performance of the children in any test or examination held by, or on behalf of, the Board of Governors of a secondary school.

(7) Paragraph (6) does not apply to a test or examination—

- (a) of an individual child of a description determined by the Department which is held by a board at the request of the Board of Governors of a grammar school; or
- (b) which is held by, or on behalf of, the Board of Governors of a secondary school specified by the Department for the purposes of this sub-paragraph.

(8) The criteria drawn up under paragraph (1) by the Board of Governors of a school shall not include the fact that the school was the first preference expressed by the parent of the child or was a higher preference than any other school or schools.

(9) Regulations may provide, in relation to any school or description of school—

- (a) that the criteria drawn up under paragraph (1) shall include such matters or matters of such description as are specified in the regulations;
- (b) that those criteria shall not include such matters or of such description as may be so specified.

Information as to schools and admission arrangements

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

- (a) the arrangements made by the board under Articles 9(1) and 15(1);
- (b) the arrangements for the admission of children to each grant-aided 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 enrolment number;
- (b) the school's admissions number;
- (c) the respective functions of the Board of Governors and principal in relation to admissions to the school; and
- (d) the criteria drawn up under Article 16(1) for the school.

(3) The Board of Governors of every grant-aided 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 primary or secondary education in its area.

(5) A board may, with the agreement of the Board of Governors of any grant-aided school situated in the area of the board, publish on behalf of the Board of Governors the particulars or 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 time or times and in such manner as may be required by regulations.

Exceptions

18.—(1) Subject to paragraphs (2) and (3), this Part does not have effect in relation to—

- (a) nursery schools;
- (b) special schools;
- (c) schools established in hospitals;
- (d) the preparatory departments of grammar schools;
- (e) the admission to a grant-aided school of children who will not have attained compulsory school age at the time of their proposed admission; or
- (f) the admission to a grant-aided school of children in respect of whom statements are maintained under Article 16 of the Education (Northern Ireland) Order 1996.

(2) Paragraphs (3) to (6) of Article 17 apply to schools and children mentioned in paragraph (1) (a), (b), (d), (e) and (f).

(3) Where the arrangements for the admission of children to a grant-aided school provide for the admission to the school of children who will not be of compulsory school age at the time of their proposed admission—

- (a) this Part shall have effect in relation to the admission of such children to the school otherwise than for nursery education; and
- (b) the transfer to a reception class at the school of children previously admitted to the school for nursery education shall be treated for the purposes of this Part as the admission of such children to the school.

(4) For the purposes of paragraph (3)—

- (a) children are to be regarded as admitted to a school for nursery education if they are or are to be placed on admission in a nursery class;
- (b) “reception class” means a class in which education is provided which is suitable to the requirements of children aged four and any pupils over that age whom it is expedient to educate together with pupils of that age;
- (c) “nursery class” means a class in which education is provided which is suitable to the requirements of children who have attained the age of two but have not attained the lower limit of compulsory school age.

Application of this Part

19. This Part does not apply in relation to any admission to a school taking effect, or proposed admission to a school which would take effect, in the school year ending on 31st July 1998; and Part IV of the 1989 Order shall accordingly continue to have effect in relation to any such admission or proposed admission.

Regulations

20. All regulations under this Part shall be subject to negative resolution.

Interpretation of this Part

21.—(1) In this Part—

- (a) any reference to a school's enrolment number shall be construed in accordance with Article 11(1);
- (b) any reference to a school's admissions number for a school year shall be construed in accordance with Article 12(1);
- (c) any reference to the admission of a child to a school shall, in the case of a grammar school having a preparatory department, be construed as a reference to the admission of a child to the secondary department of that school;
- (d) any reference to pupils registered at a school shall, in the case of a grammar school having a preparatory department, be construed as a reference to pupils registered in the secondary department of that school;
- (e) any reference to the preparatory department of a grammar school is a reference to that part of the grammar school in which primary education is provided;
- (f) any reference to the secondary department of a grammar school is a reference to that part of the grammar school in which secondary education is provided;
- (g) any reference to the relevant age group—
 - (i) in relation to a grammar school having a preparatory department, is a reference to the age group in which the majority of children below the upper limit of compulsory school age are normally admitted to the secondary department of the school;
 - (ii) in relation to any other school, is a reference to the age group in which the majority of children below the upper limit of compulsory school age are normally admitted to the school;
- (h) any reference to an appeal tribunal is a reference to an appeal tribunal constituted in accordance with regulations under Article 15(8);
- (i) any reference to a school year is a reference to a year ending on 31st July.

(2) For the purposes of this Part—

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

(3) For the purposes of this Part—

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

(4) For the purposes of this Part a child who by virtue of Article 46A of the 1986 Order commences secondary education at a time earlier or later than he would otherwise do so shall be treated as being in the same age group as those who commence secondary education at the same time as he does.

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

Repeals

22. Subject to Article 19, the statutory provisions set out in the Schedule are hereby repealed to the extent specified in column 3 of that Schedule.

PART IV

MISCELLANEOUS

Provision of transport for, and payment of travelling expenses of, certain pupils

23.—(1) For Article 52 of the 1986 Order there shall be substituted—

“Provision of transport for, and payment of travelling expenses of, certain pupils

52.—(1) A board shall make such arrangements for the provision of transport and otherwise as it considers necessary or as the Department may direct for the purpose of facilitating—

- (a) the attendance of pupils at grant-aided schools; and
- (b) the attendance of relevant pupils at institutions of further education;

and any transport provided under such arrangements shall be provided free of charge.

(2) Arrangements made by a board under paragraph (1) (other than arrangements made in pursuance of a direction of the Department) shall be subject to the approval of the Department.

(3) A board may, in accordance with arrangements approved by the Department, provide transport for, or pay the whole or part of the reasonable travelling expenses of.

- (a) pupils attending grant-aided schools; and
- (b) relevant pupils attending institutions of further education,

for whom the board is not required to make provision under arrangements made under paragraph (1).

(4) In paragraphs (1) and (3) “relevant pupils” means pupils of a class or description specified by the Department for the purposes of this Article.

(5) Any arrangements under paragraph (3) shall include provision—

- (a) for the board to make charges (payable by the parents of the pupils concerned) in respect of transport provided under that paragraph; and
- (b) as to the cases in which, and the extent to which, such charges are to be remitted by the board.

(6) With a view to assisting in the prevention of accidents, a board may carry into effect such measures as may be set out in a scheme framed by the board and approved by the Department.”.

(2) In Schedule 13 to the 1986 Order in paragraph 3(2) for head (b) there shall be substituted—

“(b) if the parent proves—

- (i) that the school at which the child is a registered pupil is not within walking distance of the child’s home; and
- (ii) that the child is one for whom the board is required to make provision under Article 52(1), but no suitable arrangements have been made by the board for his transport to and from school; and

(iii) that no suitable arrangements have been made by the board for boarding accommodation for the child at or near the school or for enabling him to become a registered pupil at a school nearer to his home;”.

(3) In paragraph 3(6) of Schedule 13 to the 1986 Order for the words “who has not attained the age of eleven years” there shall be substituted the words “who is a registered pupil at a primary school”.

(4) In Article 130(1)(a) of the 1989 Order for the words from “other than” to the end there shall be substituted

“other than—

- (i) education or transport in respect of which by virtue of Article 128 no charge may be made; or
- (ii) transport provided by a board under Article 52 of the principal Order.”.

(5) In Article 137 of the 1989 Order after paragraph (4) there shall be inserted—

“(4A) Nothing in the provisions of this Chapter relating to charges applies in relation to charges made by a board under Article 52 of the principal Order.”.

Nomination of members of Board of Governors of controlled secondary schools (other than grammar or integrated schools)

24. In Schedule 4 to the 1986 Order, in paragraph 3 (membership of Board of Governors of controlled secondary school (other than grammar or integrated school))—

(a) in sub-paragraph (2) for head (a) substitute—

“(a) four shall be nominated by the relevant members of the Boards of Governors of contributory schools from amongst the relevant members of those Boards of Governors;”;

(b) after sub-paragraph (2) there shall be inserted—

“(2A) In sub-paragraph (2)(a) “relevant members”, in relation to a Board of Governors, means the members nominated by transferors and superseded managers under paragraph 2(2)(a) or 5(1)(c).”.

Financing of certain services to schools provided under approved contracts

25.—(1) This Article applies to a school of a description set out in column 1 of the Table below, and in this Article “the relevant authority” in relation to each such school is the body indicated in column 2 of that Table.

TABLE

<i>School</i>	<i>Relevant authority</i>
1. A controlled school.	The board by which the school is managed.
2. A grant-maintained integrated school.	The Board of Governors of the school.
3. A maintained school in relation to which an agreement under paragraph 1 of Schedule 5 to the 1986 Order is in force.	The trustees of the school.
4. 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.	The trustees of the school.

(2) In this Article “an approved contract” means a contract between the relevant authority for a school to which this Article applies and another person (“the contractor”)—

- (a) under which the contractor undertakes at his own cost—
 - (i) to provide or alter any premises of the school; and
 - (ii) to maintain, or provide other services in relation to, those premises over the term of the contract,

in consideration for the payment by the relevant authority for the school of sums of money in instalments over the term of the contract; and

- (b) which has been approved by the Department for the purposes of this Article.

(3) The inclusion in a contract of matters other than those mentioned in sub-paragraph (a) of paragraph (2) does not prevent the contract falling within that sub-paragraph.

(4) In this Article references to the costs of a relevant authority on foot of an approved contract are references to the payments made or to be made by the relevant authority over the term of the contract.

(5) The Education Orders shall be amended as follows for the purpose of facilitating the making and carrying out of approved contracts and the meeting of the costs of certain relevant authorities on foot of such contracts.

(6) In Article 2 of the 1986 Order after paragraph (2C) there shall be inserted—

“(2D) In the Education Orders references to—

- (a) an approved contract;
- (b) the contractor, in relation to an approved contract;
- (c) the relevant authority, in relation to an approved contract; and
- (d) the costs of the relevant authority on foot of an approved contract,

shall be construed in accordance with Article 25 of the Education (No. 2) (Northern Ireland) Order 1996.

(2E) References in the Education Orders to the staff of or at a school or to persons employed at, in or about a school do not include references to persons employed by the contractor for the purposes of an approved contract.”.

(7) In Article 8 of the 1986 Order (responsibilities of board in relation to maintained schools) after paragraph (1) there shall be inserted—

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

(1B) A board shall be responsible for meeting the costs of the trustees of a school maintained by it on foot of an approved contract, and may, for the purposes of this paragraph, make grants to those trustees on such conditions (including conditions as to repayment) as it may determine with the approval of the Department.”.

(8) In Article 88(1A) of the 1986 Order (employment of non-teaching staff required in controlled and maintained schools) after the words “staff required” there shall be inserted “by a board”.

(9) In Article 60 of the 1989 Order (grants to voluntary grammar schools)—

- (a) after paragraph (1) there shall be inserted—

“(1A) The Department may make grants to the trustees of a voluntary grammar school of amounts equal to the costs of the trustees on foot of an approved contract.”;

- (b) after paragraph (4) there shall be inserted—

“(4A) Expenditure under paragraph (1A) in any year shall be specified by the Department as an excluded head or item of expenditure.”.

(10) In Article 62 of the 1989 Order (provision of educational facilities and services) after paragraph (5) there shall be inserted—

“(5A) In paragraph (5)(a) the reference to the school premises does not include so much of the school premises as, in pursuance of an approved contract, is under the control of the contractor.”.

(11) In Article 77 of the 1989 Order (grants to grant-maintained integrated schools) in paragraph (10) for the words “The descriptions” there shall be substituted “Where school premises are provided or altered in pursuance of an approved contract, the costs of the Board of Governors on foot of that contract shall for the purposes of this Article be regarded as expenditure which is not of a capital nature; but, subject to that, the descriptions.”.

Appeal from Special Educational Needs Tribunal

26. In Article 24 of the Education (Northern Ireland) Order 1996 (appeal from Special Educational Needs Tribunal) for the words from the beginning to “that person” there shall be substituted “Where a party to an appeal to the Tribunal is dissatisfied in point of law with a decision of the Tribunal, that party”.

N.H. Nicholls
Clerk of the Privy Council