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STATUTORY INSTRUMENTS

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**2006 No. 1915**

**The Education (Northern Ireland) Order 2006**

**PART III**

**MISCELLANEOUS AND SUPPLEMENTARY**

*Admissions*

**Admission to grammar schools**

- 27.**—(1) Article 14 of the 1997 Order (admission to grammar schools) shall cease to have effect.
- (2) In Article 13 of that Order (admission to primary or secondary school, other than grammar school) in the heading and in paragraph (1) omit “(other than a grammar school)”.
- (3) In Article 15 omit—
- (a) in paragraph (1) the words “or 14”;
  - (b) in paragraph (2)(a) the words “or 14(7)(b)”;
  - (c) paragraph (2)(b) and (c).

**Admission criteria**

- 28.**—(1) For Article 16 of the 1997 Order substitute—

**“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.
- (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)—
- (a) shall be such as to ensure that the Board of Governors by applying those criteria can comply with Article 13 before the criteria are exhausted;

- (b) 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;
  - (c) shall in all other respects comply—
    - (i) in the case of a secondary school, with regulations under paragraph (5); and
    - (ii) in the case of a primary school, with regulations under paragraph (9).
- (5) Regulations may make provision in relation to the drawing up of criteria under paragraph (1) by the Board of Governors of a secondary school; and in particular such regulations may—
- (a) require the Board of Governors to include only such criteria, or criteria of such description, as are specified (“permitted criteria”);
  - (b) require the Board of Governors to include a specified number (or minimum number) of permitted criteria;
  - (c) require the Board of Governors to include—
    - (i) any specified permitted criteria;
    - (ii) any specified combination of permitted criteria;
    - (iii) a specified combination of permitted criteria selected in a specified manner;
  - (d) require the Board of Governors to include provision as to the sequence in which different criteria are to be applied in making any selection using the criteria.
- (6) In paragraph (5) “specified” means specified in the regulations under that paragraph.
- (7) Regulations may—
- (a) confer on the Department power to direct the Board of Governors of a secondary school to reconsider any criteria drawn up by that Board under paragraph (1) (but not yet published under Article 17(2)) in the light of concerns of the Department as to the likely effect of the application of those criteria on admissions to the school; and
  - (b) provide that where such a direction has been given, the criteria drawn up by the Board of Governors under paragraph (1) may not be published under Article 17(2) without the consent of the Department.
- (8) Before making any regulations under paragraph (5) or (7) the Department shall consult—
- (a) the Boards of Governors of secondary schools; and
  - (b) such other bodies or persons as appear to the Department to be appropriate.
- (9) Regulations may provide, in relation to any primary 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 matters of such description, as may be so specified.”.
- (2) In Article 16 of the 1997 Order (as substituted by paragraph (1))—
- (a) in paragraph (4)(c)(i) after “with” insert “paragraph (4A) and”; and
  - (b) after paragraph (4) insert—
    - “(4A) The criteria drawn up by the Board of Governors of a secondary school under paragraph (1) shall not include the academic ability or aptitude of the child (whether assessed by reference to his performance in any test or examination or by any other means whatsoever).”.

**Admission to secondary school: exceptional circumstances**

29.—(1) After Article 16 of the 1997 Order insert—

**“Admission to secondary school: exceptional circumstances**

**16A.**—(1) The parent of a child of compulsory school age may apply to the body established by regulations under paragraph (6) (“the body”) for a direction that on the grounds of exceptional circumstances specified in the application the child is to be admitted to a grant-aided secondary school so specified (“the specified school”).

(2) On the hearing of an application under this Article—

- (a) if the body is satisfied that exceptional circumstances exist which require the admission of the child to the specified school, the body shall direct the Board of Governors of that school to admit the child to the school;
- (b) in any other case, the body shall dismiss the application.

(3) It shall be the duty of the Board of Governors of the specified school to comply with any direction given under paragraph (2)(a).

(4) The Department shall make regulations as to the meaning of “exceptional circumstances” for the purposes of this Article.

(5) Such regulations may—

- (a) specify matters to be taken into account, or not to be taken into account, in determining whether, in relation to a particular pupil, there are exceptional circumstances which require his admission to a particular school;
- (b) give examples of—
  - (i) circumstances which may be regarded for the purposes of this Article as exceptional circumstances requiring the admission of a child to a particular school;
  - (ii) circumstances which may not be so regarded.

(6) The Department shall by regulations provide for the constitution and procedure of a body to determine applications under this Article; and, in particular, such regulations—

- (a) shall provide for the membership of the body and may provide for disqualifying prescribed persons or descriptions of person for membership of the body;
- (b) may contain provision requiring the body to hear and determine an application within such period as may be specified in, or determined in accordance with, the regulations;
- (c) may provide for the body to sit in private, except in such circumstances as may be specified in, or determined in accordance with, the regulations;
- (d) may provide that all matters relating to the procedure on an application which are not specifically regulated by the regulations shall be determined by the Department.

(7) The Department may make payments by way of travelling and subsistence allowances to members of the body.

(8) Payments under paragraph (7) shall be made at such rates and on such conditions as may be determined by the Department.”.

(2) In Article 10(3) of the 1997 Order (calculation of number of children admitted in relevant age group) after sub-paragraph (a) insert —

“(aa) a direction of the body constituted by regulations under Article 16A(6);”.

(3) In Article 10(4) of the 1997 Order (calculation of number of registered pupils at a school) after sub-paragraph (a) insert—

“(aa) a direction of the body constituted by regulations under Article 16A(6);”.

### **Guidance as to admissions**

**30.** After Article 16A of the 1997 Order insert—

#### **“Guidance as to admissions**

**16B.**—(1) The Department may issue, and from time to time revise, such guidance as it thinks appropriate in respect of the arrangements for the admission of pupils to grant-aided schools and the discharge by—

- (a) boards;
- (b) the Boards of Governors of grant-aided schools;
- (c) appeal tribunals constituted in accordance with regulations under Article 15(8); and
- (d) the body established by regulations under Article 16A(6),

of their respective functions under this Part.

(2) The guidance may in particular set out aims, objectives and other matters in relation to the discharge of those functions.

(3) It shall be the duty of—

- (a) each of the bodies mentioned in paragraph (1); and
- (b) any other person exercising any function for the purposes of the discharge by such a body of functions under this Part,

to have regard to any relevant guidance for the time being in force under this Article.” .

#### *Suspension and expulsion of pupils from grant-aided schools*

### **Suspension and expulsion of pupils**

**31.**—(1) The Department shall prepare and issue a scheme specifying the procedure to be followed in relation to the suspension and expulsion of registered pupils from grant-aided schools.

(2) A scheme under this Article—

(a) shall provide that—

- (i) a registered pupil at a controlled school may be expelled from that school only by the relevant board on the application of the Board of Governors of the school;
- (ii) a registered pupil at any other grant-aided school may be expelled from that school only by the Board of Governors of the school;

(b) shall provide that a registered pupil at a grant-aided school may be suspended from that school only by a person or body specified in the scheme;

(c) shall specify the maximum period—

- (i) for which a pupil may be suspended in any one school year;
- (ii) for which a pupil may be suspended on any one occasion;

(d) may provide for the extension of a period of suspension (subject to any provision made by virtue of sub-paragraph (c));

(e) may include provision for such other matters as the Department thinks appropriate.

(3) It is the duty of—

- (a) the relevant board and the Board of Governors (in relation to a controlled school); and
  - (b) the Board of Governors (in relation to any other grant-aided school),
- to comply with a scheme under this Article.

(4) The Department—

- (a) shall review a scheme issued under this Article not later than five years after the issue of the scheme (or, as the case may be, after the last review under this paragraph); and
- (b) may revise the scheme and issue the revised scheme.

(5) Before making or revising a scheme under this Article the Department shall consult—

- (a) the boards;
- (b) the Board of Governors of a number of grant-aided schools selected by the Department as being a representative sample of all such schools; and
- (c) any other person with whom consultation appears to it to be desirable.

(6) In this Article and Article 32 “relevant board”, in relation to a controlled school, means the board for the area in which the school is situated.

### **Appeals against expulsion**

**32.**—(1) Where the relevant board decides to expel a registered pupil from a controlled school—

- (a) that board shall immediately—
  - (i) inform the Board of Governors of the school concerned of that decision; and
  - (ii) inform the relevant person of that decision and of his right of appeal; and
- (b) the relevant person may appeal against that decision to the appeal tribunal constituted in accordance with regulations under paragraph (6).

(2) Where the Board of Governors of any grant-aided school other than a controlled school decides to expel a registered pupil from that school—

- (a) the Board of Governors shall immediately inform the relevant person of that decision and of his right of appeal; and
- (b) the relevant person may appeal against that decision to the appeal tribunal constituted in accordance with regulations under paragraph (6).

(3) In this Article “the relevant person” means—

- (a) in relation to a pupil under the age of 18, a parent of his;
- (b) in relation to a pupil who has attained that age, the pupil himself.

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

- (a) allow the appeal and direct that the pupil be re-admitted to the school; or
- (b) dismiss the appeal.

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

(6) The Department shall by regulations provide for the constitution and procedure of an appeal tribunal to hear and determine appeals under this Article.

(7) Regulations under paragraph (6) may in particular—

- (a) provide for the tribunal to consist of a prescribed number of persons selected in the prescribed manner from a panel or panels of persons appointed by the Department to act as members of the tribunal;

- (b) provide for disqualifying prescribed persons or descriptions of person for membership of the tribunal;
  - (c) contain provision requiring—
    - (i) the appeal to be brought; and
    - (ii) the tribunal to hear and determine an appeal,
 within such period as may be specified in, or determined in accordance with, the regulations;
  - (d) provide for representations to be made to the tribunal by or on behalf of the Board of Governors of the school concerned, the relevant person and (in the case of a controlled school) the relevant board;
  - (e) provide for the tribunal in determining an appeal to have regard in particular to any prescribed matters;
  - (f) provide for the tribunal to sit in private, except in such circumstances as may be specified in, or determined in accordance with, the regulations;
  - (g) provide that all matters relating to the procedure of a tribunal which are not specifically regulated by the regulations are to be determined by the Department.
- (8) The Department may make payments by way of travelling and subsistence allowances to members of the appeal tribunal.
- (9) Payments under paragraph (8) shall be made at such rates and on such conditions as may be determined by the Department.

### **Appeals against suspension**

**33.**—(1) The Department may by regulations provide for appeals against decisions to suspend a registered pupil from a grant-aided school.

- (2) Regulations under this Article may in particular include provision as to—
  - (a) the persons who may appeal;
  - (b) the person by whom, or body by which, the appeal is to be heard;
  - (c) the circumstances under which, and time within which, an appeal may be brought;
  - (d) the procedure to be followed on an appeal;
  - (e) the matters to which the person or body hearing the appeal is to have regard in determining the appeal;
  - (f) such other matters as the Department thinks appropriate.

### **Education of suspended pupils**

**34.**—(1) It is the duty of the Board of Governors of a grant-aided school to make arrangements for the provision of suitable education to a registered pupil of the school at any time when the pupil is suspended from the school.

(2) In such circumstances as the Department may determine, a board may make arrangements to assist the Board of Governors of a grant-aided school in its area in providing suitable education for a pupil in pursuance of paragraph (1).

(3) In consequence of paragraphs (1) and (2), Article 86 of the 1998 Order is amended as follows—

- (a) in paragraph (1) (duty of board to make arrangements for the provision of suitable education for children of compulsory school age who by reason of illness, expulsion or

suspension from school or otherwise, may not receive suitable education) for “expulsion or suspension” substitute “or expulsion”;

(b) in paragraph (2) (power of board to make arrangements for the provision of suitable education for certain children over compulsory school age who by reason of illness, expulsion or suspension from school or otherwise, may not receive suitable education) for “expulsion or suspension” substitute “or expulsion”;

(c) after paragraph (2) insert—

“(2A) Paragraphs (1) and (2) do not apply in relation to a child who is suspended from school.”.

(4) In this Article “suitable education”, in relation to a pupil, means efficient education suitable to his age, ability and aptitude and to any special educational needs he may have.

### *The General Teaching Council for Northern Ireland*

#### **Approval of qualifications of teachers**

**35.** In Article 36(2)(a) of the 1998 Order (person not eligible for registration by Council unless he has such qualifications as may be approved by the Department) for “Department” substitute “Council”.

#### **Removal from register**

**36.** In Article 36(3)(f)(iii) of the 1998 Order (removal from register of persons found guilty of misconduct) after “misconduct” insert “or serious professional incompetence”.

#### **Terms and conditions of service of registrar of General Teaching Council**

**37.** In Schedule 1 to the 1998 Order (General Teaching Council) in paragraph 5(2)(b) (terms and conditions of service of registrar to be determined by the Council with the approval of the Department) omit “with the approval of the Department”.

### *Institutions of further education*

#### **Membership of governing body of institution of further education**

**38.**—(1) In Schedule 3 to the [Further Education \(Northern Ireland\) Order 1997 \(NI 15\)](#) in paragraph 2 (membership of governing body) after sub-paragraph (2) insert—

“(3) The Department may by order amend sub-paragraphs (1) and (2).”.

(2) In Article 24(4) of that Order (orders subject to affirmative resolution) after “Article 14(3) (a)” insert “or paragraph 2(3) of Schedule 3”.

#### **Payments to members of governing body of institution of further education**

**39.** In Schedule 3 to the [Further Education \(Northern Ireland\) Order 1997 \(NI 15\)](#) renumber paragraph 5 (payment of travelling and subsistence allowances to members) as sub-paragraph (1) of that paragraph and after that sub-paragraph insert—

“(2) The articles of government of an institution of further education may provide for the governing body to pay remuneration to the members of the governing body (or such of those members as may be specified or described in the articles) of such 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.”.

### *Miscellaneous*

#### **Baseline assessments**

**40.** Chapter I of Part III of the 1998 Order (baseline assessments) shall cease to have effect.

#### **Removal of requirement for annual parents' meeting**

**41.** Article 126 of the 1989 Order (which requires the Board of Governors of a grant-aided school to hold an annual parents' meeting) shall cease to have effect.

#### **Fees for instruction provided by Department of Agriculture and Rural Development**

**42.—**(1) After section 5 of the Agriculture Act (Northern Ireland) 1949 (c. 2) (provision for education and instruction) insert—

##### **“Fees for instruction provided by the Department**

**5A.—**(1) The Department may, in accordance with regulations under this section, charge fees for or in connection with the provision by the Department under section 5 of any form of instruction.

(2) The Department may by regulations make provision as to—

- (a) the matters in respect of which fees are to be charged under this section;
- (b) the amount of fees to be charged under this section in respect of any matter;
- (c) the persons by whom such fees are payable;
- (d) the time at which, and manner in which, such fees are payable;
- (e) the reduction or remission of such fees in prescribed circumstances.”.

(2) In section 5(2B) of that Act for “sub-section (2A)” substitute “this section”.

(3) In section 26 (2) of that Act after “any scheme” insert “or regulations”.

### *Supplementary provisions*

#### **Regulations and orders**

**43.—**(1) Regulations under this Order shall be subject to negative resolution.

(2) Except as provided by paragraphs (3) and (4), orders under this Order shall be subject to negative resolution.

(3) No order shall be made under Article 3(5) or 6(4) unless a draft of the order has been laid before, and approved by resolution of, the Assembly.

(4) Paragraph (2) does not apply to an order under Article 1.

(5) Regulations and orders under this Order may contain such incidental, supplementary, transitional and savings provisions as appear to the Department to be necessary or expedient.

**Minor and consequential amendments and repeals**

**44.**—(1) The statutory provisions set out in Schedule 2 shall have effect subject to the minor and consequential amendments specified in that Schedule.

(2) The statutory provisions set out in Schedule 3 are hereby repealed to the extent specified in the second column of that Schedule.