*Draft Order in Council laid before Parliament under paragraph 2(1)(a) of the Schedule to the Northern Ireland Act 2000, for approval by resolution of each House of Parliament*

DRAFT STATUTORY INSTRUMENTS

# 2005 No. (N.I. )

# NORTHERN IRELAND

## The Special Educational Needs and Disability (Northern Ireland) Order 2005

*Made - - - - 2005*
*Coming into operation in accordance with Article 1(2) and (3)*

At the Court at Buckingham Palace, the ** day of ** 2005

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order in Council has been approved by resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1(1) of the Schedule to the Northern Ireland Act 2000 (c. 1) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

## PART I

## INTRODUCTORY

**Title and commencement**

**1.**—(1) This Order may be cited as the Special Educational Needs and Disability (Northern Ireland) Order 2005.

(2) The following provisions of this Order come into operation on such day or days as the Department of Education may appoint by order—

(a) Part II, together with Schedule 1;

(b) Chapter I of Part III, together with Part I of Schedule 2;

(c) Chapter III of Part III;

(d) Articles 43 to 48, so far as relating to Chapters I and III of Part III;

(e) Article 50(1), together with Schedule 5;

(f) Article 50(2), together with Schedule 6, except so far as relating to the Disability Discrimination Act 1995 (c. 50).

(3) The following provisions of this Order come into operation on such day or days as the Department for Employment and Learning may appoint by order—

(a) Chapter II of Part III, together with Part II of Schedule 2 and Schedule 3;

(b) Articles 43 to 48, so far as relating to Chapter II of Part III; and

(c) Article 50(2), together with Schedule 6, so far as relating to the Disability Discrimination Act 1995 (c. 50).

(4) An order bringing into operation any provision of Article 30 may, in particular, include provision for the duty imposed by Article 30(1) to have effect with such modifications as may be specified in the order for a period which ends—

(a) on a date so specified; or

(b) on the making by the Department for Employment and Learning of an order bringing the period to an end.

**Interpretation**

**2.**—(1) The Interpretation Act (Northern Ireland) 1954 (c. 33) applies to this Order as it applies to an Act of the Assembly.

(2) In this Order—

"act" includes deliberate omission;

"employment" has the same meaning as in the 1995 Act, and related expressions shall be construed accordingly;

"Minister of the Crown" includes the Treasury;

"premises" includes land of any kind;

"statutory provision" has the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) 1954 (c. 33);

"the 1986 Order" means the Education and Libraries (Northern Ireland) Order 1986 (NI 3);

"the 1995 Act" means the Disability Discrimination Act 1995 (c. 50);

"the 1996 Order" means the Education (Northern Ireland) Order 1996 (NI 1).

(3) Section 1 of, and Schedule 1 to, the 1995 Act and any regulations thereunder (meaning of "disability" and "disabled person") apply for the purposes of this Order as they apply for the purposes of that Act.

# PART II

## SPECIAL EDUCATIONAL NEEDS

*Education in ordinary schools*

**Education in ordinary schools of children with special educational needs**

**3.**—(1) In the 1996 Order for Article 7 substitute—

"**Duty to educate children with special educational needs in ordinary schools**

**7.**—(1) This Article applies to a child with special educational needs who should be educated in a grant-aided school.

(2) If no statement is maintained under Article 16 for the child, he shall be educated in an ordinary school.

(3) If a statement is maintained under Article 16 for the child, he shall be educated in an ordinary school unless that is incompatible with—

(a) the wishes of his parent, or

(b) the provision of efficient education for other children.

**Education otherwise than in ordinary schools**

**7A.**—(1) Article 7(2) does not require a child to be educated in an ordinary school during any period in which—

(a) he is admitted to a special school for the purposes of an assessment under Article 15 of his educational needs and his admission to that school is with the agreement of—

(i) the board;

(ii) the Board of Governors of the school;

(iii) his parent; and

(iv) any person whose advice is to be sought in accordance with regulations made under paragraph 2 of Schedule 1;

(b) he remains admitted to a special school, in prescribed circumstances, following an assessment under Article 15 at that school;

(c) he is admitted to a special school, following a change in his circumstances, with the agreement of—

(i) the board;

(ii) the Board of Governors of the school; and

(iii) his parent.

(2) Article 7 does not affect the operation of—

(a) Article 10; or

(b) paragraph 5 of Schedule 2.

(3) If a board decides—

(a) to make a statement for a child under Article 16, but

(b) not to name in the statement the school for which a parent has expressed a preference under paragraph 5 of Schedule 2,

it shall, in making the statement, comply with Article 7(3).

(4) A board may, in relation to its ordinary controlled schools taken as a whole, rely on the exception in Article 7(3)(b) only if it shows that there are no reasonable steps that it could take to prevent the incompatibility.

(5) A board or a Board of Governors may, in relation to a particular ordinary school, rely on the exception in Article 7(3)(b) only if it shows that there are no reasonable steps that either of them could take to prevent the incompatibility.

(6) The exception in Article 7(3)(b) does not permit a Board of Governors to fail to comply with the duty imposed by Article 16(5)(b).

(7) Boards and Boards of Governors of grant-aided schools shall have regard to guidance about Article 7 and this Article issued by the Department.

(8) That guidance shall, in particular, relate to steps which may, or may not, be regarded as reasonable for the purposes of paragraphs (4) and (5).".

*General duties of boards*

**Advice and information for parents**

**4.** In the 1996 Order, after Article 21 insert—

*"General duties of boards*

**Advice and information for parents**

**21A.**—(1) A board shall arrange for the parent of any child in its area with special educational needs to be provided with advice and information about matters relating to those needs.

(2) In making the arrangements, the board shall have regard to any guidance given by the Department.

(3) The board shall take such steps as it considers appropriate for making the services provided under paragraph (1) known to—

(a) the parents of children in its area;

(b) the principals and Boards of Governors of grant-aided schools in its area;

(c) the principals and proprietors of independent schools in its area; and

(d) such other persons as it considers appropriate.".

**Resolution of disputes**

**5.** In the 1996 Order after Article 21A insert—

"**Resolution of disputes**

**21B.**—(1) A board shall make arrangements with a view to avoiding or resolving disagreements between boards or Boards of Governors of grant-aided schools (on the one hand) and parents of children in its area (on the other) about the exercise by boards or Boards of Governors of functions under this Part.

(2) A board shall also make arrangements with a view to avoiding or resolving, in each relevant school, disagreements between the parents of a child who is a registered pupil at the school and has special educational needs and the Board of Governors or proprietor of the school about the special educational provision made for that child.

(3) In paragraph (2) "relevant school" means—

(a) a grant-aided school;

(b) an independent school which is named in the statement maintained for the child under Article 16.

(4) The arrangements under paragraphs (1) and (2) shall provide for the appointment of independent persons with the function of facilitating the avoidance or resolution of such disagreements.

(5) In making the arrangements, the board shall have regard to any guidance given by the Department.

(6) The board shall take such steps as it considers appropriate for making the arrangements made under paragraphs (1) and (2) known to—

(a) the parents of children in its area;

(b) the principals and Boards of Governors of grant-aided schools in its area;

(c) the principals and proprietors of independent schools in its area; and

(d) such other persons as it considers appropriate.

(7) The arrangements do not affect the entitlement of a parent to appeal to the Tribunal.".

**Compliance with orders of Tribunal**

**6.** In the 1996 Order after Article 23 insert—

"**Compliance with orders**

**23A.** If the Tribunal makes an order, the board concerned must comply with the order before the end of the prescribed period beginning with the date on which it is made.".

*Appeals*

**Appeal against content of statement**

**7.**—(1) Article 18 of the 1996 Order (appeal against content of statement) is amended as follows.

(2) For paragraphs (1) and (2)—

"(1) The parent of a child for whom a board maintains a statement under Article 16 may appeal to the Tribunal—

(a) when the statement is first made,

(b) if an amendment is made to the statement, or

(c) if, after conducting an assessment under Article 15, the board determines not to amend the statement.

(1A) An appeal under this Article may be against any of the following—

(a) the description in the statement of the board's assessment of the child's special educational needs,

(b) the special educational provision specified in the statement (including the name of a school so specified),

(c) if no school is specified in the statement, that fact.

(2) Paragraph (1)(b) does not apply where the amendment is made in pursuance of—

(a) paragraph 11 (change of named school at request of parent) or 13(4)(b) (amendment ordered by Tribunal) of Schedule 2; or

(b) directions under paragraph 2 of Schedule 13 to the 1986 Order (revocation of school attendance order);

and paragraph (1)(c) does not apply to a determination made following the service of notice under paragraph 3 (amendment by board) of Schedule 2.".

(3) In paragraph (4)(a) for "paragraph 3" substitute "paragraph 5".