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## STATUTORY INSTRUMENTS

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# 1996 No. 274 (N.I. 1)

## The Education (Northern Ireland) Order 1996

- - - - - 14th February 1996

### PART I INTRODUCTORY

#### Title and commencement

1.—(1) This Order may be cited as the Education (Northern Ireland) Order 1996.

(2) Except as provided by paragraph (3), this Order shall come into operation on the expiration of two months from the day on which it is made.

(3) The following provisions, namely —

- (a) Part II and Schedules 1 and 2;
- (b) Articles 31 and 34;
- (c) Article 35(1) to (5) and Schedule 3;
- (d) Articles 40 and 41 and Schedule 4;
- (e) Part I of Schedule 5 and so much of, Article 43 as relates thereto;
- (f) Part I of Schedule 6 and so much of Article 44 as relates thereto;

shall come into operation on such day or days as the Department may by order appoint<sup>F1</sup>.

(4) An order under paragraph (3) may make such transitional provision as appears to the Department to be necessary or expedient in connection with the provisions brought into operation by the order.

<b>F1</b> partly exercised by SRs. 1996/329;1997/307;1998/205
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#### 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 and the Education and Libraries (Northern Ireland) Order 1993; 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.

## PART II

### CHILDREN WITH SPECIAL EDUCATIONAL NEEDS

#### *Introductory*

#### **Meaning of “special educational needs” and “special educational provision” etc.**

3.—(1) For the purposes of the Education Orders, a child has “special educational needs” if he has a learning difficulty which calls for special educational provision to be made for him.

(2) For the purposes of this Part, subject to paragraph (3), a child has a “learning difficulty” if—

- (a) he has a significantly greater difficulty in learning than the majority of children of his age,
- (b) he has a disability which either prevents or hinders him from making use of educational facilities of a kind generally provided for children of his age in ordinary schools, or
- (c) he has not attained the lower limit of compulsory school age and is, or would be if special educational provision were not made for him, likely to fall within sub-paragraph (a) or (b) when he is of compulsory school age.

(3) A child is not to be taken as having a learning difficulty solely because the language (or form of, the language) in which he is, or will be, taught is different from a language (or form of a language) which has at any time been spoken in his home.

(4) In the Education Orders, “special educational provision” means—

- (a) in relation to a child who has attained the age of two years, educational provision which is additional to, or otherwise different from, the educational provision made generally for children of his age in ordinary schools, and
- (b) in relation to a child under that age, educational provision of any kind.

(5) In the Education Orders, “special school” means a controlled or voluntary school which is specially organised to make special educational provision for pupils with special educational needs and is recognised by the Department as a special school.

(6) In this Part, “ordinary school” means a grant-aided school which is not a special school.

(7) In this Part, “child” includes any person who has not attained the age of nineteen years and is a registered pupil at a school.

(8) For the purposes of paragraph (7) a person who attains the age of nineteen years at any time during a [<sup>F2</sup>school year] at any school shall be deemed not to have attained that age until the day after the end of that [<sup>F2</sup>school year] .

(9) In this Part, “the Tribunal” has the meaning assigned to it by Article 22(1).

<b>F2</b>	Words in art. 3(8) substituted (24.3.2016) by <a href="#">Special Educational Needs and Disability Act (Northern Ireland) 2016 (c. 8)</a> , ss. <b>15(2)</b> , 18(1)(a)
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## *Code of practice*

### **Code of practice**

4.—(1) The Department shall issue, and may from time to time amend, a code of practice giving practical guidance in respect of the discharge by boards and the Boards of Governors of grant-aided schools of their functions under this Part.

(2) It shall be the duty of—

- (a) boards and Boards of Governors of grant-aided schools exercising functions under this Part, and
- (b) any other person exercising any function for the purpose of the discharge by boards and Boards of Governors of grant-aided schools of functions under this Part,

to have regard to the provisions of the code.

(3) On any appeal, the Tribunal shall have regard to any provision of the code which appears to the Tribunal to be relevant to any question arising on the appeal.

(4) The Department shall publish the code as for the time being in force.

### **Making and amendment of code**

5.—(1) Where the Department proposes to issue or amend a code of practice, it shall prepare a draft of the code (or amendment).

(2) The Department shall consult such persons about the draft as the Department thinks fit and shall consider any representations made by them.

(3) If the Department determines to proceed with the draft (either in its original form or with such modifications as the Department thinks fit), the Department shall issue the code or amendment to the code in the form of the draft and the code or amendment shall come into force on such day as the Department may by order appoint.

## *Special educational provision: general*

### **Review of arrangements**

6.—(1) A board shall—

- (a) determine, and keep under review, its policy in relation to special educational provision; and
- (b) keep under review the arrangements made by it for special educational provision.

(2) In exercising its functions under paragraph (1)(a), [<sup>F3</sup>the Authority] shall consult—

- (a) the Boards of Governors of grant-aided schools <sup>F4</sup>...;

<sup>F5</sup>(b) .....

- (c) the Council for Catholic Maintained Schools; and
- (d) such other persons as it thinks fit.

**F3** Words in Order substituted (1.4.2015) by [Education Act \(Northern Ireland\) 2014 \(c. 12\)](#), [Sch. 3 para. 1\(1\)\(a\)](#) (with [Sch. 2 para. 4\(3\)](#), [Sch. 3 para. 1\(2\)](#)); S.R. 2015/35, art. 2(b)

**F4** Words in art. 6(2)(a) repealed (1.4.2015) by [Education Act \(Northern Ireland\) 2014 \(c. 12\)](#), [Sch. 4](#) (with [Sch. 2 para. 4\(3\)](#)); S.R. 2015/35, art. 2(b)

**Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Education (Northern Ireland) Order 1996. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

**F5** Art. 6(2)(b) repealed (1.4.2015) by [Education Act \(Northern Ireland\) 2014 \(c. 12\)](#), [Sch. 4](#) (with [Sch. 2 para. 4\(3\)](#)); S.R. 2015/35, art. 2(b)

**Modifications etc. (not altering text)**

**C1** Arts. 6-21B: power to disapply or modify conferred (temp.) (25.3.2020) by [Coronavirus Act 2020 \(c. 7\)](#), s. 87(1), [Sch. 17 para. 17](#) (with ss. 88-90)

**[<sup>F6</sup>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.]

**F6** [2005 NI 6](#)

**Modifications etc. (not altering text)**

**C1** Arts. 6-21B: power to disapply or modify conferred (temp.) (25.3.2020) by [Coronavirus Act 2020 \(c. 7\)](#), s. 87(1), [Sch. 17 para. 17](#) (with ss. 88-90)

**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) [<sup>F3</sup>the Authority] ;
  - (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) [<sup>F3</sup>the Authority] ;
  - (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 [<sup>F3</sup>the Authority] 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).

**F3** Words in Order substituted (1.4.2015) by [Education Act \(Northern Ireland\) 2014 \(c. 12\)](#), [Sch. 3 para. 1\(1\)\(a\)](#) (with [Sch. 2 para. 4\(3\)](#), [Sch. 3 para. 1\(2\)](#)); S.R. 2015/35, art. 2(b)

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### **Duties in relation to pupils with special educational needs in ordinary schools**

**8.—**(1) The Board of Governors of an ordinary school shall—

- (a) use its best endeavours, in exercising its functions in relation to the school, to secure that if any [<sup>F7</sup>pupil attending the school] has special educational needs the special educational provision which his learning difficulty calls for is made,
- (b) secure that, where a [<sup>F7</sup>pupil attending the school] has special educational needs, those needs are made known to all who are likely to teach him, and
- (c) secure that the teachers in the school are aware of the importance of identifying, and providing for, those [<sup>F8</sup>pupils attending the school] who have special educational needs.

(2) Where a child who has special educational needs is being educated in an ordinary school, those concerned with making special educational provision for the child shall secure, so far as is reasonably practicable and is compatible with—

- (a) the child receiving the special educational provision which his learning difficulty calls for,
- (b) the provision of efficient education for the children with whom he will be educated, and
- (c) the efficient use of resources,

that the child engages in the activities of the school together with children who do not have special educational needs.

(3) The annual report for an ordinary school prepared under Article 125 of the 1989 Order shall describe—

- (a) any special arrangements made for the admission of pupils to whom paragraph (4) applies;