



Department of
Education

www.deni.gov.uk

AN ROINN

Oideachais

MÁNNYSTRIE O

Lear

Peter McCallion
Clerk to the Committee for Education
Room 375a
Parliament Buildings
Ballymiscaw
Stormont
BELFAST
BT4 3XX

Tel No: (028) 9127 9746

Fax No: (028) 9127 9100

Email: russell.welsh@deni.gov.uk

Your ref: PMcC/KM/2189

16 July 2015

Dear Peter

SPECIAL EDUCATIONAL NEEDS AND DISABILITY BILL

I refer to your letter of 12 June 2015 regarding the Committee's request for a Keeling Schedule, with limited annotations, showing how the Bill would give effect to the objectives set out in the Explanatory and Financial Memorandum.

A Keeling Schedule with annotations is now attached at Annex A.

I would like to apologise for the delay in providing the annotations to the Keeling Schedule.

Yours sincerely

Russell

RUSSELL WELSH
Departmental Assembly Liaison Officer

The Education (Northern Ireland) Order 1996

1996 No. 274 (N.I. 1)

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 school ~~term~~ [year] at any school shall be deemed not to have attained that age until the day after the end of that school ~~term~~ [year]

Comment [AR1]: Gives effect to clause 13 to allow the Education Authority (EA) to maintain a SEN statement, to the end of the school year following the child's 19th birthday.

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

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***Duty of the 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.

Comment [AR2]: Gives effect to clause 1 by placing a duty on the EA, so far as reasonably practicable, to seek and have regard to the views of a particular child in exercising its function within the SEN framework.

Comment [AR3]: Gives effect to clause 1 by placing a duty on the EA, to have regard to the importance of the child with SEN participating in decisions and for the child to be provided with information and support necessary to enable participation in those decisions. To complement this clause, Schedule 1 paragraph 12 amends Article 21A (Advice and Information) to provide that the EA arrange for a child with SEN to be provided with advice and information on matters about those needs.

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), a board shall consult—

(a) the Boards of Governors of grant-aided schools in its area;

(b) other boards;

(c) the Council for Catholic Maintained Schools; and

(d) such other persons as it thinks fit.

Comment [AR4]: Gives effect to clause 2 by placing a duty on the EA to prepare a plan of the arrangements made or proposed to be made for SEN provision.

Comment [AR5]: Gives effect to clause 2 by requiring that the EA's plan sets out a description of the resources and advisory and support services it proposes to make available regarding the EA fulfilling its functions in relation to special educational provision. The EA would also be required to set out the arrangements for securing the provision of any training for grant aided schools required for their effective discharge of their functions in connection with special educational provision.

Comment [AR6]: Gives effect to clause 2 by requiring the EA to review the plan of arrangements for special educational provision at least once a year and also a provision that the EA could revise it at any time.

Comment [AR7]: Gives effect to clause 2 by requiring the EA to consult with such bodies or persons in preparing, reviewing or revising the plan of its arrangements for special educational provision (subject to regulations).

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

6A.—(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 connection with 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 (8)(c) consult such bodies or persons as it considers appropriate.

(5) The Authority shall publish the plan on or before 31st July in any year

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 may make provision in relation to plans and may, in particular, prescribe—

(a) the form and content of a plan;

(b) the procedure to be followed in connection with the preparation, review or revision of a plan; and

(c) the persons to be consulted by the Authority under paragraph (4).

[F1Duty 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~~

(a) the wishes of—

(i) the child, if the child is over compulsory school age,

(ii) the parent of the child in any other case; 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~~

(iii) the child, if the child is over compulsory school age, or the parent of the child in any other case; and

Comment [AR8]: Gives effect to clause 2 by requiring the EA to publish the plan of its arrangements for special educational provision on or before 31st of July each year.

Comment [AR9]: Gives effect to clause 2 by requiring the EA to publish the plan of its arrangements for special educational provision in such a manner to bring it to the attention of those who will be affected by it (e.g. schools, parents, children over compulsory school age)

Comment [AR10]: Gives effect to clause 2 by providing a regulatory power (subject to negative resolution) to set out the content and form of the EA plan of the arrangements for special educational provision.

Comment [AR11]: Gives effect to clause 9 (1) and paragraph 1 of the Schedule to provide new rights to a child over compulsory school age. Reflects that if a statement is maintained for a child over compulsory school age, he shall be educated in an ordinary school unless it is incompatible with his wishes.

Comment [AR12]: Gives effect to clause 9(1) and paragraph 2(2) of the Schedule to provide new rights to a child over compulsory school age. Reflects that if a child over compulsory school age is to be admitted to a special school for the purpose of a statutory assessment (Article 15) his admission is with his agreement, and with the agreement of the EA and the BoGs of the school.

Comment [AR13]:

Comment [AR14]:

Comment [AR15]:

(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.~~

(iii) the child, if the child is over compulsory school age, or the parent of the child in any other case.

(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~~ the child or (as the case may be) the parent of the child 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.

Comment [AR16]: Gives effect to clause 9(1) and paragraph 2(3) of the Schedule to provide new rights to a child over compulsory school age. Reflects that, if a child over compulsory school age is admitted to a special school following a change in his circumstances, it is with his agreement and with the agreement of the EA and the BoGs of the school.

Comment [AR17]: Gives effect to clause 9(1) and paragraph 2(4) of the Schedule to provide new rights to a child over compulsory school age. Reflects that if the EA decides to make a statement for a child over compulsory school age, but decides not to name in the statement the school for which that child has expressed a preference under paragraph 5 of Schedule 2, the EA shall, in making the statement, comply with Article 7(3) (as amended by SENDO).

(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).

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 [F2pupil attending the school] has special educational needs the special educational provision which his learning difficulty calls for is made,
- (b) secure that, where a [F2pupil attending the school] has special educational needs, those needs are made known to all who are likely to ~~teach him~~ [be concerned with the pupil's education], and
- (c) secure that the teachers in the school ~~are aware of the importance of identifying, and providing~~ take reasonable steps to identify and provide for, those [F3pupils attending the school] who have special educational needs,
- (d) prepare and keep under review a programme of special educational provision (a “personal learning plan”) in respect of 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, and
 - (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(1) which relate to disagreements between the Board of Governors and such persons.

(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.

(2A) Regulations may—

Comment [AR18]: Gives effect to clause 3(2)(a) to provide that people, as well as teachers, such as classroom assistants, playground assistants, visiting therapists etc working within a school may be involved in supporting a SEN pupil's education, and where this is the case, they should be made aware of the child's special educational needs. The objective is to ensure that schools are not only aware of a pupil's SEN, but take proactive steps to address the needs.

Comment [AR19]: Gives effect to clause 3(2)(b) to strengthen the existing duties of BoGs to ensure that teachers proactively take reasonable steps to address the needs of pupils with SEN. The objective is to ensure that schools are not only aware of a pupil's SEN, but take practical steps to address the needs.

Comment [AR20]: Gives effect to clause 3(2)(c) to provide that the BoGs of an ordinary school prepare and keep under review a personal learning plan (PLP) for each SEN pupil in the school. The objective is to ensure a plan is completed for each pupil and, through guidance in a revised code of practice, to achieve greater clarity and consistency. The Code would set out such aspects as: the format of the PLP, timescales for completion, involvement of the child and the parent, and the review arrangements.

Comment [AR21]: Gives effect to clause 3(2)(c) for a new duty on the BoGs of an ordinary school to designate a teacher as a learning support co-ordinator. The LSC will replace the current role of the SENDO in schools. Guidance in the revised code of practice will outline the range of duties of duties and responsibilities of the LSC and give effect to the objective of placing the child at the centre of decisions concerning his or her SEN.

Comment [AR22]: Gives effect to clause 3(2)(c) by placing a new duty on the BoGs to make parents and children over compulsory school age aware of the independent arrangements for the avoidance and resolution of disputes between them and the BoGs. Clause 8 (2) (4) complements this through amendment to Article 21B (resolution of disputes) providing that the person who delivers the avoidance and resolution service should not be an employee of the EA.

- (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.

(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;
- (b) the steps taken to prevent pupils with special educational needs from being treated less favourably than other pupils;
- (c) the facilities provided to assist access to the school by pupils with special educational needs.

(4) This paragraph applies to a pupil if—

- (a) he has special educational needs; but
- (b) no statement is maintained in respect of him under Article 16.

Annotations: ?

F2 Words in art. 8(1)(a)(b) substituted (23.3.2007) by Education (Northern Ireland) Order 2006 (S.I. 2006/1915 (N.I. 11)), arts. 1(4)(c), 44(1), **Sch. 2 para. 35(a)**; S.R. 2007/197, **art. 2(a)**

F3 Words in art. 8(1)(c) substituted (23.3.2007) by Education (Northern Ireland) Order 2006 (S.I. 2006/1915 (N.I. 11)), arts. 1(4)(c), 44(1), **Sch. 2 para. 35(b)**; S.R. 2007/197, **art. 2(a)**

Duties in relation to pupils in special schools

8ZA.—(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.”

Comment [AR23]: Gives effect to clause 3(3) by requiring the BoGs to notify the EA, if the EA is making SEN provision for that child, of changes regarding that child. A regulation-making power (negative resolution) provides for the manner of notifying the change and the circumstances to be notified e.g. the child has moved to another school in or outside the EA’s area, the child is being home educated or in education other than at school (EOTAS), or has been hospitalised.

Comment [AR24]: Gives effect to clause 3(3) through a regulation power (negative resolution) to prescribe the qualifications, experience or both of the learning support co-ordinator. For example the requirement that the LSC may have previously worked in a role of advising on, or coordinating SEN provision.

Comment [AR25]: Gives effect to clause 3(3) through a regulation making power (negative resolution) to prescribe other functions relating to learning support coordinators in ordinary schools. For example, the LSC to routinely report on SEN matters to the school’s senior management team and to the BoGs.

Comment [AR26]: Gives effect to clause 3(4) to provide that BoGs of special schools complete a personal learning plan for each SEN pupil in the school (for children at the school undergoing statutory assessment or who have a statement). See comment AR21.

Comment [AR27]: Gives effect to clause 3(4) to provide that BoGs of special schools designate a teacher in the school as learning support co-ordinator.

Comment [AR28]: Gives effect to clause 3(4) for regulation (negative resolution) to prescribe the qualifications, experience or both of the LSC in a special school. For example, the requirement that the LSC has a period of experience in teaching pupils in a special school environment. Regulations would also prescribe other functions relating to LSCs in special schools. For example, as a matter of routine the LSC report on SEN matters to the school’s senior management team and to the BoGs.

Comment [AR29]: Delete?

[F4Duty to inform parent or child where special educational provision made

8A. If—

- (a) a child for whom no statement is maintained under Article 16 is a registered pupil at an ordinary grant-aided school;
- (b) special educational provision is made for him **[F5(whether at the school or elsewhere in pursuance of arrangements under Article 21 of the Education (Northern Ireland) Order 2006)]** because it is considered that he has special educational needs; and
- (c) ~~his parent~~ **the child or (as the case may be) the child's parent** has not previously been informed under this Article of special educational provision made for him **F6. . . ,**

the Board of Governors of the school shall ~~inform the child's parent~~ **inform the child, if the child is over compulsory school age, or the parent of the child in any other case** that special educational provision is being made for him **F6. . .** because it is considered that he has special educational needs.]

Annotations: ?

F5 Words in art. 8A(b) substituted (23.3.2007) by Education (Northern Ireland) Order 2006 (S.I. 2006/1915 (N.I. 11)), arts. 1(4)(c), 44(1), **Sch. 2 para. 36(a)**; S.R. 2007/197, **art. 2(a)**

F6 Words in art. 8A repealed (23.3.2007) by Education (Northern Ireland) Order 2006 (S.I. 2006/1915 (N.I. 11)), arts. 1(4)(c)(d), 44, Sch. 2 para. 36(b), **Sch. 3 Pt. III**; S.R. 2007/197, **art. 2**, Sch.

Determination by Boards of Governors of policy in relation to provision of education for children with special educational needs

9. (1) The Board of Governors of a grant-aided school shall determine, and keep under review, its policy in relation to the provision of education for children with special educational needs.

(2) In exercising its functions under paragraph (1), a Board of Governors of a school shall, to the extent that it may appear necessary or desirable for the purpose of co-ordinating provision for children with special educational needs, consult with—

- (a) the board for the area in which the school is situated;
- (b) the Boards of Governors of other grant-aided schools; and
- (c) the Council for Catholic Maintained Schools (in the case of a Catholic maintained school).

(3) The policy determined by a Board of Governors under paragraph (1) shall be compatible with the statutory provisions relating to education (including, in particular, those relating to children with special educational needs).

Comment [AR30]: Gives effect to clause 9(1) and paragraph 3(4) of the Schedule to provide new rights to a child over compulsory school age. Reflects that, if the child is over compulsory school age, the BoGs of the school have a duty to inform that child, instead of his parent, if special educational provision is made for him because it is considered he has special educational needs and he has not previously been informed of the special educational provision made for him.

(4) In carrying out its functions under the Education Orders in relation to a school under its management, a Board of Governors shall have regard to its policy in relation to the provision of education for children with special educational needs.

(5) The annual report for a grant-aided school prepared under Article 125 of the 1989 Order shall describe what steps have been taken by the Board of Governors to secure the implementation of its policy in relation to the provision of education for children with special educational needs.

Special educational provision otherwise than in a grant-aided school

Special educational provision otherwise than in a grant-aided school

10. (1) Subject to paragraphs (2) and (3) and to Articles 11 and 12, a board may arrange for the special educational provision (or any part of it) which any learning difficulty of a child in its area calls for to be made—

(a) in an institution outside Northern Ireland, or

(b) in Northern Ireland otherwise than in a grant-aided school.

(2) A board shall not make any arrangements under paragraph (1) unless it is satisfied that—

(a) the interests of the child require such arrangements to be made; and

(b) those arrangements are compatible with the efficient use of resources.

(3) Before making any arrangements under this Article, a board shall ~~consult the child's parent.~~

(a) the child, if the child is over compulsory school age, or

(b) the parent of the child in any other case.

(4) This Article is without prejudice to any other powers of a board.

Special educational provision in institutions outside Northern Ireland

11. (1) No person shall so exercise his functions under this Part that the special educational provision (or any part of it) which any learning difficulty of a child calls for is made in an institution outside Northern Ireland unless the institution is one which specialises in providing for children with special needs.

(2) In paragraph (1), “children with special needs” means children who have particular needs which would be special educational needs if those children were in Northern Ireland.

Comment [AR31]: Gives effect to clause 9(1) and paragraph 4 of the Schedule to provide new rights to a child over compulsory school age. Reflects that if the child is over compulsory school age, the EA is required to consult the child, instead of his parent, before making any arrangements for special educational provision other than in a grant-aided school.

(3) Where a board arranges under Article 10(1)(a) for special educational provision in respect of a child to be made in an institution outside Northern Ireland, the board shall pay—

- (a) the fees charged by the institution;
- (b) the expenses reasonably incurred in maintaining him while he is at the institution or travelling to or from it;
- (c) his reasonable travelling expenses; and
- (d) the expenses reasonably incurred by any person accompanying him while he is travelling or staying at the institution.

Special educational provision in institutions in Northern Ireland other than grant-aided schools

12. (1) No person shall so exercise his functions under this Part that the special educational provision (or any part of it) which any learning difficulty of a child calls for is made in an institution in Northern Ireland other than a grant-aided school unless—

- (a) the institution is for the time being approved by the Department under Article 26 as suitable for the admission of children with special educational needs, or
- (b) the Department consents to the child being educated there.

[F7(1A) But that does not apply to a board deciding, for the purposes of Article 16(5), whether a parent has made suitable arrangements.]

(2) Where a board arranges under Article 10(1)(b) for special educational provision in respect of a child to be made at an independent school in Northern Ireland, the board—

- (a) shall pay the fees payable in respect of the education provided for the child at the school;
- (b) may pay any fees payable in respect of board and lodging provided for the child at the school; and
- (c) may provide transport for the child to facilitate his attendance at the school.

(3) Where a board arranges under Article 10(1)(b) for special education provision in respect of a child to be made at an institution in Northern Ireland other than a school, the board may contribute to the costs of providing education to the child at the institution or assist the institution in the provision of that education, and may in particular—

- (a) pay the fees payable in respect of the education provided for the child at the institution;
- (b) pay any fees payable in respect of board and lodging provided for the child at the institution;
- (c) provide transport for the child to facilitate his attendance at the institution; and

(d) provide equipment and services to the institution.

Identification and assessment of children with special educational needs

General duty of board towards children for whom it is responsible

13. (1) A board shall exercise its powers with a view to securing that, of the children for whom it is responsible, it identifies those to whom paragraph (2) applies.

(2) This paragraph applies to a child if—

(a) he has special educational needs, and

(b) it is necessary for the board to determine the special educational provision which any learning difficulty he may have calls for.

(3) For the purposes of this Part a board is responsible for a child if he is in the area of the board and—

(a) he is a registered pupil at a grant-aided school, or

(b) he has attained the age of two years, is not over compulsory school age and has been brought to the attention of the board as having, or probably having, special educational needs.

Duties of health and social services boards and health and social services trusts

14. (1) If a health and social services authority, in the course of exercising any of its functions in relation to a child who has not attained the lower limit of compulsory school age, forms the opinion that he has, or probably has, special educational needs, that authority shall—

(a) inform the child's parent of its opinion and of its duty under this paragraph and paragraph (2); and

(b) after giving the parent an opportunity to discuss that opinion with an officer of the authority, bring it to the attention of the appropriate board.

(2) If, in a case falling within paragraph (1), the health and social services authority is of the opinion that a particular voluntary organisation is likely to be able to give the parent advice or assistance in connection with any special educational needs that the child may have, that authority shall inform the parent accordingly.

(3) Where it appears to a board that any health and social services authority could, by taking any specified action, help in the exercise of any of the board's functions under this Part, the board ~~may request~~ **[shall request]** the help of the authority, specifying the action in question.

Comment [AR32]: Gives effect to clause 4(2) to impose a duty on the EA to request help in all cases where the EA considers that the Regional Health and Social Care Board or a health and social care trust could help in the exercise of its functions to ensure timely assessment and provision for SEN children in order for them to achieve their full potential. This would require the EA to seek the help of the Trust only in a case where the EA is of the view that the Trust could help regarding a specific child.

(4) A health and social services authority whose help is so requested shall comply with the request unless it considers that—

(a) the help requested is not necessary for the purpose of the exercise by the board of those functions, or

(b) having regard to the resources available to it for the purpose of the exercise of its functions, it is not reasonable for it to comply with the request, or

(c) compliance with the request is not compatible with its own statutory or other duties or obligations or unduly prejudices the discharge of any of its functions.

(5) Regulations may provide that, where a health and social services authority is under a duty by virtue of paragraph (4) to comply with a request to help a board in the making of an assessment under Article 15 or a statement under Article 16, it must, subject to prescribed exceptions, comply with the request within the prescribed period.

(6) In this Article “health and social services authority” means—

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

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

Assessment of educational needs

15. (1) Where a board is of the opinion that a child for whom it is responsible falls, or probably falls, within paragraph (2), it shall serve a notice on ~~the child's parent informing him~~ the child (if the child is over compulsory school age) or the parent of the child (in any other case) informing that person—

(a) that the board ~~[F8 is considering whether]~~ to make an assessment of the child's educational needs,

(b) of the procedure to be followed in making the assessment,

(c) of the name of the officer of the board from whom further information may be obtained, and

(d) of ~~the parent's~~ that person's right to make representations, and submit written evidence, to the board within such period (which shall not be less than ~~twenty-nine~~ [22] days beginning with the date on which the notice is served) as may be specified in the notice.

(2) A child falls within this paragraph if—

(a) he has special educational needs, and

Comment [AR33]: Gives effect to clause 4(3) to update the definition of “health and social services authority”.

Comment [AR34]: Gives effect to clause 9(1) and paragraph 5(2) of the Schedule to provide new rights to a child over compulsory school age. Reflects that if a child is over compulsory school age the EA should serve a notice on that child, instead of on the parent, informing that consideration is being given on whether to make an assessment of his needs. Paragraph 12(4) and (5) of the Schedule provide that if that child is over compulsory school age but under age 18, the EA is required to inform the parent of the notice and provide a copy of the notice to the child's parent.

Comment [AR35]: Gives effect to clause 9 (1) and paragraph 5(3) of the Schedule to provide new rights to a child over compulsory school age. Reflects that if a child is over compulsory school age, that child has a right to make representations and submit written evidence for the purpose of the statutory assessment instead of the parent.

Comment [AR36]: Gives effect to clause 5(1) by setting at, not less than 22 days, the period in which the EA can receive written evidence from parents of a child of compulsory school age or, from children over compulsory school age when the EA is considering whether to undertake a statutory assessment. If the response is received after 22 days, the EA will still accept it but the EA will be exempt from meeting the statutory time limit for completion of the statementing process. The objective is to ensure early identification, assessment and provision for SEN children.

(b) it is necessary for the board to determine the special educational provision which any learning difficulty he may have calls for.

(3) Where—

(a) a board has served a notice under paragraph (1), and, [subject to paragraph (3A)] the period specified in the notice in accordance with paragraph (1)(d) has expired, and

(b) the board remains of the opinion, after taking into account any representations made and any evidence submitted to it in response to the notice, that the child falls, or probably falls, within paragraph (2),

the board shall make an assessment of his educational needs.

(3A) The Authority may proceed to make an assessment under paragraph (3) before 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.

(4) Where a board decides to make an assessment under this Article, it shall give notice in writing ~~to the child's parent~~ of that decision and of the board's reasons for making it ~~to—~~

(a) the child, if the child is over compulsory school age, or

(b) the parent of the child in any other case.

(5) Schedule 1 (which makes provision in relation to the making of assessments under this Article) shall have effect.

(6) Where, at any time after serving a notice under paragraph (1), a board decides not to assess the educational needs of the child concerned it shall give notice in writing ~~to the child's parent~~ of the board's decision and the reasons for making it ~~to—~~

(a) the child, if the child is over compulsory school age, or

(b) the parent of the child in any other case.

Statement of special educational needs

16. (1) If, in the light of an assessment under Article 15 of any child's educational needs and of any representations made by ~~the child's parent~~ the child (if the child is over compulsory school age) or the parent of the child (in any other case), it is necessary for the board to determine the special educational provision which any learning difficulty he may have calls for, the board shall make and maintain a statement of his special educational needs.

(2) The statement shall be in such form and contain such information as may be prescribed.

(3) In particular, the statement shall—

Comment [AR37]: Gives effect to clause 5(1)(b) regarding a proviso under clause 5(1)(c) iro written consent from a parent or a child over compulsory school age to waive the specified period. See also comment AR38.

Comment [AR38]: Gives effect to clause 5(1)(c) to allow the EA to proceed with making a statutory assessment on receipt of written consent from the parent of a child of compulsory school age or, in the case of a child over compulsory school age, the child himself.

Comment [AR39]: Gives effect to clause 9(1) and paragraph 5(4) and (5) of the Schedule to provide new rights to a child over compulsory school age. Reflects that if a child is over compulsory age, the EA give notice to that child, instead of to his parent, of its decision to make an assessment and the reasons for making it. Paragraph 12(4) and (5) of the Schedule provide that if that child is over compulsory school age but under age 18, the EA is required to inform the parent of the notice and provide a copy of the notice to the child's parent.

Comment [AR40]: Gives effect to clause 9(1) and paragraph (4) and (5) of the Schedule to provide new rights to a child over compulsory school age. Reflects that if a child is over compulsory school age, the EA give notice to that child, instead of to his parent, of its decision not to make an assessment. Paragraph 12(4) and (5) of the Schedule provide that if that child is over compulsory school age but under age 18, the EA is required to inform the parent of the notice and provide a copy of the notice to the child's parent.

Comment [AR41]: Gives effect to clause 9(1) and paragraph 6 of the Schedule to provide new rights to a child over compulsory school age. Reflects that if a child is over compulsory school age, the EA may decide to make and maintain a statement informed by any representations made by that child, instead of by his parent.

- (a) give details of the board's assessment of the child's special educational needs, and
- (b) specify the special educational provision to be made for the purpose of meeting those needs, including the particulars required by paragraph (4).

(4) The statement shall—

- (a) specify the type of school or other institution which the board considers would be appropriate for the child,
- (b) if the board is not required under Schedule 2 to specify the name of any grant-aided school in the statement, specify the name of any school or institution (whether in Northern Ireland or elsewhere) which it considers would be appropriate for the child and should be specified in the statement, and
- (c) indicate any provision for the child for which it makes arrangements under Article 10(1)(b) otherwise than in a school or institution and which it considers should be indicated in the statement.

[F9(4A) Paragraph (4)(b) does not require the name of a school or institution to be specified if the child's parent has made suitable arrangements for the special educational provision specified in the statement to be made for the child.]

(5) Where a board maintains a statement under this Article—

- (a) unless the child's parent has made suitable arrangements, the board—
 - (i) shall arrange that the special educational provision indicated in the statement is made for the child, and
 - (ii) may arrange that any non-educational provision indicated in the statement is made for him in such manner as it considers appropriate, and
- (b) if the name of a grant-aided school is specified in the statement, the Board of Governors of the school shall admit the child to the school.

(6) Paragraph (5)(b) does not affect any power to suspend or expel from a school a pupil who is already a registered pupil there.

(7) Schedule 2 (which makes provision in relation to the making and maintenance of statements under this Article) shall have effect.

Appeal against decision not to make statement

17. (1) If, after making an assessment under Article 15 of the educational needs of any child for whom no statement is maintained under Article 16, the board does not propose to

make such a statement, it shall give notice in writing of its decision, of the reasons for making it

~~to the child's parent to —~~

(a) the child, if the child is over compulsory school age, or

(b) the parent of the child in any other case.

(2) In such a case, ~~the child's parent~~ the person to whom the notice is given —

(a) shall have the right to receive, on request, a copy of any advice given to the board on which the decision is based; and

(b) may appeal to the Tribunal against the decision.

[F10(2A)] A notice under paragraph (1) shall ~~inform the parent of~~ provide information as to the right of appeal under paragraph (2) and contain such other information as may be prescribed.

(2B) Regulations may provide that where a board is under a duty under this Article to serve any notice, the duty must be performed within the prescribed period.]

(3) On an appeal under this Article, the Tribunal may—

(a) dismiss the appeal,

(b) order the board to make and maintain such a statement, or

(c) remit the case to the board for it to reconsider whether, having regard to any observations made by the Tribunal, it is necessary for the board to determine the special educational provision which any learning difficulty the child may have calls for.

Appeal against contents of statement

18. **[F11(1)]** ~~Where the Authority maintains a statement for a child under Article 16, the child (if over compulsory school age) or the parent of the child (in any other case) 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, ~~[or after conducting a review under Article 19],~~ 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),

Comment [AR42]: Gives effect to clause 9(1) and paragraph 7(2) of the Schedule to provide new rights to a child over compulsory school age. Reflects that, if after making an assessment under Article 15, the EA does not propose to make a statement, the EA is required to give notice of its decision and the reasons for making it to the child over compulsory school age, instead of to his parent. Paragraph 12(4) and (5) of the Schedule provide that if the child is over compulsory school age but under age 18, the EA is required to inform the parent of the notice and provide a copy of the notice to the child's parent.

Comment [AR43]: Gives effect to clause 9(1) and paragraph 7(3) of the Schedule to provide new rights to a child over compulsory school age. Reflects that if the child is over compulsory school age, that child, instead of his parent, will be entitled to receive a copy of any advice given to the EA on which the EA based its decision not to make a statement.

Comment [AR44]: Gives effect to clause 9(1) and paragraph 7(4) of the Schedule to provide new rights to a child over compulsory school age. Reflects that if the child is over compulsory school age, the notice issued by the EA to that child, advising of the EA decision not to make a statement, must inform that child of the right of appeal and contain such information as may be prescribed. Paragraph 12(4) and (5) of the Schedule provide that if the child is over compulsory school age but under age 18, the EA is required to inform the parent of the notice and provide a copy of the notice to the child's parent.

Comment [AR45]: Gives effect to clause 9(1) paragraph 8(2) of the Schedule to reflect new rights provided to a child over compulsory school age. Reflects that if the child is over compulsory school age that child, instead of his parent, will have a right of appeal to the Tribunal when the statement is first made, if an amendment is made to the statement, or, if, after conducting an assessment under Article 15 or a review under Article 19, the EA determines not to amend the statement.

Comment [AR46]: Gives effect to clause 6(2) to introduce a new right of appeal to the Tribunal for a child's parent or, in the case of a child over compulsory age, the child himself, where following an annual review of a statement, the EA decides not to make any changes to the statement. Article 19 provides that all statements must be reviewed within the period of 12 months beginning either with the date on which the statement was made or the date of the previous review.

(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 ~~child or~~ 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) On an appeal under this Article, the Tribunal may—

(a) dismiss the appeal,

(b) order the board to amend the statement, so far as it describes the board'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, or

(c) order the board to cease to maintain the statement.

(4) On an appeal under this Article the Tribunal shall not order the board to specify the name of any school in the statement (either in substitution for an existing name or in a case where no school is named) unless—

(a) ~~the parent~~ the child or (as the case may be) the parent of the child has expressed a preference for the school in pursuance of arrangements under[F11 paragraph 5] of Schedule 2, or

(b) in the proceedings ~~the parent that person~~, the board or both have proposed the school.

(5) Before determining any appeal under this Article the Tribunal may, with the agreement of the parties, correct any deficiency in the statement.

[F12Unopposed appeals

18A. (1) This Article applies if—

(a) ~~the parent of a child~~ a person has appealed to the Tribunal under Article 17, 20 or 20A ~~20A or 21ZA(1)(a)~~ or paragraph 11(3) of Schedule 2 against a decision of a board, and

(b) the board notifies the Tribunal that it has determined that it will not, or will no longer, oppose the appeal.

(2) The appeal is to be treated as having been determined in favour of the appellant.

(3) If an appeal is treated as determined in favour of the appellant as a result of paragraph (2), the Tribunal is not required to make any order.

(4) Before the end of the prescribed period, the board shall—

Comment [AR47]: Gives effect to clause 9(1) and paragraph 8(3) of the Schedule to provide new rights to a SEN child over compulsory school age. Reflects that the child over compulsory school age may not appeal an amendment, under paragraph 11 of Schedule 2 if that amendment related to a change of named school or under paragraph 13(4)(b) (amendment ordered by Tribunal) of Schedule 2. This is the same position with regards to a parent.

Comment [AR48]: Gives effect to clause 9(1) and paragraph 8(4) of the Schedule to provide new rights to a child over compulsory school age. Reflects that, in the case of an appeal by a child over compulsory school age, the Tribunal shall not order the EA to specify the name of any school in a statement unless that child expressed a preference for that school. This is the same position with regard to an appeal made by a parent of a child who is not over compulsory school age.

Comment [AR49]: Gives effect to clause 9(1) and paragraph 8(5) of the Schedule to provide new rights to a child over compulsory school age. Reflects that, in the case of a child over compulsory school age, the Tribunal shall not order the EA to specify the name of any school in a statement unless in the Tribunal proceedings that child proposed the school. This is the same position with regard to an appeal made by a parent of a child who is not over compulsory school age.

Comment [AR50]: Gives effect to clause 9(1) and paragraph 9(2) of the Schedule to provide new rights to a child over compulsory school age. Reflects that, in the case of a child over compulsory school age, where that child has made an appeal against the EA decision: not to make a statement; not to make an assessment; or not to amend a statement and the EA notifies the Tribunal that it will not, or will no longer, oppose the appeal, the appeal is to be treated as having been determined in favour of the child over compulsory school age. This is the same position with regard to an appeal made by a parent of a child not over compulsory school age.

Comment [AR51]: Gives effect to clause 7(3)(a) to reflect the new right for the parents of a SEN child under the age of 2. Reflects that where a parent appealed the EA decision: not to make a statement; or, where a statement is made, about the content of a statement, and the EA notifies the Tribunal that it will not or no longer oppose the appeal, the appeal is to be treated as having been determined in favour of the parent.

(a) in the case of an appeal under Article 17, make a statement under Article 16 of the child's educational needs,

(b) in the case of an appeal under Article 20 or 20A, make an assessment of the child's educational needs,

(ba) in the case of an appeal under Article 21ZA(1)(a), make a statement under Article 21;

(c) in the case of an appeal under paragraph 11(3) of Schedule 2 against a determination of the board not to comply with **the parent's request a request under that paragraph,** comply with the request.

(5) Where the Authority is **required by paragraph (4)(a) to make a statement under Article 16,** required by paragraph (4) to make a statement, the Authority shall maintain the statement under that Article.

Reviews of statements

19. (1) A statement under Article 16 shall be reviewed by the board—

(a) on the making of an assessment in respect of the child concerned under Article 15, and

(b) in any event, within the period of twelve months beginning with the making of the statement or, as the case may be, with the previous review.

(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, if the child is over compulsory school age, or

(b) the parent of the child 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.

(2) Regulations may make provision—

(a) as to the manner in which reviews of such statements are to be conducted,

(b) as to the participation in such reviews of such persons as may be prescribed, **and**

(ba) providing 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

Comment [AR52]: Gives effect to clause 7(3)(b) about the new right of appeal to a parent of a child under 2. Requires, in the case of an unopposed appeal against the EA's decision not to make a statement, for the EA to comply with the parent's request and make a statement within a prescribed period.

Comment [AR53]: Gives effect to clause 7(3) regarding appeals by a parent of a child under 2. Requires that the EA comply with the request, in the case of an unopposed appeal in a prescribed period.

Comment [AR54]: Gives effect to clause 7(3)(c) regarding appeal by parents of SEN children under age 2. Relates to paragraph (4) of Article 18A above.

Comment [AR55]: Gives effect to clause 6(3)(a). Reflects that if the EA decides not to amend a statement following annual review, it will give a notice to the parent or, if the child is over compulsory school age, to that child of its decision, the reasons for making it and the right of appeal. Paragraph 12(4) and (5) of the Schedule provide that if the child is over compulsory school age but under age 18, the EA is required to inform the parent of the notice and provide a copy of the notice to the child's parent.

Comment [AR56]: Gives effect to clause 6(3)(a). Reflects that the parent or, if the child is over compulsory school age, the child, will have a right to receive a copy of the advice the EA was given on which the EA based its decision not to amend a statement following annual review.

Comment [AR57]: Gives effect to clause 6(3)(a) about a new right of appeal to the Tribunal. Reflects that the notice issued by the EA shall inform the parent of the child not over compulsory school age or the child over compulsory school age of the right of appeal and contain such information as may be prescribed. Paragraph 12(4) and (5) of the Schedule provides that if the child is over compulsory school age but under age 18, the EA is required to inform the parent of the notice and provide a copy of the notice to the child's parent.

Comment [AR58]: Gives effect to clause 6(3)(b)(i) to omit the word "and".

Comment [AR59]: Gives effect to clause 6(3)(b)(ii) to require the Authority to serve any notice (about a decision not to amend the statement) under this Article within the prescribed period. Regulations will set out this prescribed period.

(c) in connection with such other matters relating to such reviews as the Department considers appropriate.

Assessment of educational needs at request of ~~child's parent~~ child or parent

20. (1) Where—

(a) ~~the parent of a child for whom a board is responsible~~ **a child for whom the Authority is responsible (if the child over compulsory school age) or the parent of such a child (in any other case)** asks the board to arrange for an assessment to be made in respect of the child under Article 15,

(b) such an assessment has not been made within the period of six months ending with the date on which the request is made, and

(c) it is necessary for the board to make an assessment under that Article, the board shall comply with that request.

(2) Paragraph (1) applies whether or not the board is maintaining a statement under Article 16 for the child.

(3) If in any case where paragraph (1)(a) and (b) applies the board decides not to comply with the request—

(a) it shall give **[F13** notice in writing of that decision and of the reasons for making it to ~~the parent of the child~~ **the person who made the request,** and

(b) ~~the parent~~ **that person** may appeal to the Tribunal against the decision.

[F13(3A) A notice **F14.** . . shall ~~inform the parent of~~ **provide information as to** the right of appeal under paragraph (3)(b) and contain such other information as may be prescribed.]

(4) On an appeal under paragraph (3) the Tribunal may—

(a) dismiss the appeal, or

(b) order the board to arrange for an assessment to be made in respect of the child under Article 15.

[F15] Review or assessment of educational needs at request of responsible body

20A. (1) This Article applies if—

Comment [AR60]: Gives effect to clause 9(1) and paragraph 10(3) of the Schedule to provide new rights to children over compulsory school age. Reflects the right of a child over compulsory school age, instead of his parent, to request a statutory assessment of his educational needs. The Authority would continue to have a duty to comply with such a request for an assessment from a parent of a child, not over the upper limit of compulsory school age.

Comment [AR61]: Gives effect to clause 9(1) and paragraph 10(4) and (5) of the Schedule to provide new rights to children over compulsory school age. Reflects that in the case of a child over compulsory school, the EA must issue a notice to that child of its decision not to comply with the request for statutory assessment and the reason for making that decision. Paragraph 12(4) of the Schedule provides that if the child is over compulsory school age but under 18, the EA is required to inform the parent of the notice and provide a copy of the notice to the child's parent.

Comment [AR62]: Gives effect to clause 9(1) and paragraph 10(5) of the Schedule to provide new rights to children over compulsory school age. Reflects that the child over compulsory school has a right of appeal to the Tribunal against a decision of the EA not to comply with a request to conduct an assessment of educational needs.

Comment [AR63]: Gives effect to clause 9(1) and paragraph 10(6) of the Schedule to provide new rights to children over compulsory school age. Reflects that the notice issued by the EA to the child over compulsory school age about its decision not to comply with the request for an assessment must provide information as to the right of appeal and contain other information as may be prescribed (in regulations). Paragraph 12(4) and (5) of the Schedule provides that if the child is over compulsory school age but under age 18, the EA is required to inform the parent of the notice and provide a copy of the notice to the child's parent.

(a) a child is a registered pupil at a school (whether or not he is a child in respect of whom a statement is maintained under Article 16),

(b) the responsible body asks the board to arrange for an assessment to be made in respect of him under Article 15, and

(c) such an assessment has not been made within the period of six months ending with the date on which the request is made.

(2) If it is necessary for the board to make an assessment or further assessment under Article 15, it shall comply with the request.

(3) Before deciding whether to comply with the request, the board shall serve on ~~the child's parent~~ **the child (if the child is over compulsory school age) or the parent of the child (in any other case)** a notice informing him—

(a) that it is considering whether to make an assessment of the child's educational needs,

(b) of the procedure to be followed in making the assessment,

(c) of the name of an officer of the board from whom further information may be obtained, and

(d) of ~~the parent's right~~ **the right of the child or (as the case may be) of the parent** to make representations, and submit written evidence, to the board before the end of the period specified in the notice ("the specified period").

(4) The specified period shall not be less than ~~29~~ **[22]** days beginning with the date on which the notice is served.

(5) **[Subject to paragraph (5A),]** The board may not decide whether to comply with the request until the specified period has expired.

(5A) The Authority may take a decision under paragraph (5) before 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.

(6) The board shall take into account any representations made, and any evidence submitted, to it in response to the notice under paragraph (3).

(7) If, as a result of this Article, a board decides to make an assessment under Article 15, it shall give written notice ~~to the child's parent and to the responsible body which made the request,~~ of the decision and of the board's reasons for making it ~~to—~~

(a) the responsible body which made the request; and

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

Comment [AR64]: Gives effect to clause 9(1) and paragraph 11(3) of the Schedule to provide new rights to children over compulsory school age. The notice issued will include the right of the child over compulsory school age to make representations and submit written evidence to the EA before the end of a prescribed period (in regulations).

Comment [AR65]: Gives effect to clause 5(2)(a) to ensure early assessment of SEN by reducing the time period from 29 to 22 days for the EA to receive written evidence from parents of children of compulsory school age or, from children over compulsory school age, when the EA is considering making a statutory assessment at the request of the BoG of a grant-aided school, or the proprietor of an independent school.

Comment [AR66]: Gives effect to clause 5(2)(b). Reflects that the EA may not decide whether to comply with the request by the responsible body to carry out the statutory assessment until the 22 day period has expired unless it has obtained the consent in writing of the person on whom the notice was served (including the child over compulsory school age).

Comment [AR67]: Gives effect to clause 5(2)(c) to ensure early assessment and provision of SEN and to reduce bureaucracy. Provides that the EA can continue with the statutory assessment of a child's needs before the expiration of the 22 day period with the written consent of a parent if the child is of compulsory school age, or of the child, if over compulsory school age.

Comment [AR68]: Gives effect to clause 9(1) paragraph 11(4) of the Schedule to provide new rights to children over compulsory school age. Reflects the EA duty to give notice to the child over compulsory school age of the EA decision to make an assessment. Paragraph 12(4) and (5) of the Schedule provides that if the child is over compulsory school age but under age 18, the EA is required to inform the parent of the notice and provide a copy of the notice to the child's parent.

Comment [AR69]:

(8) If, after serving a notice under paragraph (3), the board decides not to assess the educational needs of the child—

(a) it shall give written notice of the decision and of the board's reasons for making it ~~to his parent and to the responsible body which made the request, and to—~~

(i) the responsible body which made the request, and

(ii) the child (if the child is over compulsory school age) or the parent of the child (in any other case); and

(b) the parent ~~the child or parent to whom the notice is given~~ may appeal to the Tribunal against the decision.

~~(9) A notice given under paragraph (8)(a) to the child's parent shall—~~

~~(a) inform the parent of his right to appeal, and~~

~~(b) contain such other information (if any) as may be prescribed.~~

~~(9) A notice given to a person under paragraph (8)(a)(ii) shall—~~

~~(a) provide information as to the person's right to appeal, and~~

~~(b) contain such other information (if any) as may be prescribed.~~

(10) On an appeal under paragraph (8) the Tribunal may—

(a) dismiss it, or

(b) order the board to arrange for an assessment to be made in respect of the child under Article 15.

(11) In this Article “the responsible body” means—

(a) in relation to a grant-aided school, the Board of Governors,

(b) in relation to an independent school, the proprietor.

Assessment of educational needs of children under two

21. (1) Where a board is of the opinion that a child in its area who is under the age of two years falls, or probably falls, within paragraph (2)—

(a) it may, with the consent of his parent, make an assessment of the child's educational needs, and

(b) it shall make such an assessment at the request of his parent.

(2) A child falls within this paragraph if—

(a) he has special educational needs, and

Comment [AR70]: Gives effect to clause 9(1) and paragraph 11(5) of the Schedule to provide new rights to children over compulsory school age. Reflects the EA duty to give notice to the child over compulsory school age of the EA decision not to assess the educational needs of the child, and its reasons for making it and to the responsible body, which made the request. Paragraph 12(4) and (5) of the Schedule provides that if the child is over compulsory school age but under 18, the EA is required to inform the parent of the notice and provide a copy of the notice to the child's parent.

Comment [AR71]: Gives effect to clause 9(1) and paragraph 11(6) of the Schedule to provide new rights to children over compulsory school age. Reflects that a child over compulsory school age will have a right of appeal to the Tribunal against the decision of the EA not to comply with the child's request to conduct an assessment of educational needs.

Comment [AR72]: Gives effect to clause 9(1) and paragraph 11(7) of the Schedule to provide new rights to children over compulsory school age. Reflects that the notice, issued to the child over compulsory school age, of the EA decision not to assess (under paragraph (8)(a)), shall inform the child of his right of appeal to the Tribunal and contain other information as may be prescribed (in regulations).

(b) it is necessary for the board to determine the special educational provision which any learning difficulty he may have calls for.

(3) An assessment under this Article shall be made in such manner as the board considers appropriate.

(4) After making an assessment under this Article, the board—

(a) may make a statement of the child's special educational needs, and

(b) may maintain that statement,

in such manner as it considers appropriate.

(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 of—

(a) 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 may 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.

Appeals against decisions under Article 21

21ZA.—(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.

Comment [AR73]: Gives effect to clause 7(2) regarding appeal against contents of statement or failure to make a statement for a child under 2. Reflects that, if the EA decides not to make a statement, it must notify the parent of its decision, the reason for making it and the parent's right of appeal.

Comment [AR74]: Also gives effect to clause 7(2). Reflects that the parent of the child under age 2 has the right to receive the advice on which the EA decision is based.

Comment [AR75]: Also gives effect to clause 7(2). Reflects that where the EA makes or amends a statement, the EA must provide the parent of the child under age 2 with a copy of the statement.

Comment [AR76]: Also gives effect to clause 7(2). Reflects that in issuing a statement or amended statement to the parent, the EA must inform the parent of the right of appeal to Tribunal.

Comment [AR77]: Also gives effect to clause 7(2). Reflects that any such notice issued must contain information which will be prescribed (in regulations).

Comment [AR78]: Also gives effect to clause 7(2). Reflects that regulations may provide that the EA notice served, under Article 21, to the parent of the child under age 2 must be issued within a prescribed period.

Comment [AR79]: Gives effect to clause 7(3) - appeals against decisions under Article 21. Reflects a right of appeal for the parent of a child under 2 against an EA decision not to make a statement and against the content of a statement.

- (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.

F16*General duties of boards*]

[F17*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.~~

(1) The Authority shall arrange for —

- (a) a child who has special education needs;
- (b) the parent of any child 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 persons who are mentioned in that paragraph;~~
- (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.]

(4) Where the Authority gives notice under a provision listed in paragraph (5) to a child who is over compulsory school age but under the age of 18, the Authority shall at the same time inform the parent of the child of that fact in writing and provide the parent with a copy of the notice.

(5) The provisions are—

- (a) Article 15(1), (4)(a) and (6)(a);
- (b) Article 17(1)(a);
- (c) Article 19(1A)(a);
- (d) Article 20(3)(a);
- (e) Article 20A(3), (7)(b) and (8)(a)(ii);
- (f) in Schedule 1, paragraphs 3(1)(b)(i) and 4(1)(a);
- (g) in Schedule 2, paragraphs 4(2), 9(2), 11(3)(a) and 13(2)(a).

(6) Where the Authority serves a document listed in paragraph (7) on a

Comment [AR80]: Also gives effect to clause 7(3) to provide a new right of appeal to the Tribunal for the parents of children under age 2 about a decision not to make a statement or about the content of a statement. Reflects that, in these circumstances the Tribunal may dismiss an appeal, order the EA to make and maintain a statement or remit a case to the EA for consideration.

Comment [AR81]: Gives effect to clause 9(1) and paragraph 12(2) of the Schedule to provide new rights for children over compulsory school age and new rights for children under clause 1 (views of the child). Reflects the duty placed on the EA to arrange for advice and information about SEN to be provided to all children with special educational needs and to parents. This advice will help inform the views of the child.

Comment [AR82]: Gives effect to clause 9(1) and paragraph 12(3) of the Schedule to reflect the new rights for children over compulsory school age and new rights to children under clause 1 (views of the child). Reflects that the EA would be required to take appropriate steps to make its information and advice services known to a range of persons in its area, including children over compulsory school age.

Comment [AR83]: Gives effect to clause 9(1) and paragraph 12(4) and (5) of the Schedule to provide new rights for children over compulsory school age. Reflects that, if the child is over compulsory school age but under 18, the EA is required, for any notice issued, to also inform the parent about the notice and provide a copy of the notice to the parent.

child who is over compulsory school age but under the age of 18, the Authority shall at the same time inform the parent of the child of that fact in writing.

(7) The documents are—

- (a) a copy of a proposed statement served under paragraph 2(1)(a) of Schedule 2;
- (b) a copy of a proposed amended statement served under paragraph 3(2)(a) of that Schedule;
- (c) a copy of an existing statement and an amendment notice served under paragraph 3(4)(a) of that Schedule;
- (d) a copy of a statement or amended statement served under paragraph 9(1)(a) of that Schedule.

[F18] 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~~ children over compulsory school age or the parents of other children (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~~ a child over compulsory school age or the parent of any other child who is a pupil attending 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.~~

(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.

Comment [AR84]: Gives effect to clause 9(1) and paragraph 12 (6) and (7) of the Schedule to provide new rights for children over compulsory school age. Reflects that where a child is over compulsory school age but under age 18, when the EA issues: proposed statement; proposed amended statement; existing statement and an amendment notice; or copy of a statement and an amendment notice to that child, at the same time the EA will notify the child's parent and provide the parent with a copy of the notice.

Comment [AR85]: Gives effect to clause 9(1) and paragraph 13(2) of the Schedule to provide new rights for children over compulsory school age. Reflects that the current EA duty to make arrangements, with a view to avoiding or resolving disagreements between the EA or BoGs and parents about the exercise of functions by the EA or BoGs, is extended to children who are over compulsory school.

Comment [AR86]: Gives effect to clause 9(1) and paragraph 13(3) of the Schedule to provide new rights for children over compulsory school age. Reflects that the current EA duty to make arrangements with a view to avoiding or resolving, in each relevant school, disagreements between the parent and the BoGs or proprietor of a school is extended to a child over compulsory school age who is a pupil attending the school and has special educational needs.

Comment [AR87]: Gives effect to clause 8(2) regarding mediation in connection with appeals. Reflects that the EA must make arrangements for the provision of mediation for a person who intends to appeal to the Tribunal against an EA decision. The person in this circumstance could be a parent or a child over compulsory school age.

Comment [AR88]: Also gives effect to clause 8(2). Reflects that where a parent or a child over compulsory school age requests mediation the EA must arrange for the mediation and participate in the mediation.

Comment [AR89]: Also gives effect to clause 8(2). Reflects that in the arrangements made by the EA, either for dispute avoidance and resolution or for mediation in the case of appeals, these should be provided by appointment of independent persons, not employed by the EA.

Comment [AR90]:

(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~~ children over compulsory school age and the parents of other 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) ~~Except as provided by Article 21C(3),~~ the arrangements do not affect the entitlement of a parent person to appeal to the Tribunal.]

Annotations: ?

Words in art. 21B(2) substituted (23.3.2007) by Education (Northern Ireland) Order 2006 (S.I. 2006/1915 (N.I. 11)), arts. 1(4)(c), 44(1), Sch. 2 para. 37; S.R. 2007/197, art. 2(a)

Information and advice as to mediation in connection with certain appeals

21C.—(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.

Comment [AR91]: Gives effect to clause 9(1) and paragraph 13(4) of the Schedule to provide new rights to children over compulsory school age. Reflects that the EA is required to take appropriate steps for making arrangements for dispute avoidance and resolution known to children over compulsory school age, parents of other children, principals and BoGs of grant-aided schools, principals and proprietors of independent schools and such other persons as it considers appropriate.

Comment [AR92]: Gives effect to clause 8(3) regarding mediation in connection with appeals. Reflects that a parent or a child over compulsory school age can only lodge an appeal to the Tribunal if he has first sought and been provided with independent information and advice about pursuing mediation.

Comment [AR93]: Gives effect to clause 9(1) and paragraph 13(5) of the Schedule to provide new rights for children over compulsory school age. Amends “parent” to “person” to reflect that the appeal could be a parent, or a child over compulsory school age.

Comment [AR94]: Gives effect to clause 8(4) regarding information and advice as to mediation in connection with certain appeals. Reflects that the mediation relates to appeals about the EA decision: not to make a statement; the content of a statement; not to carry out an assessment at the request of a parent or a child over compulsory school age; not to carry out an assessment requested by a responsible body; or a decision to cease to maintain a statement.

Comment [AR95]: Also gives effect to clause 8(4). Reflects that mediation does not apply to an appeal about the name or type of school or the fact that no school is named in the statement.

Comment [AR96]: Also gives effect to clause 8(4). Reflects that a parent or a child over compulsory school age may appeal only if the mediation adviser has issued a certificate to the person.

Comment [AR97]: Also gives effect to clause 8(4). Reflects that the mediation adviser is required to issue the certificate to a parent of a child over compulsory school age once they have been provided with information and advice about pursuing mediation.

(5) If the person has informed the 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.

Comment [AR98]: Also gives effect to clause 8(4). Reflects that if a parent or the child over compulsory school age has informed the mediation adviser that he wishes or does not wish to engage in mediation, the certificate will 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.

Comment [AR99]: Also gives effect to clause 8(4). Reflects that the mediation adviser, with responsibility for providing information and advice about mediation is independent of and not employed by the EA.

(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;

(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.

Comment [AR100]: Also gives effect to clause 8(4). Reflects that regulations will set out the arrangements for mediation in connection with appeals.

Special Educational Needs Tribunal for Northern Ireland

Constitution of Tribunal

22. **[F20]**(1) The Special Educational Needs and Disability Tribunal for Northern Ireland (referred to in this Part as “the Tribunal”) shall exercise the jurisdiction conferred on it by this Part.]

(2) There shall be—

(a) a President of the Tribunal appointed by the Lord Chancellor;

(b) a panel appointed by the Lord Chancellor of persons who may serve as chairman of the Tribunal; and

(c) a panel appointed by the Department {DoJ} of persons who may serve as the other two members of the Tribunal apart from the chairman.

(3) No person may be appointed—

(a) President or member of the panel mentioned in paragraph (2)(b) unless he possesses such legal qualifications as the Lord Chancellor considers suitable **[F21]** after consultation with the Lord Chief Justice **]**;

(b) member of the panel mentioned in paragraph (2)(c) unless he satisfies such requirements as may be prescribed [by DoJ].

[F22(3A)] The Lord Chief Justice may nominate any of the following to exercise his functions under paragraph (3)—

(a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;

(b) a Lord Justice of Appeal (as defined in section 88 of that Act). **]**

(4) The President—

(a) **F23**

(b) may resign office by notice in writing to the Lord Chancellor; and

(c) is eligible for re-appointment if he ceases to hold office.

(5) A person appointed member of either panel shall hold office subject to such conditions as to the period of his appointment and otherwise as may be determined by the person or body appointing him, but may resign office by notice in writing to that person or body.

(6) The Department {DoJ} may—

(a) pay to the President, and to any other person in respect of his service as a member of the Tribunal, such remuneration and expenses as it may, with the approval of the Department of Finance and Personnel, determine;

(b) defray the expenses of the Tribunal to such amount as the Department may, with the approval of the Department of Finance and Personnel, determine;

(c) provide for the Tribunal such staff and accommodation as the Tribunal may require.

(7) The jurisdiction of the Tribunal shall be exercised by such number of tribunals as may be determined from time to time by the President.

Annotations:

F20 2005 NI 6

F21 Words in [art. 22\(3\)\(a\)](#) inserted (3.4.2006) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 15(2), 148(1), Sch. 5 para. 102(2); S.I. 2006/1014, [art. 2\(a\)](#), Sch. 1 paras. 10, 12(b)

F22Art. 22(3A) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(2), 148(1), Sch. 5 para. 102(3); S.I. 2006/1014, art. 2(a), Sch. 1 paras. 10, 12(b)

F23Art. 22(4)(a) repealed (3.4.2006) by Justice (Northern Ireland) Act 2002 (c. 26), ss. 86, 87(1), Sch. 13; S.R. 2006/124, art. 2, Sch. paras. 9, 11(j)

Tribunal procedure [aLL DOJ FUNCTION FROM 1/4/2011]

23. (1) Regulations may make provision about the proceedings of the Tribunal on an appeal under this Part and the initiation of such an appeal.

(2) The regulations may, in particular, include provision—

(a) as to the period within which, and the manner in which, appeals are to be instituted,

(b) where the jurisdiction of the Tribunal is being exercised by more than one tribunal—

(i) for determining by which tribunal any appeal is to be heard, and

(ii) for the transfer of proceedings from one tribunal to another,

(c) for enabling any functions which relate to matters preliminary or incidental to an appeal to be performed by the President, or by the chairman,

Sub - para. (d) rep. by 2005 NI 6

(e) for hearings to be conducted in the absence of any member, other than the chairman,

(f) as to the persons who may appear on behalf of the parties,

(g) for granting any person such discovery or inspection of documents or right to further particulars as might be granted by a county court,

(h) requiring persons to attend to give evidence and produce documents,

(i) for authorising the administration of oaths to witnesses,

(j) for the determination of appeals without a hearing in prescribed circumstances,

(k) as to the withdrawal of appeals,

(l) for the award of costs or expenses,

(m) for taxing or otherwise settling any such costs or expenses (and, in particular, for enabling such costs to be taxed in the county court),

(n) for the registration and proof of decisions and orders, and

(o) for enabling the Tribunal to review its decisions, or revoke or vary its orders, in such circumstances as may be determined in accordance with the regulations.

[F24(2A)] Proceeding before the Tribunal shall be held in private, except in prescribed circumstances.]

(3) The Department may pay such allowances for the purpose of or in connection with the attendance of persons at the Tribunal as it may with the approval of the Department of Finance and Personnel determine.

[F24(4)] Part I of the Arbitration Act 1996 shall not apply to any proceedings before the Tribunal, but regulations may make provision corresponding to any provision of that Part.]

[F24(4A)] The regulations may make provision for an appeal under this Part to be heard, in prescribed circumstances, with a claim under Chapter I of Part III of the Special Educational Needs and Disability (Northern Ireland) Order 2004.]

(5) Any person who without reasonable excuse fails to comply with—

(a) any requirement in respect of the discovery or inspection of documents imposed by the regulations by virtue of paragraph (2)(g), or

(b) any requirement imposed by the regulations by virtue of paragraph (2)(h),

is guilty of an offence.

(6) A person guilty of an offence under paragraph (5) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

[F25] 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 from Tribunal

24. **[F26]** Where a party to an appeal to the Tribunal is dissatisfied in point of law with a decision of the Tribunal, that party] may, according as rules of court may provide, either appeal therefrom to the High Court or require the Tribunal to state and sign a case for the opinion of the High Court.

Annotations: 

F26 1997 NI 5

Special schools and other institutions

Religious education in special schools

25. (1) Article 21 of the 1986 Order (religious education in grant-aided schools other than nursery or special schools) shall apply in relation to special schools as it applies in relation to ordinary schools.

(2) Accordingly—

(a) in paragraphs (1) and (7) of that Article the words “or special” and in paragraph (9) of that Article the words “and special” shall cease to have effect;

(b) in Article 22(1) of the 1986 Order the words “or special” shall cease to have effect; and

(c) in Article 12 of the 1989 Order (which provides for the kind of religious education to be included in the curriculum of a school) for paragraph (1) there shall be substituted—

“(1) The religious education for which provision is required by Article 5(1)(a) to be included in the curriculum for any particular grant-aided school shall be religious education of the kind required by such of the provisions of Article 21 of the 1986 Order as apply in the case of that school.”.

Approval of institutions in Northern Ireland other than grant-aided schools

26. (1) The Department may approve an institution in Northern Ireland other than a grant-aided school as suitable for the admission of children with special educational needs.

(2) An approval under this Article may be given subject to such conditions as the Department sees fit to impose.

(3) In any case where there is a failure to comply with such a condition imposed under paragraph (2), the Department may withdraw its approval.

School attendance orders

School attendance orders

27. For paragraphs 1 and 2 of Schedule 13 to the 1986 Order (school attendance orders) there shall be substituted—

“1. (1) If it appears to a board that a parent of a child of compulsory school age in its area is failing to perform the duty imposed on him by Article 45, it shall serve a notice in writing on the parent requiring him to satisfy the board, within such period (not being less than fourteen days beginning with the day on which the notice is served) as is specified in the notice, that the child is, by regular attendance at school or otherwise, receiving suitable education.

(2) If—

(a) a parent on whom a notice has been served under sub-paragraph (1) fails to satisfy the board, within the period specified in the notice, that the child is receiving suitable education, and

(b) in the opinion of the board it is expedient that the child should attend school,

the board shall serve in the prescribed manner on the parent an order (referred to in this Order as a “school attendance order”), in the prescribed form, requiring him to cause the child to become a registered pupil at a school named in the order.

(3) Unless it is revoked by the board or a direction is made in respect of it by a court under paragraph 6, a school attendance order shall (subject to any amendment made by the board) continue in force—

(a) where the school named in the order provides education for pupils up to the upper limit of compulsory school age or beyond, for so long as the child is of compulsory school age;

(b) where the school does not provide education up to or beyond that age, until the pupil has reached the age at which he would normally leave that school.

(4) Where a grant-aided school is named in a school attendance order the Board of Governors of the school shall admit the child to the school.

(5) Sub-paragraph (4) does not affect any power to suspend or expel from a school a pupil who is already a registered pupil there.

(6) In this Part “suitable education”, in relation to a child, means efficient full-time education suitable to his age, ability and aptitude and to any special educational needs he may have.

1A. (1) Sub-paragraphs (2) to (5) apply where a board is required by virtue of paragraph 1(2) to serve a school attendance order in respect of a child, other than a child for whom it maintains a statement under Article 16 of the Education (Northern Ireland) Order 1996.

(2) Before serving the order, the board shall serve on the parent a notice in writing—

(a) informing him of its intention to serve the order,

(b) specifying the school which the board intends to name in the order and, if it thinks fit, one or more other schools which it regards as suitable alternatives, and

(c) stating the effect of sub-paragraphs (4) and (5).

(3) A voluntary or grant-maintained integrated school shall not be specified in a notice under sub-paragraph (2) unless the board has consulted the managers of the school.

(4) If the notice specifies one or more alternative schools and the parent selects one of them and notifies the board accordingly before the expiration of the period of fourteen days beginning with the day on which the notice is served, the school selected by him shall be named in the order.

(5) If before the expiration of the period mentioned in sub-paragraph (4) the parent—

(a) applies for the child to be admitted to a school other than the school or schools specified in the notice; and

(b) notifies the board accordingly,

then, if as a result of the application the child is offered a place at that school, that school shall, subject to sub-paragraph (7), be named in the order.

(6) If at any time while a school attendance order is in force with respect to a child, other than a child for whom the board maintains a statement under Article 16 of the Education (Northern Ireland) Order 1996.

(a) the parent applies for the child to be admitted to a school other than the school named in the order; and

(b) as a result of the application the child is offered a place at a school,

the board shall, subject to sub-paragraph (7), at the request of the parent amend the order by substituting that school for the one previously named.

(7) Sub-paragraphs (5) and (6) do not apply where the school at which the child is offered a place is an independent school unless, in the opinion of the board, the school is suitable to his age, ability and aptitude and to any special educational needs he may have.

1B. (1) Sub-paragraphs (2) and (3) apply where a board is required by virtue of paragraph 1(2) to serve a school attendance order in respect of a child for whom it maintains a statement under Article 16 of the Education (Northern Ireland) Order 1996.

(2) Where the statement specifies the name of a School that school shall be named in the order.

(3) Where the statement does not specify the name of a school—

(a) the board shall, in accordance with paragraph 10 of Schedule 2 to the Education (Northern Ireland) Order 1996, amend the statement so that it specifies the name of a school, and

(b) that school shall then be named in the order.

(4) Where—

(a) a school attendance order is in force in respect of a child for whom the board maintains a statement under Article 16 of the Education (Northern Ireland) Order 1996, and

(b) the name of the school specified in the statement differs (for whatever reason) from that specified in the order,

the board shall amend the order so that it names the school specified in the statement.

2. (1) This paragraph applies where a school attendance order is in force in respect of a child.

(2) If at any time the parent applies to the board requesting that the order be revoked on the ground that arrangements have been made for the child to receive suitable education otherwise than at school, the board shall comply with the request, unless it is of the opinion that no satisfactory arrangements have been made for the education of the child otherwise than at school.

(3) If a parent is aggrieved by a refusal of the board to comply with a request under sub-paragraph (2), he may refer the question to the Department.

(4) Where a question is referred to the Department under sub-paragraph (3), it shall give such direction determining the question as it thinks fit.

(5) Where the child in question is one for whom the board maintains a statement under Article 16 of the Education (Northern Ireland) Order 1996.

(a) sub-paragraphs (2) to (4) do not apply if the name of a school is specified in the statement, and

(b) in any other case a direction under sub-paragraph (4) may require the board to make such amendments in the statement as the Department considers necessary or expedient in consequence of its determination.”.

Supplementary

Regulations and orders

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

(2) Regulations and orders made by the Department under this Part may contain such incidental, supplementary and transitional provisions as the Department thinks fit.

SCHEDULE 1 MAKING OF ASSESSMENTS UNDER ARTICLE 15

Introductory

1. In this Schedule, “assessment” means an assessment of a child's educational needs under Article 15.

Medical and other advice

2. (1) Regulations shall make provision as to the advice which a board is to seek in making assessments.

(2) Without prejudice to the generality of sub-paragraph (1), the regulations shall, except in such circumstances as may be prescribed, require the board to seek medical, psychological and educational advice and such other advice as may be prescribed.

Manner, and timing, of assessments, etc.

3. (1) Regulations may make provision—

(a) as to the manner in which assessments are to be conducted,

(b) requiring the board, where, after conducting an assessment in respect of a child for whom a statement is maintained under Article 16, it determines not to amend the statement, to serve ~~on the parent of the child~~ notice giving the prescribed information ~~on —~~

(i) the child, if the child is over compulsory school age, or

(ii) the parent of the child in any other case;

and

(c) in connection with such other matters relating to the making of assessments as the Department considers appropriate.

(2) Sub-paragraph (1)(b) does not apply to a determination made following the service of notice under **[F1]** paragraph 3 of Schedule 2 of a proposal to amend the statement.

[F2](3) Regulations may provide—

(a) that where a board is under a duty under Article 15, 20 or 20A to serve any notice, the duty must be performed within the prescribed period,

(b) that where a board has served a notice under Article 15(1) or 20A(3) on ~~a child's parent a~~ **child or the parent of a child**, it must decide within the prescribed period whether or not to make an assessment of the child's educational needs,

(c) that where a request has been made to a board under Article 20(1), it must decide within the prescribed period whether or not to comply with the request, and

(d) that where a board is under a duty to make an assessment, the duty must be performed within the prescribed period.

(4) Provision made under sub-paragraph (3)—

(a) may be subject to prescribed exceptions, and

Comment [AR101]: Gives effect to clause 9(1) and paragraph 14(2) of the Schedule to provide new rights to a child over compulsory school age. Reflects that regulations may make provision requiring the EA to serve a notice on a child over compulsory school age giving prescribed (in regulations) information if the EA decides not to amend a statement maintained under Article 16. Paragraph 12(4) and (5) of the Schedule provide that if a child is over compulsory school age but under 18, the EA is required to inform the child's parent of the notice and provide a copy of the notice to the child's parent.

Comment [AR102]: Gives effect to clause 9(1) and paragraph 14(3) of the Schedule to provide new rights to a child over compulsory school age. Reflects that, if a notice has been issued to a child over compulsory school age about whether the EA is considering making a statutory assessment (under Article 15(1) and 20A (3)), regulations may provide that the EA must make its decision within a prescribed period.

(b) does not relieve the board of the duty to serve a notice, or make a decision or assessment, which has not been served or made within the prescribed period.]]

Attendance at examinations

4. (1) Where a board [F3 is considering whether to make an assessment, it may serve a notice on ~~the parent of the child concerned~~ requiring the child's attendance for examination in accordance with the provisions of the notice on—

(a) ~~the child concerned, if the child is over compulsory school age, or~~

(b) ~~the parent of the child concerned in any other case.~~

(2) The parent of a child-examined under this paragraph may be present at the examination if the parent so desires ~~and, if the child is over compulsory school age, the child agrees.~~

(3) A notice under this paragraph shall—

(a) state the purpose of the examination,

(b) state the time and place at which the examination will be held,

(c) name an officer of the board from whom further information may be obtained,

(d) inform the ~~parent~~ ~~person on whom it is served~~ that he may submit such information to the board as he may wish, and

~~(e) inform the parent of his right to be present at the examination.~~

(e) provide information as to the effect of sub-paragraph (2).

Offence

5. (1) Any parent who fails without reasonable excuse to comply with any requirements of a notice served on him under paragraph 4 commits an offence if the notice relates to a child who is not over compulsory school age at the time stated in it as the time for holding the examination.

(2) A person guilty of an offence under this paragraph is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

[F1 SCHEDULE 2 MAKING AND MAINTENANCE OF STATEMENTS UNDER ARTICLE 16

Introductory

1. In this Schedule—

Comment [AR103]: Gives effect to clause 9(1) and paragraph 14(4) of the Schedule to provide new rights to a child over compulsory school age. Reflects that where the EA is considering whether to make an assessment for a child over compulsory school age, it may serve a notice on the child requiring the child's attendance for examination. Paragraph 12(4) and (5) of the Schedule provides that if a child is over compulsory school age but under 18, the EA is required to inform the child's parent of the notice and provide a copy of the notice to the child's parent.

Comment [AR104]: Gives effect to clause 9(1) and paragraph 14(5) of the Schedule to provide new rights to a child over compulsory school age. Reflects that if a child is over compulsory age, the child's parent may be present at the examination, if the child desires. The EA notice to the child over compulsory age would reflect this. (It would remain that where the child is not over the upper limit of compulsory school age, the parent may be present at the examination if the parent so desires and the notice would continue to reflect this.)

Comment [AR105]: Gives effect to clause 9(1) and paragraph 14(6) of the Schedule to provide new rights to a child over compulsory school age. Reflects that in the case of child over compulsory school age, the notice issued by the EA shall inform the child, instead of his parent, that he may submit such information as he may wish.

Comment [AR106]: Gives effect to clause 9(1) and paragraph 14(7) of the Schedule to provide new rights to a child over compulsory school age. Reflects that, in the case of a child over compulsory school age, the parent will have no right to attend the examination of the child without the consent of the child. (The Authority shall continue to be required to advise the parent of a child, not over the upper limit of compulsory school age, that he may be present at the examination.)

- “amendment notice” has the meaning given in paragraph 3,
- “statement” means a statement of a child’s special educational needs under Article 16,
- “periodic review” means a review conducted in accordance with Article 19(1)(b), and
- “re-assessment review” means a review conducted in accordance with Article 19(1)(a).

Copy of proposed statement

2. (1) Before making a statement, a board shall serve ~~on the parent of the child concerned~~ a copy of the proposed statement ~~on—~~

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

(2) The copy of the proposed statement shall not specify—

- (a) any prescribed matter,
- (b) any matter in pursuance of Article 16(4).

Amendments to a statement

3. (1) A board shall not amend a statement except—

- (a) in compliance with an order of the Tribunal,
- (b) as directed by the Department under paragraph 2(4) of Schedule 13 to the Education and Libraries (Northern Ireland) Order 1986 (NI 3), or
- (c) in accordance with the procedure laid down in this Schedule.

(2) If, following a re-assessment review, a board proposes to amend a statement, it shall serve ~~on the parent of the child concerned~~ a copy of the proposed amended statement ~~on—~~

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

(3) The copy of the proposed amended statement shall not specify—

- (a) any prescribed matter,
- (b) any matter in pursuance of Article 16(4).

Comment [AR107]: Gives effect to clause 9(1) and paragraph 15(2) of the Schedule to provide new rights to a child over compulsory school age. Reflects that before making a statement for a child over compulsory age, the EA must serve a copy of the proposed statement to that child (instead of to the parent). Paragraph 12 (6) and (7) of the Schedule also gives effect that if the child is over compulsory school age but under the age of 18, the EA shall at the same time inform the parent of the child in writing that it has served a copy of the proposed statement on the child.

Comment [AR108]: Gives effect to clause 9(1) and paragraph 15(3) of the Schedule to provide new rights to a child over compulsory school age. Reflects that if following a reassessment review for a child, over compulsory school age, the EA proposes to amend a statement it will be required to serve a copy of the proposed amended statement on the child (instead of on the parent). Paragraph 12(6) and (7) of the Schedule provides that if the child is over compulsory school age but under age 18, the EA shall at the same time inform the parent of the child in writing that it has served a copy of the proposed amended statement on the child.

(4) If, following a periodic review, a board proposes to amend a statement, it shall ~~serve on the parent of the child concerned~~

~~(a) a copy of the existing statement, and~~

~~(b) an amendment notice.~~

a copy of the existing statement and an amendment notice on—

(a) the child concerned, if the child is over compulsory school age, or

(b) the parent of the child concerned in any other case.

(5) If, at any other time, a board proposes to amend a statement, it shall proceed as if the proposed amendment were an amendment proposed after a periodic review.

(6) An amendment notice is a notice in writing giving details of the amendments to the statement proposed by the board.

Provision of additional information

4. (1) Sub-paragraph (2) applies when a board serves on ~~a parent a person~~—

(a) a copy of a proposed statement under paragraph 2,

(b) a copy of a proposed amended statement under paragraph 3, or

(c) an amendment notice under paragraph 3.

(2) The board shall also serve on ~~the parent that person~~ a written notice explaining (to the extent that they are applicable)—

(a) the arrangements under paragraph 5,

(b) the effect of paragraph 6, and

(c) the right to appeal under Article 18.

(3) A notice under sub-paragraph (2) shall contain such other information as may be prescribed.

Preference as to school

5. (1) Every board shall make arrangements for enabling ~~a parent a person~~—

(a) on whom a copy of a proposed statement has been served under paragraph 2,

(b) on whom a copy of a proposed amended statement has been served under paragraph 3, or

Comment [AR109]: Gives effect to clause 9(1) and paragraph 15(4) of the Schedule to provide new rights to a child over compulsory school age. Reflects that if, following a periodic review, the EA proposes to amend a statement of a child over compulsory school age, it shall serve a copy of the existing statement and an amendment notice on the child (instead of on the parent). Paragraph 12 (6) and (7) also gives effect that if the child is over compulsory school age but under age 18, the EA shall at the same time inform the parent of the child in writing that it has served a copy of the existing statement and an amendment notice on the child.

Comment [AR110]: Gives effect to clause 9(1) and paragraph 15(5) of the Schedule to provide new rights to a child over compulsory school age. Reflects that the provision of additional information, when the EA serves a copy of a proposed statement, a copy of a proposed amended statement or an amendment notice (under sub-paragraph (2)), applies to a child over compulsory age, instead of to his parent.

Comment [AR111]: Gives effect to clause 9(1) and paragraph 15(6) of the Schedule to provide new rights to a child over compulsory school age. Reflects that, if a child is over compulsory school age, the EA shall serve a notice on the child along with a copy of a proposed statement, a copy of a proposed amended statement or an amendment notice explaining the arrangements about: expressing a preference as to a school; the consultation arrangements on specifying the name of a school in the statement; and the right of appeal about the content of a statement (under Article 18). Paragraphs 12(4) and (5) of the Schedule also provide that, if the child is over compulsory school age but under 18, the EA is required to inform the parent of the notice and provide a copy of the notice to the child's parent.

Comment [AR112]: Gives effect to clause 9(1) and paragraph 15(7) of the Schedule to provide new rights to a child over compulsory school age. Reflects that the EA will be required to make arrangements for enabling a child over compulsory school age on whom a copy of a proposed statement, a copy of a proposed amended statement, or an amendment notice has been served, to express a preference as to the grant-aided school at which he wishes education to be provided for himself and to give the reasons for his preference.

(c) on whom an amendment notice has been served under paragraph 3 which contains a proposed amendment about—

(i) the type or name of a school or institution, or

(ii) the provision made for the child concerned otherwise than in a school or institution under arrangements made under Article 10(1)(b),

to be specified in the statement,

to express a preference as to the grant-aided school at which he wishes education to be provided for ~~his child~~ **the child concerned** and to give reasons for his preference.

(2) Any such preference must be expressed or made within the period of fifteen days beginning—

(a) with the date on which the written notice mentioned in paragraph 4 was served ~~on the parent~~, or

(b) if a meeting has (or meetings have) been arranged under paragraph 7(1)(b) or (2), with the date fixed for that meeting (or the last of those meetings).

(3) Where a board makes a statement in a case where ~~the parent of the child concerned a person~~ **has expressed a preference** in pursuance of such arrangements as to a grant-aided school at which he wishes education to be provided for ~~his child~~ **the child concerned**, the board shall specify the name of that school in the statement unless—

(a) the school is unsuitable to the child's age, ability or aptitude or to his special educational needs, or

(b) the attendance of the child at the school would be incompatible with the provision of efficient education for the children with whom he would be educated or the efficient use of resources.

Consultation on specifying name of school in statement

6. (1) Sub-paragraph (2) applies if a board is considering—

(a) specifying the name of a grant-aided school in a statement, or

(b) amending a statement—

(i) if no school was specified in the statement before the amendment, so that a grant-aided school will be specified in it,

(ii) if a school was specified in the statement before the amendment, so that a different school, which is a grant-aided school, will be specified in it.

Comment [AR113]: Gives effect to clause 9(1) and paragraph 15(7) of the Schedule to provide new rights to a child over compulsory school age. Reflects that the child over compulsory school age, instead of his parent, can express his preference as to the grant aided school he wishes to attend and to provide the reasons for his choice.

Comment [AR114]: Gives effect to clause 9(1) and paragraph 15(8) of the Schedule to provide new rights to a child over compulsory school age. Reflects that where the EA makes a statement for a child over compulsory school age and that child has expressed a preference as to the grant-aided school at which he wishes education to be provided, the EA shall specify the name of that school in the statement unless (a) the school is unsuitable to: the child's age, ability or aptitude, or to his special educational needs or (b) the child's attendance at the school would be incompatible with the provision of efficient education for the others with whom he would be educated, or with the efficient use of resources. The parent of a child over compulsory school age will no longer have a right to express a preference as to the school he wishes the child to attend.

(2) The board shall—

(a) serve a copy of the proposed statement or amended statement, or of the existing statement and of the amendment notice, on each affected body, and

(b) consult each affected body.

(3) “Affected body” means—

(a) the Board of Governors of any school which the board is considering specifying; and

(b) if a school which the board is considering specifying is in the area of another board, that board.

Representations

7. (1) A **parent person** on whom a copy of a proposed statement has been served under paragraph 2 or on whom a proposed amended statement or an amendment notice has been served under paragraph 3 may—

(a) make representations (or further representations) to the board about the content of the proposed statement or the statement as it will have effect if amended in the way proposed by the board, and

(b) require the board to arrange a meeting between him and an officer of the board at which the proposed statement or the statement as it will have effect if amended in the way proposed by the board can be discussed.

(2) Where a **parent person**, having attended a meeting arranged by a board under subparagraph (1)(b) in relation to—

(a) a proposed statement, or

(b) an amendment proposed following a re-assessment review,

disagrees with any part of the assessment in question, he may require the board to arrange such meeting or meetings as it considers will enable him to discuss the relevant advice with the appropriate person or persons.

(3) In this paragraph—

- “relevant advice” means such of the advice given to the board in connection with the assessment as it considers to be relevant to that part of the assessment with which the **parent person** disagrees, and

Comment [AR115]: Gives effect to clause 9(1) and paragraph 15(9) of the Schedule to provide new rights to a child over compulsory school age. Reflects that where a child over compulsory school age has been served with a copy of a proposed statement, or a proposed amended statement, or an amendment notice, that child may: make representations or further representations to the EA about the content of the proposed statement, or statement as it will have effect if amended in the way proposed by the EA, and may require the EA to arrange a meeting between the child and an EA officer at which the proposed statement, or the statement as it would have effect if amended in the way proposed by the EA can be discussed.

Comment [AR116]: Gives effect to clause 9(1) and paragraph 15(9) of the Schedule to provide new rights to a child over compulsory school age. Reflects that where a child over compulsory school age having attended a meeting arranged by the EA to discuss a proposed statement, or an amendment proposed following a re-assessment review, disagrees with any part of the assessment in question, that child may require the EA to arrange such meeting(s) as it considers will enable the child to discuss the relevant advice with the person who gave the advice or any other person the EA considers is the appropriate person to discuss it with the child.

Comment [AR117]: Gives effect to clause 9(1) and paragraph 15(10) of the Schedule to provide new rights to a child over compulsory school age. Reflects that ‘relevant advice’ would be advice with which a child over compulsory school age disagrees. This would no longer relate to the parent of a child over compulsory school age.

- “appropriate person” means the person who gave the relevant advice or any other person who, in the opinion of the board, is the appropriate person to discuss it ~~with the parent.~~
- (4) Any representations under sub-paragraph (1)(a) must be made within the period of fifteen days beginning—
- (a) with the date on which the written notice mentioned in paragraph 4 was served ~~on the parent,~~ or
- (b) if a meeting has (or meetings have) been arranged under sub-paragraph (1)(b) or (2), with the date fixed for that meeting (or the last of those meetings).
- (5) A requirement under sub-paragraph (1)(b) must be made within the period of fifteen days beginning with the date on which the written notice mentioned in paragraph 4 was served ~~on the parent.~~
- (6) A requirement under sub-paragraph (2) must be made within the period of fifteen days beginning with the date fixed for the meeting arranged under sub-paragraph (1)(b).

Making the statement

8. (1) Where representations are made to a board under paragraph 7(1)(a), the board shall not make or amend the statement until it has considered the representations and the period or the last of the periods allowed by paragraph 7 for making requirements or further representations has expired.
- (2) If a board makes a statement, it may be in the form originally proposed (except as to the matters required to be excluded from the copy of the proposed statement) or in a form modified in the light of the representations.
- (3) If a board amends a statement following service of a proposed amended statement under paragraph 3, the amended statement made may be in the form proposed or in a form modified in the light of the representations.
- (4) If a board amends a statement following service of an amendment notice, the amendments may be those proposed in the notice or amendments modified in the light of the representations.
- (5) Regulations may provide that, where a board is under a duty (subject to compliance with the preceding requirements of this Schedule) to make a statement, the duty, or any step required to be taken for performance of the duty, must, subject to prescribed exceptions, be performed within the prescribed period.

Comment [AR118]: Gives effect to clause 9(1) and paragraph 15(10) of the Schedule to provide new rights to a child over compulsory school age. Reflects that the ‘appropriate person’ would be the person who gave the relevant advice or any other person who, in the opinion of the EA, is the appropriate person to discuss it with the child over compulsory school age. This would no longer relate to the parent of a child over compulsory school age.

Comment [AR119]: Gives effect to clause 9(1) and paragraph 15(11) of the Schedule to provide new rights to a child over compulsory school age. Reflects that the child over compulsory school age must make representations to the EA within 15 days of the notice issued to that child about the provision of additional information and the right to make representations on the content of a statement (paragraph 4 of Schedule 2 of the 1996 Order refers)

Comment [AR120]: Gives effect to clause 9(1) and paragraph 15(11) of the Schedule to provide new rights to a child over compulsory school age. Reflects that the EA must arrange a meeting, between the child over compulsory school age and an EA officer at which the proposed statement can be discussed, within 15 days of the notice issued to that child about the provision of additional information and the right to make representations on the content of a statement (paragraph 4 of Schedule 2 of the 1996 Order refers) if that child requests such a meeting.

(6) Such provision shall not relieve the board of the duty to make a statement, or take any step, which has not been performed or taken within that period.

Service of statement

9. (1) Where a board makes or amends a statement it shall serve a copy of the statement, or the amended statement, on—~~the parent of the child concerned~~

(a) ~~the child concerned, if the child is over compulsory school age, or~~

(b) ~~the parent of the child concerned in any other case.~~

(2) It shall, at the same time, give ~~that person~~ ~~the parent~~ written notice of his right to appeal under Article 18(1) against—

(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 specified in the statement), or

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

(3) A notice under sub-paragraph (2) must contain such other information as may be prescribed.

Keeping, disclosure and transfer of statements

10. (1) Regulations may make provision as to the keeping and disclosure of statements.

(2) Regulations may make provision, where a board becomes responsible for a child for whom a statement is maintained by another board, for the transfer of the statement to it and for Part II of this Order to have effect as if the duty to maintain the transferred statement were its duty.

Change of named school

11. (1) Sub-paragraph (2) applies where—

~~(a) the parent of a child for whom a statement is maintained which specifies the name of a school or institution asks the board to substitute for that name the name of a grant-aided school specified by the parent;~~

(a) a statement is maintained for a child and specifies the name of a school or institution;

(aa) the child (if over compulsory school age) or the parent of the child (in any other case) asks the Authority to substitute for that name the name of a grant-aided school specified in the request, and

Comment [AR121]: Gives effect to clause 9(1) and paragraph 15(12) of the Schedule to provide new rights to a child over compulsory school age. Reflects that if the child is over compulsory school age the EA will be required to serve a copy of the statement, or amended statement, on that child instead of on the parent. Paragraph 12 (6) and (7) of the Schedule provides that if the child is over compulsory school age but under the age of 18, the EA shall at the same time inform the parent that it has served a statement or amended statement on the child.

Comment [AR122]: Gives effect to clause 9(1) and paragraph 15(13) of the Schedule to provide new rights to a child over compulsory school age. Reflects that if the child is over compulsory school age, the EA will be required to give notice to that child of the right of appeal to Tribunal. Paragraph 12(4) and (5) of the Schedule provides that if the child is over compulsory school age but under the age of 18, the EA is required to inform the parent of the notice and provide a copy of the notice to the child's parent.

Comment [AR123]: Gives effect to clause 9(1) and paragraph 15(14) of the Schedule to provide new rights to a child over compulsory school age. Reflects that a child, who is over compulsory school age and for whom a statement is maintained which specifies the name of a school or institution, can ask the EA to substitute the name of the school specified in the statement with the name of the child's preferred choice of school. This provision would no longer apply to the parent of a child over compulsory school age.

Comment [AR124]:

(b) the request is not made less than twelve months after—

(i) a request under this paragraph,

(ii) the service of a copy of the statement or amended statement under paragraph 9, or

(iii) if ~~the parent has appealed~~ **an appeal has been brought** to the Tribunal under Article 18 or this paragraph, the date when the appeal is concluded,

whichever is the later.

(2) The board shall comply with the request unless—

(a) the school is unsuitable to the child's age, ability or aptitude or to his special educational needs, or

(b) the attendance of the child at the school would be incompatible with the provision of efficient education for the children with whom he would be educated or the efficient use of resources.

(3) Where the board decides not to comply with the request—

(a) it shall give notice in writing of that fact to ~~the child's parent~~ **the person who made the request**, and

(b) ~~the parent of the child—that person~~ may appeal to the Tribunal against the decision.

(4) A notice under sub-paragraph (3)(a) must ~~inform the parent of~~ **provide information as to** the right of appeal under sub-paragraph (3)(b) and contain such other information as may be prescribed

(5) On the appeal the Tribunal may—

(a) dismiss the appeal, or

(b) order the board to substitute for the name of the school or other institution specified in the statement the name of the grant-aided school specified ~~by the parent~~ **in the request under this paragraph**.

(6) Regulations may provide that, where a board is under a duty to comply with a request under this paragraph, the duty must, subject to prescribed exceptions, be performed within the prescribed period.

(7) Such provision shall not relieve the board of the duty to comply with such a request which has not been complied with within that period.

Procedure for ceasing to maintain a statement

Comment [AR125]: Gives effect to clause 9(1) and paragraph 15(15) of the Schedule to provide new rights to a child over compulsory school age. Reflects that where a child, over compulsory school age for whom a statement is maintained, requests that the EA substitute the name specified in the statement with the name of the child's preferred choice, and the EA decides not to comply with a request made by that child, the EA will be required to notify that child in writing of that fact.

Comment [AR126]: Gives effect to clause 9(1) and paragraph 15(16) of the Schedule to provide new rights to a child over compulsory school age. Reflects that if a child over compulsory school age asks the EA to substitute the name of the school specified in the statement with the name of a school of the child's choice and the EA decides not to comply with the request, the EA must give notice of its decision to the child. Paragraph 12(4) and (5) of the Schedule provide that if the child is over compulsory school age but under the age of 18, the EA must inform the parent of the notice and provide a copy of the notice to the child's parent.

Comment [AR127]: Gives effect to clause 9(1) and paragraph 15(17) of the Schedule to provide new rights to a child over compulsory school age. Reflects that the child over compulsory school age has a right to appeal the EA decision not to comply with that child's request to substitute the name of a school in his statement, with the name of the school of the child's choice.

Comment [AR128]: Gives effect to clause 9(1) and paragraph 15(18) of the Schedule to provide new rights to a child over compulsory school age. Reflects that the EA notice, issued to the child who is over compulsory school age about the EA decision not to comply with that child's request to substitute the name of a school in his statement, with the name of the school of the child's choice, must provide information as to the rights of appeal to that child and also provide other information as may be prescribed (in regulations).

Comment [AR129]: Gives effect to clause 9(1) and paragraph 15(19) of the Schedule to provide new rights to a child over compulsory school age. Reflects that the Tribunal, in the case of an appeal by a child over compulsory school age, would have the power to order the EA to substitute the name of the school specified by the child.

12. (1) A board may not cease to maintain a statement except in accordance with paragraph 13.

(2) Sub-paragraph (1) does not apply where the board—

(a) ceases to maintain a statement for a child who has ceased to be a child for whom it is responsible, or

(b) is ordered to cease to maintain a statement under Article 18(3)(c).

13. (1) A board may cease to maintain a statement only if it is no longer necessary to maintain it.

(2) Where the board decides to cease to maintain a statement—

(a) it shall give notice in writing of that fact to ~~the child's parent~~

(a) ~~the child concerned, if the child is over compulsory school age, or~~

(b) ~~the parent of the child concerned in any other case.~~

and

(b) ~~the parent of the child that person~~ may appeal to the Tribunal against the decision.

(3) A notice under sub-paragraph (2)(a) must ~~inform the parent of~~ provide information as to the right of appeal under sub-paragraph (2)(b) and contain such other information as may be prescribed.

(4) On an appeal under this paragraph the Tribunal may—

(a) dismiss the appeal, or

(b) order the board to continue to maintain the statement in its existing form or with such amendments of the description in the statement of the board's assessment of the child's special educational needs or the special educational provision specified in the statement, and such other consequential amendments, as the Tribunal may determine.

(5) Except where ~~the parent of the child appeals an appeal is brought~~ to the Tribunal under this paragraph, a board may only cease to maintain a statement under this paragraph within the prescribed period beginning with the service of the notice under sub-paragraph (2).

(6) A board may not, under this paragraph, cease to maintain a statement if—

(a) ~~the parent of the child has appealed~~ an appeal has been brought under this paragraph against the board's determination to cease to maintain the statement; and

(b) the appeal has not been determined by the Tribunal or withdrawn.

Comment [AR130]: Gives effect to clause 9(1) paragraph 15(20) of the Schedule to reflect the new rights to a child over compulsory school age. Reflects that the EA will be required to notify a child over compulsory school age (instead of the parent), if it decides to cease to maintain a statement. Paragraph 12(4) and (5) of the Schedule provides that if the child is over compulsory school age but under 18, the EA is required to inform parent of the notice and provide a copy of the notice to the child's parent.

Comment [AR131]: Gives effect to clause 9(1) and paragraph 15(21) of the Schedule to provide new rights to a child over compulsory school age. Reflects that the right of appeal against the EA decision to cease to maintain a statement would apply to the child over compulsory school age instead of to the parent.

Comment [AR132]: Gives effect to clause 9(1) and paragraph 15(22) of the Schedule to provide new rights to a child over compulsory school age. The provision reflects that the EA will be required to provide information as to the right of appeal against its decision to cease to maintain a statement and contain such other information as may be prescribed.

Comment [AR133]: Gives effect to clause 9(1) and paragraph 15(23) of the Schedule to provide new rights for children over compulsory school age. Reflects that, where a child over compulsory school age or the parent of a child (in any other case) appeals to the Tribunal under this paragraph, the EA may only cease to maintain a statement within the prescribed period beginning with the service of the document.

Comment [AR134]: Gives effect to clause 9(1) and paragraph 15(24) of the Schedule to provide new rights for a child over compulsory school age. Reflects that the EA may not cease to maintain a statement for a child over compulsory school age, if that child has appealed the EA's decision to cease to maintain the statement and the appeal has not been determined by the Tribunal or not withdrawn.



Northern Ireland
Assembly

Committee for Education

Russell Welsh
Departmental Assembly Liaison Officer
Department of Education
Rathgael House
Balloo Road
Bangor
BT19 7PR

12 June 2015

Our Ref: PMcC/KM/2189

Dear Russell

Special Educational Needs and Disability (SEND) Bill

At its meeting on 10 June 2015, the Committee for Education considered correspondence from the Department of Education enclosing a Keeling Schedule in respect of the Special Educational Needs and Disability (SEND) Bill.

The Committee agreed that in order to inform its scrutiny of the SEND Bill, it required – as previously requested – a Keeling Schedule with limited annotations showing how the Bill would give effect to the objectives set out in the Explanatory and Financial Memorandum. It is therefore again requested that the Department provide an annotated Schedule.

If you wish to discuss the above, please do not hesitate to contact me.

A response by 26 June 2015 would be greatly appreciated.

Committee for Education

Room 375, Parliament Buildings, Ballymiscaw, Stormont, Belfast, BT4 3XX

Tel: (028) 9052 1201 Fax: (028) 9052 21974

E-mail: peter.mccallion@niassembly.gov.uk

Yours sincerely

Signed Peter McCallion

Peter McCallion
Clerk
Committee for Education

Committee for Education

Room 375, Parliament Buildings, Ballymiscaw, Stormont, Belfast, BT4 3XX

Tel: (028) 9052 1201 Fax: (028) 9052 21974

E-mail: peter.mccallion@niassembly.gov.uk