

*Order laid before the Assembly under \*\*\*, and subject to affirmative resolution procedure of the Assembly*

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STATUTORY RULES OF NORTHERN IRELAND

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**2026 No. xxxx**

**EDUCATION**

**The Special Educational Needs (SEN) Regulations (Northern Ireland) 2026**

*Made - - - - x Month 2026*

*Coming into operation 1st September 2026*

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The Department of Education(a) makes the following Regulations in exercise of the powers conferred by:

Articles 6A(7), 7A(1)(b), 8(2A), 8ZA(2) 14(5), 16(2), 17(2A) and (2B), 18A(4), 19(1C) and (2), 20(3A), 20A(9)(b), 21(9) and (10), 21C(7), 23A and 28 and paragraphs 2 and 3(1), (3) and (4) of Schedule 1 and paragraphs 2(2)(a), 3(3)(a), 4(3), 8(5), 9(3), 10, 11(4) and (6), and 13(3) and (5) of

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(a) 2016 c.5 (N.I.), (section 1 (11) and Schedule 1)

Schedule 2 to the Education (Northern Ireland) Order 1996(a), and Section 11(2) and (3) of the Special Educational Needs and Disability Act (Northern Ireland) 2016(b).

## PART I GENERAL

### **Citation and commencement**

1. These Regulations may be cited as the Education (Special Educational Needs) Regulations (Northern Ireland) 2026 and shall come into operation on 01 September 2026.

### **Interpretation**

2.—(1) In these Regulations—

“affected body” has the meaning at paragraph 6(3) of Schedule 2 to the 1996 Order;

“appropriate person” shall be construed in accordance with regulation 20(2);

“Article 10(1) institution”, “Article 10(1)(a) institution” and “Article 10(1)(b) institution” shall be construed in accordance with Article 10;

“assessment” means an assessment of a child’s educational needs under Article 15;

“capacity determination” has the meaning at regulation 24;

“child over compulsory school age” has the meaning at Article 46 of the 1986 Order;

“designated officer” means an officer of the Authority designated in writing by the Authority to carry out the functions prescribed in:

(a) regulation 19 (Periodic review of a statement under Article 19(1)(b) where the child does not attend a school); and

(b) regulation 20 (Transition plan);

“duly authorised officer” means an officer of the Authority designated in writing by the Authority to carry out the functions prescribed in:

(a) regulation 17(c) (Statement of Special educational needs); and

(b) Schedule 2;

“health care professional” means a person who is registered as a member of any profession to which section 60(2) of the Health Act 1999(c) applies;

“key stage” has the meaning at Article 3(3) of the 2006 Order;

“learning support co-ordinator”—

(a) in an ordinary school, has the meaning at Article 8(1)(e)(d); and

(b) in a special school, has the meaning at Article 8ZA(1)(b)(e);

“manager” means—

(a) in relation to an independent school, the proprietor of the school; and

(b) in relation to an Article 10(1) institution, which is not an independent school, the person responsible for carrying out duties in that institution akin to a principal or a proprietor;

“mediation advisor” has the meaning at Article 21C(6)(b)(f);

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(a) S.I.1996/274 (N.I.1) as amended by the Special Educational Needs and Disability (Northern Ireland) Order 2005 (S.I.2005/1117 (N.I.6) and the Special Educational Needs and Disability Act (Northern Ireland) 2016 (2016 c.8 (N.I.))

(b) 2016 c.8 (N.I.)

(c) 1999 c.8

(d) Article 8(1)(e) was inserted by s.3(2) of 2016 c.8 (N.I.)

(e) Article 8ZA(1)(b) was inserted by s.3(5) of 2016 c.8 (N.I.)

(f) Article 21C was inserted by s.10 of 2016 c.8 (N.I.)

“mediation certificate” means the certificate issued by the mediation adviser in accordance with Article 21C(4);

“mediation with the Authority” has the meaning at Article 21C(6)(a);

“mediation issues” has the meaning at regulation 34(2)(c);

“mediator” has the meaning set out at Article 21B(4);

“Northern Ireland curriculum” has the meaning at Articles 4, 5, 6, 7 and 8 of the 2006 Order;

“Notices” means a notice required to be served or given by any Article or Schedule to the 1996 Order or a provision of these Regulations;

“operational area of the relevant HSC Trust” shall be construed in accordance with paragraph 3A of Schedule 3 to the 1991 Order;

“parent” has the meaning at Article 2(2) of the 1986 Order;

“periodic review” has the meaning at paragraph 1 of Schedule 2 to the 1996 Order;

“personal learning plan”—

(a) in an ordinary school, has the meaning at Article 8(1)(d)(a); and

(b) in a special school, has the meaning at Article 8ZA(1)(a)(b);

“plan of arrangements for special educational provision” means the plan which the Authority is required to prepare in accordance with Article 6A(c);

“relevant HSC Trust” means the HSC Trust in whose operational area the child resides;

“relevant member of the staff of the school” means a person who teaches the child or who is otherwise responsible for the provision of education to the child;

“relevant treatment or service” has the meaning at Article 14(4B)(d);

“representative” means a person aged 18 years or over appointed by a child over compulsory school age to provide assistance and support to enable that child to exercise any of their rights conferred by Part II of the 1996 Order;

“school year” for the purposes of these Regulations means a year beginning on 1 August and ending on 31 July;

“serving a notice” includes by post and by electronic means;

“social worker” means a person registered as such with the Northern Ireland Social Care Council in accordance with the Health and Personal Social Services Act (Northern Ireland) 2001(e);

“specialist provision” means special educational provision within an ordinary school for pupils with a statement which indicates that specialist teaching within a small group setting is most appropriate;

“statement” means a statement of a child’s special educational needs made under Article 16;

“transition plan” is a document required to be prepared in accordance with regulation 20;

“the Authority” means the Education Authority established under the Education Act (Northern Ireland) 2014(f);

“the parties to the mediation” means—

(a) the person with a right of appeal to the Tribunal who opts to pursue mediation (on the one part); and

(b) the Authority (on the other part);

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(a) Article 8(1)(d) was inserted by s.3(2) of 2016 c.8 (N.I.)  
(b) Article 8ZA was inserted by s.3(5) of 2016 c.8 (N.I.)  
(c) Article 6A was inserted by s.2 of 2016 c.8 (N.I.)  
(d) Article 14(4B) was inserted by s.5 of 2016 c.8 (N.I.)  
(e) 2001 c.3 (N.I.)  
(f) 2014 c.12 (N.I.)

“the GDPR” means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation);

“the responsible body” has the meaning at Article 20A(11)(a);

“the Tribunal” has the meaning at Article 22(1);

“the 1986 Order” means the Education and Libraries (Northern Ireland) Order 1986(b);

“the 1991 Order” means the Health and Personal Social Services (Northern Ireland) Order 1991(c);

“the 1996 Order” means the Education (Northern Ireland) Order 1996(d);

“the 2005 Order” means the Special Educational Needs and Disability (Northern Ireland) Order 2005(e);

“the 2005 Regulations” means the Education (Special Educational Needs) Regulations (Northern Ireland) 2005(f);

“the 2006 Order” means the Education (Northern Ireland) Order 2006(g).

(2) For the purposes of these Regulations and notwithstanding section 39(2) of the Interpretation Act (Northern Ireland) 1954(h) (time), where a period of time is expressed to begin on, or to be reckoned from, a particular day, that day shall be included in the period.

(3) In these Regulations any reference to a numbered Article is a reference to that Article of the 1996 Order bearing that number.

## PART II

### EDUCATION AUTHORITY PLAN OF ARRANGEMENTS FOR SPECIAL EDUCATIONAL PROVISION

#### **Plan of Arrangements: Content**

3.—(1) This regulation applies to the Authority’s plan of arrangements (the plan) for special educational provision under Article 6A.

(2) In addition to those matters set out at Article 6A(2), the plan shall include—

- (a) the school year which it relates;
- (b) the special educational needs and special educational provision to be addressed by it; and
- (c) how and by whom the resources and the advisory and support services made available by the authority to address those needs can be accessed.

#### **Procedure to be followed in connection with preparing, reviewing or revising the plan**

4.—(1) In preparing, reviewing or revising the plan the Authority shall—

- (a) have regard to the financial resources available to it;
- (b) provide information about the evidence it has considered to identify:

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(a) Article 20A was inserted by Article 10 of S.I. 2005/1117 (N.I. 6)  
(b) S.I. 1986/594 (N.I. 3)  
(c) S.I. 1991/194 (N.I. 1)  
(d) S.I. 1996/274 (N.I. 1) as amended by 2016 c.8 (N.I.)  
(e) S.I. 2005/1117 (N.I. 6)  
(f) S.R. 2005 No. 384  
(g) S.I. 2006/1915 (N.I. 11)  
(h) 1954 c.33 (N.I.)

- (i) the special educational needs and special educational provision it intends to address under regulation 3(2)(b);
  - (ii) the resources and the advisory and support services it intends to provide under regulation 3(2)(c) to address those needs; and
- (c) consult with and have regard to the views of—
- (i) the Department;
  - (ii) children over compulsory school age with special educational needs;
  - (iii) parents of children who have special educational needs;
  - (iv) educational and other establishments set out at Article 102(2)(a), (c) and (d) of the 1986 Order; and
  - (v) Article 10(1)(b) institutions
- about the services it intends to provide under regulation 3(2)(b) and (c).

(2) When preparing, reviewing or revising the plan the Authority shall publish a draft plan for consultation by the end of March immediately preceding the school year to which the plan relates.

## PART III

### BOARD OF GOVERNORS

#### **Information to be notified to the Authority**

5. Where the Authority is making special educational provision in respect of a child at an ordinary school, the Board of Governors of that school shall notify the Authority in writing of the following—

- (a) if the child has been absent from the school for a period of 4 weeks, specifying the first date of the absence;
- (b) if it considers it likely the child will be absent from school for more than 4 weeks, specifying the first date of that absence; and
- (c) if appropriate, the date the child returns to school.

#### **Experience of learning support co-ordinators in ordinary schools**

6. The Board of Governors of an ordinary school shall ensure that any teacher designated as a learning support co-ordinator under Article 8(1)(e) has at least 3 years' full time equivalent experience of being concerned with the education of pupils with special educational needs.

#### **Experience of learning support co-ordinators in special schools**

7. The Board of Governors of a special school shall ensure that any teacher designated as a learning support co-ordinator by it under Article 8ZA(1)(b) has at least 3 years' full time equivalent experience of being concerned with the education of pupils with special educational needs, one year of which is to be obtained in—

- (a) a special school; or
- (b) in specialist provision.

#### **Board of Governors duties in relation to the learning support co-ordinator**

8.—(1) The Board of Governors of a grant-aided school shall ensure that the designated learning support co-ordinator is afforded—

- (a) ongoing training to conduct their role effectively;
- (b) reasonable time to conduct their role effectively; and

(c) an opportunity to provide to the Board of Governors on at least a termly basis the following information:

- (i) special educational needs of the registered pupils;
- (ii) special educational provision; and
- (iii) services related to (i) and/or (ii).

(2) For the purposes of paragraph (1)(a) the Board of Governors shall have regards to, but not be limited by, the arrangements for training provided under Article 6A(2)(b).

## PART IV ASSESSMENTS

### **Advice to be sought by the Authority**

9.—(1) Where the Authority considers it appropriate to carry out an Article 15 assessment, the Authority—

- (a) shall seek advice of the kind listed in paragraph (2) in relation to the matters listed at paragraph (3); and
- (b) may seek advice from the entities listed in paragraph (4) in relation to matters listed at paragraph (3).

(2) The advice mentioned in paragraph (1)(a) (the required advice) is—

- (a) educational advice (in accordance with regulation 10);
- (b) psychological advice (in accordance with regulation 11);
- (c) medical advice from a health care professional identified as appropriate by the relevant HSC Trust.

(3) The advice mentioned in paragraph (1) is for the purposes of allowing the Authority to determine—

- (a) the special educational needs of the child;
- (b) the special educational provision that may be required to meet such needs;
- (c) in accordance with Article 16(5)(a), any non-educational needs and/or non-educational provision which appear relevant to the child's special educational needs; and
- (d) the outcomes that are intended to be achieved by the child in receiving that provision mentioned in subparagraph (c).

(4) The advice mentioned in paragraph (1)(b) (other advice) is—

- (a) social work advice from a social worker identified as appropriate by the relevant HSC Trust;
- (b) advice from a health care professional identified as appropriate by the relevant HSC Trust (other than that set out at paragraph (2)(c)).

(5) The Authority shall seek the advice mentioned in paragraph (1)(a) and (b) at the same time it serves the Notice mentioned in regulation 13(5)(c) or (d) (as the case may be).

(6) Subject to regulation 15, the time within which the paragraph (1) advice must be submitted to the Authority is—

- (a) where paragraph (2)(a) applies, not later than 4 weeks from the date that body or person receives the Authority's request;
- (b) where paragraph (2)(b) applies, not later than 6 weeks from the date that body or person receives the Authority's request;
- (c) where paragraph (2)(c) or (4) applies, not later than 6 weeks from the date that body or person receives the Authority's request.

- (7) Advice provided pursuant to paragraph (1) shall be in writing and may not—
- (a) relate to any matter which is required to be specified in a statement by virtue of Article 16(4)(b);
  - (b) make recommendations about matters which are not relevant to the advice sought.
- (8) If the Authority considers it necessary, the Authority may, with the consent of the child (if the child is over compulsory school age) or the parent of the child (in any other case), provide to a person from whom the paragraph (2) or (4) advice is being sought, copies of any or all of the following—
- (a) any representations made by the child (if the child is over compulsory school age) or the parent of the child (in any other case) obtained in accordance with Article 15(1)(d) or Article 20A(3)(d);
  - (b) any evidence submitted by, or at the request of, the child (if the child is over compulsory school age) or the parent of the child (in any other case) in accordance with Article 15(1)(d) or Article 20A(3)(d).
- (9) The Authority shall not seek any of the advice referred to in paragraph (2) if such advice has previously been provided for the purposes of Part II of the 1996 Order and each of the persons listed in sub-paragraphs (a) to (c) are satisfied it is sufficient for the purposes of arriving at a satisfactory assessment—
- (a) the Authority;
  - (b) the child (if over compulsory school age) or the parent of the child (in any other case); and
  - (c) each person listed at paragraph (2) who would otherwise be required to provide the advice.
- (10) Regulations 10 and 11 make further provision in relation to paragraph (2)(a) and (b).
- (11) Paragraph (6) is subject to regulation 15(10) (Exceptions).

### **Educational advice**

- 10.—**(1) Subject to paragraphs (2) to (4), the educational advice referred to in regulation 9(2)(a) shall be sought—
- (a) from the principal or proprietor (as the case may be) of each school which the child is currently attending or which the child attended at any time within the preceding 12 months;
  - (b) where the child is not currently attending a school, from the person responsible for the educational provision of the child;
  - (c) where the child is not currently attending a school, and where advice under sub-paragraph (b) is not available, from a person whom the Authority is satisfied has experience of teaching children with special educational needs or has knowledge of the differing provision which may be called for to meet those needs; or
  - (d) where any of the child's parents is a serving member of His Majesty's armed forces, from the relevant Directorate of the Ministry of Defence.
- (2) The advice sought under paragraph (1)(a) to (c) shall not be sought from any person who is not a teacher.
- (3) The following applies in relation to advice sought under paragraph (1)(a)—
- (a) if the principal or proprietor has not themselves taught the child within the preceding 12 months, the advice must be given after consultation with a teacher who has taught the child; and
  - (b) the advice shall include any current personal learning plan and the steps which have been taken by the school to identify, assess and meet the special educational needs of the child.
- (4) Where it appears to the Authority, in consequence of advice obtained in accordance with regulation 9(2)(c) that the child in question has—

- (a) a hearing impairment;
- (b) a visual impairment; or
- (c) both a hearing and a visual impairment,

the Authority may in addition to that advice, seek further advice in accordance with regulation 9(4)(b) from an appropriate health care professional suitable placed to give advice in relation to those matters.

(5) The time within which any paragraph (4) advice must be submitted to the Authority is not later than 6 weeks from the date the relevant HSC Trust receives the Authority's request.

### **Psychological advice**

11. The psychological advice referred to in regulation 9(2)(b) shall be sought from a person—

- (a) employed by the Authority as an educational psychologist; or
- (b) engaged by the Authority as an educational psychologist in the case in question.

### **Matters to be taken into account in making an assessment**

12.—(1) When making an assessment the Authority shall—

- (a) consult—
  - (i) the child (if the child is over compulsory school age); or
  - (ii) the child and the child's parent (in any other case); and
- (b) consider—
  - (i) the advice obtained in accordance with regulation 9;
  - (ii) any representations made by the child (if the child is over compulsory school age) or the child and the child's parent (in any other case) obtained in accordance with Article 15(1)(d), Article 20A(3)(d) or otherwise; and
  - (iii) any evidence submitted by, or at the request of, the child (if the child is over compulsory school age) or the child and parent of the child (in any other case) in accordance with Article 15(1)(d), Article 20A(3)(d) or otherwise.

(2) Where paragraph (1)(a)(i) applies, the parent of the child may be present during any consultation if the child over compulsory school age agrees.

### **Time limits relating to assessment stage**

13.—(1) Where Article 15(1) applies, the Authority shall serve the notice required by Article 15(1) (an Article 15(1) Notice) no later than 1 week from the formation of the opinion mentioned in that Article.

(2) Where Article 20(1) applies, not later than 4 weeks from the date the Authority receives that request, the Authority shall either—

- (a) give the notice required by Article 20(3) (an Article 20(3) Notice) that it has decided not to comply with that request; or
- (b) give the notice required by Article 15(4) (an Article 15(4) Notice - decision of the Authority to make an assessment).

(3) Where Article 20A(1) applies, the Authority shall serve the notice required by Article 20A(3) (an Article 20A(3) Notice) not later than 1 week from its receipt of that request.

(4) Where paragraph (1) or (3) applies, not later than 4 weeks following service of the notice mentioned in either of those paragraphs, the Authority shall serve the notice mentioned at paragraph (5), whichever is appropriate.

(5) The notice referred to in paragraph (4) is —

- (a) the notice required by Article 15(6) (an Article 15(6) Notice - decision of the Authority not to make an assessment);
- (b) the notice required by Article 20A(8) (an Article 20A(8) Notice - decision of the Authority not to make an assessment);
- (c) the notice required by Article 15(4); or
- (d) the notice required by Article 20A(7) (an Article 20A(7) Notice - decision of the Authority to make an assessment).

(6) Where Article 21(5) applies, (children under two), not later than 4 weeks following the making of that decision, the Authority shall give the notice required by that Article (an Article 21(5) Notice).

(7) Where Article 21(7) applies, (children under two), not later than 6 weeks following the decision to make or amend a statement, the Authority shall give the notice required by that Article (an Article 21(8) Notice).

(8) Not later than 8 weeks following the giving of the Notice mentioned in paragraph (5)(c) or (d), whichever was appropriate, the Authority shall complete the assessment required by Article 15.

(9) Where Article 17(1) applies (appeal in respect of a child for whom no statement is maintained), not later than 2 weeks following the making of that decision, the Authority shall give the notice required by that Article (an Article 17(1) Notice).

(10) Paragraphs (4) and (8) are subject to regulation 15 (Exceptions).

(11) Schedule 1 contains provision as to the other information to be included in each of the Notices mentioned in this Regulation.

**Time limits relating to statements, periodic reviews and re-assessment reviews**

**14.—**(1) Where Article 16(1) applies (statement of special educational needs), not later than 4 weeks following completion of the Article 15 assessment mentioned in regulation 13(8), the Authority shall serve—

- (a) a copy of the proposed statement required by paragraph 2 of Schedule 2 to the 1996 Order; and
- (b) written notice required by paragraph 4(2) of Schedule 2 to the 1996 Order (hereafter referred to as a paragraph 4(2) of Schedule 2 Notice).

(2) Where Article 19(1A) applies (review of statement maintained under Article 16), not later than 2 weeks following the decision not to amend the statement, the Authority shall give the Notice required by that Article (an Article 19(1A) Notice).

(3) Where paragraph 3(2) of Schedule 2 to the 1996 Order applies (re-assessment review), not later than 4 weeks following the re-assessment review, the Authority shall serve—

- (a) a copy of the proposed amended statement; and
- (b) a paragraph 4(2) of Schedule 2 Notice.

(4) Where paragraph 3(4) of Schedule 2 to the 1996 Order applies (periodic review), not later than 4 weeks following the determination of the Authority at regulation 18(13)(a)(ii), the Authority shall serve—

- (a) a copy of the existing statement and amendment notice, and
- (b) a paragraph 4(2) of Schedule 2 Notice.

(5) Where paragraph 6(1) of Schedule 2 to the 1996 Order applies (consultation on specifying name of school in statement), not later than 4 weeks following the service of the documents mentioned at paragraphs (1), (3) or (4), (whichever is appropriate), the Authority shall –

- (a) serve on the affected body a copy of the proposed statement, proposed amended statement, or the existing statement and amendment notice (as the case may be); and
- (b) consult with the affected body.

(6) The Authority shall serve a copy of the statement or amended statement (as the case may be) together with the written notice required by paragraph 9(2) of Schedule 2 to the 1996 Order (a paragraph 9(2) of Schedule 2 Notice) not later than 6 weeks from—

- (a) service of the proposed statement in accordance with paragraph (1); or
- (b) service of the proposed amended statement or existing statement and amendment notice (as the case may be) in accordance with paragraphs (3) or (4).

(7) Where notice has been given in accordance with paragraph 13(2) of Schedule 2 to the 1996 Order (a paragraph 13(2) of Schedule 2 Notice), the Authority shall not cease to maintain a statement before a period of 8 weeks.

(8) Where paragraph 11(1) of Schedule 2 to the 1996 Order applies (change of named school), not later than 6 weeks following that request, the Authority shall—

- (a) comply with that request; or
- (b) give notice, in accordance with paragraph 11(3) of Schedule 2 to the 1996 Order, (a paragraph 11(3) of Schedule 2 Notice) that it has decided not to comply with the request.

(9) Paragraph (6) is subject to regulation 15 (Exceptions).

(10) Schedule 1 contains provision as to the other information to be included in each of the Notices mentioned in this Regulation.

### **Exceptions**

**15.—**(1) Regulations 13 and 14 are subject to the following paragraphs.

(2) Where, as a consequence of one of the circumstances set out at paragraph (3), it has not been practicable for the Authority to serve the appropriate Notice mentioned in regulation 13(5) within the 4 week timeframe required by regulation 13(4), the new timeframe shall be 6 weeks.

(3) The circumstance mentioned in paragraph (2) are—

- (a) exceptional circumstances affect the relevant party during the 4 week period; or
- (b) the relevant party was absent from Northern Ireland for a continuous period of not less than 2 weeks during the 4 week period.

(4) Where, as a consequence of the circumstance in paragraph (5), it has not been practicable for the Authority to serve the appropriate a Notice mentioned in regulation 13(5) within the 4 week timeframe required by regulation 13(4), the new timeframe shall be 3 weeks from the date the school reopens to pupils.

(5) The circumstance referred to in paragraph (4) is the Authority has requested advice from the principal or proprietor of a school in a week which is a week immediately before the school is due to close for a continuous period of not less than 2 weeks.

(6) Subject to paragraph (10), where, as a consequence of one of the circumstances set out at paragraph (7), it has not been practicable for the Authority to complete the assessment within the 8 week timeframe required by regulation 13(8), the new timeframe shall be 12 weeks.

(7) The circumstances referred to in paragraph (6) are—

- (a) exceptional circumstances affect the relevant party during the 8 week period;
- (b) the relevant party was absent from Northern Ireland for a continuous period of not less than 4 weeks during the 8 week period;
- (c) the relevant party fails to keep an appointment for an examination or a test during the 8 week period; or
- (d) after receiving the advice sought under regulation 9 it is necessary for the Authority to seek further advice.

(8) Where, as a consequence of one of the circumstances set out in paragraph (9), it has not been practicable for the Authority to complete the assessment within the 8 week timeframe required by regulation 13(8), the new timeframe shall be 3 weeks from the date the school reopens to pupils.

(9) The circumstance referred to in paragraph (8) are that the Authority has requested advice in a week, which is a week immediately before the school is due to close for a continuous period of not less than 2 weeks, from—

- (a) the principal or proprietor of a school (in accordance with regulation 9(2)(a)); or
- (b) the Educational Psychologist (in accordance with regulation 9(2)(b)).

(10) Where—

- (a) the Authority has requested advice in accordance with regulation 9(2)(c) or (4);
- (b) one of the circumstances mentioned at paragraph (11) applies; and
- (c) the person responsible for providing the advice has notified the Authority that an extension to the 6 week timeframe mentioned in regulation 9(6)(c) is required and has indicated which circumstance at paragraph (11) applies;

the Authority shall grant an extension of time, of 6 weeks, to a total of 12 weeks.

(11) The circumstances mentioned in paragraph (10)(b) are—

- (a) exceptional circumstances affect the relevant party during the 6 week period mentioned in regulation 9(6)(c);
- (b) the relevant party was absent from Northern Ireland for a continuous period of not less than 4 weeks during the 6 week period;
- (c) the relevant party fails to keep an appointment for an examination or test during the 6 week period;
- (d) the relevant HSC Trust has not before the date on which it received the request for advice in accordance with regulation 9(2)(c) or (4) produced or maintained any information or records relevant to an assessment of the child under Article 15.

(12) Where paragraph (10) applies, and it becomes impracticable for the Authority to complete the assessment within the timeframe required by paragraph (6) (12 weeks), the new timeframe shall be 14 weeks in total.

(13) Where—

- (a) the relevant HSC Trust has notified an extension of time in accordance with paragraph (10); and
- (b) it has still not been possible for the HSC Trust to provide the Authority with regulation 9(2)(c) or (4) advice;

the Authority shall complete the assessment within the new timeframe mentioned in paragraph (12) (14 weeks), despite the absence of that advice.

(14) Where, as consequence of paragraph 7(1)(b) or (2) of Schedule 2 to the 1996 Order (representations), it has not been practicable for the Authority to comply with the timeframe mentioned in regulation 14(6), then—

- (a) a copy of the statement or amended statement (as the case may be) shall be served by the Authority not later than 2 weeks following the time within which any representations may be received in accordance with those paragraphs in the 1996 Order; and
- (b) if a meeting has been or is to be held, the statement or amended statement shall be served not later than 2 weeks following the last such meeting arranged under those paragraphs in the 1996 Order.

(15) Where, as a consequence of one of the circumstances set out at paragraph (16), it has not been practicable for the Authority to serve the documents mentioned in regulation 14(6) (whichever is appropriate) within the 6 week timeframe required by that regulation, the new timeframe shall be 10 weeks.

(16) The circumstance referred to in paragraph (15) are—

- (a) exceptional circumstances affect the relevant party during the 6 week period mentioned in regulation 14(6); or

- (b) the relevant party was absent from Northern Ireland for a continuous period of not less than 4 weeks during the 6 week period;
- (c) the Authority has consulted with the affected body under regulation 14(5)(b) in a week which is a week immediately before the affected body is due to close for a continuous period of not less than 2 weeks.

(17) Where the Authority is endeavouring to make arrangements for a child in accordance with Article 10(1)(a) the new timeframe mentioned in regulation 14(6) shall be 9 weeks.

(18) Where, in pursuance of arrangements under Article 10(1)(b), the Authority has sent to the Department a written request seeking consent under Article 12(1)(b) and the Authority has not received a response (granting or refusing consent) within three weeks of the Department's receipt of that request, the new timeframe mentioned in regulation 14(6) shall be 9 weeks.

(19) in this regulation "relevant party" means the child, if over compulsory school age, or the child or the parent of the child in any other case.

### **Children admitted to special schools for the purposes of assessment**

**16.** If a child without a statement has been admitted to a special school for the purposes of an assessment under Article 15, following the completion of that assessment the child may remain at that school—

- (a) where Article 16(1) applies, until a statement is made for the child;
- (b) where Article 17(1) applies—
  - (i) until the expiry of 10 working days during which the school is open to pupils after the Authority serves the notice under Article 17(1) (an Article 17(1) Notice) that it does not propose to make a statement; or
  - (ii) until the conclusion of any appeal brought under Article 17(2)(b) or mediation process set out at Part VII.

## **PART V STATEMENTS**

### **Statement of special educational needs**

**17.** A statement shall—

- (a) be in the form set out in Schedule 2;
- (b) contain the information specified in that form;
- (c) be dated and authenticated by the signature of a duly authorised officer of the Authority;
- (d) set out whether it is the first statement made in respect of the child or an amended statement; and
- (e) indicate on the first page if it is—
  - (i) amended following a re-assessment review in accordance with Article 19(1)(a) and the date of that review;
  - (ii) amended following a periodic review in accordance with Article 19(1)(b) and the date of that review;
  - (iii) amended following a mediation agreement, under regulation 39 and the date of any such agreement;
  - (iv) amended in compliance with an order of the Tribunal and the date of any such order;

- (v) amended pursuant to a direction of the Department under paragraph 2(4) of Schedule 13 to the 1986 Order(a)and the date of any such direction; or
- (vi) amended pursuant to a request under paragraph 11 of Schedule 2 to the 1996 Order and the date of such amendment.

**Periodic Review of a statement under Article 19(1)(b)**

**18.—(1)** This regulation applies where the Authority conducts a periodic review of a statement in accordance with Article 19(1)(b).

(2) Not later than the end of the second week in September in each school year the Authority shall write to the principal or proprietor (as the case may be) of every school specifying—

- (a) each child registered at the school in respect of whom a periodic review is required; and
- (b) the date by which a report from that principal or proprietor shall be submitted to the Authority to inform the periodic review of each registered child.

(3) The principal or proprietor shall submit the report to the Authority on or before the date specified by paragraph (2)(b).

(4) Before completing the report, the principal or proprietor—

- (a) may convene a meeting (a review meeting); and
- (b) shall convene that review meeting where the circumstances set out in paragraph (5) apply.

(5) The circumstances mentioned in paragraph (4)(b) are—

- (a) the child has reached the final year of a key stage and a review meeting has not yet been convened in that key stage;
- (b) the child is in Year 10 of compulsory school education;
- (c) the child is preparing to transfer to another school or institution; or
- (d) a review meeting has been requested by—
  - (i) the child, (if the child is over compulsory school age),
  - (ii) the parent of the child (in other case); or
  - (iii) the Authority.

(6) The principal or proprietor shall invite to any review meeting—

- (a) the child concerned (if the child is over compulsory school age), or the child and the child’s parent (in any other case);
- (b) any relevant member of the staff of the school;
- (c) any independent advocate nominated by the child concerned, (if the child is over compulsory school age), or the child and child’s parent child (in any other case);
- (d) representative from the Authority;
- (e) where the Authority considers it appropriate, a healthcare professional from the relevant HSC Trust.

(7) For the purposes of informing the periodic review, the Authority may obtain any or all of the following—

- (a) psychological advice in accordance with regulation 11;
- (b) medical advice from a health care professional;
- (c) social work advice from a social worker;
- (d) advice from a health care professional (other than that set out at sub-paragraph (b)).

(8) The time within which any advice mentioned in paragraph (7) shall be submitted to the Authority is—

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(a) S.I.1986/594 (NI. 3)

- (a) where paragraph (7)(a) applies, not later than 4 weeks from the date that person receives the Authority's request for advice;
- (b) where paragraph (7)(b) to (d) applies, not later than 6 weeks from the date that person receives the Authority's request for advice.

(9) Before completing the report (and convening a review meeting), the principal or proprietor shall invite and take into account—

- (a) representations from:
  - (i) the child concerned (if the child is over compulsory school age); or
  - (ii) the child and the child's parent (in any other case);
- (b) written advice (which may include information) from:
  - (i) any relevant member of the staff of the school; and
  - (ii) any person the principal or proprietor considers appropriate.

(10) At the time the principal or proprietor invites the representations at paragraph (9)(a), the principal or proprietor shall inform that person of their right to request a review meeting to inform the periodic review.

(11) Subject to paragraph (10), the report mentioned at paragraph (2)(b) shall contain the following particulars—

- (a) the child's progress towards meeting the objectives specified in Part III of the statement;
- (b) the child's progress towards attaining any expected outcomes, including those set out in the child's personal learning plan;
- (c) any expected outcomes to be established in furtherance of those objectives which the child ought to meeting during the period until the next periodic review;
- (d) any modifications to, or exclusions from, the Northern Ireland curriculum, and where there are modifications or exclusions, whether these are appropriate to maintain a balanced and broadly based curriculum for that child;
- (e) any recommendations as to whether the Authority should amend or cease to maintain a statement; and
- (f) where a transition plan is in place, any matters which are subject of such a plan.

(12) Where a review meeting takes place, the following additional matters should be included in report—

- (a) all agreed matters and steps which the meeting attendees conclude ought to be taken in respect of the child;
- (b) where meeting attendees cannot agree the recommendations at paragraph(11)(e), the differing recommendations of each attendee;
- (c) where a first transition plan is being prepared, the content of that plan for the transition from Year 10 to adulthood; and
- (d) where a transition plan is in place, any recommended changes to that plan suggested by the meeting attendees.

(13) On receipt of the report the Authority shall determine—

- (a) in respect of the statement , whether—
  - (i) it remains appropriate to the child's special educational needs and does not require amendment;
  - (ii) it requires amendment (in which case regulation 14(4) applies); or
  - (iii) it should cease to be maintained; and
- (b) where a transition plan is in place, whether amendments to that plan are appropriate.

(14) Subject to paragraphs (15) and (16) the Authority shall make the determination required by paragraph (13) not later than 4 weeks from the date mentioned in paragraph (2)(b).

(15) Where, on receipt of the report, the Authority is of the opinion that advice of a type mentioned at paragraph (7) is required, the Authority shall seek that advice before the expiration of the period mentioned in paragraph (14).

(16) Where paragraph (15) applies, the Authority shall make the determination required by paragraph (13) not later than 4 weeks from the date it receives the advice.

(17) After conducting the review of the statement, the Authority shall inform the child (if over compulsory school age) or the parent of the child (in any other case) of its determination under paragraph (13).

(18) In this regulation—

“report” means the report mentioned at paragraph (2)(b); and

“review meeting” means the meeting mentioned in paragraph (4)(a) or (b) as the case may be.

(19) This regulation is subject to regulation 19.

### **Periodic Review of a statement under Article 19(1)(b) where child does not attend a school**

**19.**—(1) This regulation applies where the child who is subject of the review in regulation 18(1) is not registered at, or is registered at but does not attend, a school.

(2) Where paragraph (1) applies, the provisions of regulation 18 also apply, subject to the following paragraphs.

(3) The following paragraphs of regulation 18 are treated as if they are omitted—

(a) paragraphs (3) to (6); and

(b) paragraphs (9) to (10).

(4) A designated officer of the Authority shall prepare and submit the report mentioned in regulation 18(2)(b) by the date mentioned in that provision or determined by the Authority (if the child is not registered at a school).

(5) Before preparing and submitting the report, the designated officer shall—

(a) invite written representations from those persons listed at regulation 18(6)(a), (c) to (e) and (9)(a);

(b) invite written representations from the manager of an Article 10(1) institution, other than an independent school, at which the child is receiving special educational provision;

(c) convene a meeting (a review meeting); and

(d) invite to that meeting the persons listed at regulation 18(6)(a), (d) to (e).

(6) The additional matters set out at regulation 18(12) should be included in the report.

### **Transition plan**

**20.**—(1) This regulation applies where there is a statement in place in respect of a child and that child—

(a) attends a school;

(b) does not attend a school; or

(c) is receiving special educational provision in an Article 10(1) institution (other than an independent school).

(2) During Year 10 of compulsory school education (or the year the child would be in Year 10 were they attending a school) a first transition plan must be prepared by the appropriate person mentioned at sub-paragraph (a) or (b) (whichever is applicable)—

(a) where paragraph (1)(a) applies, by the principal or proprietor of the school (as the case may be);

(b) where paragraph (1)(b) or (c) apply, by the designated officer.

(3) The Authority shall give directions in writing to the appropriate person not later than the end of the second week in September, regarding the preparation of the first transition plan.

(4) Before preparing the first transition plan, a transition planning meeting shall be convened by the appropriate person.

(5) The appropriate person shall invite to the transition planning meeting—

- (a) where paragraph (1)(a) applies, the persons listed at paragraph (6)(b) to (d);
- (b) where paragraph (1)(b) or (c) apply, the persons listed at paragraph (6)(a) to (d).

(6) The persons mentioned in paragraph (5) are—

- (a) the manager of an Article 10(1) institution, other than an independent school, at which the child is receiving special educational provision;
- (b) a health care professional from the relevant HSC Trust;
- (c) a person providing careers services under section 1 of the Employment and Training Act (Northern Ireland) 1950(a);
- (d) the persons listed at regulation 18(6) (and for the purposes of this regulation, regulation 18(6) shall be deemed to read, the principal, proprietor or manager (as the case may be)).

(7) The transition planning meeting shall take place concurrently with the review meeting mentioned at regulation 18(4) or 19(4)(c) (whichever is applicable).

(8) The particulars listed at regulation 18(11)(a) to (e) shall be considered at that transition planning meeting as well as any other matter which the meeting attendees consider relevant to the child concerned.

(9) The first transition plan shall contain all matters and steps which the persons mentioned in paragraph (6) conclude ought to be included and taken in respect of the child.

(10) The appropriate person shall submit the first transition plan to the Authority at the same time it submits the report mentioned in regulation 18(2)(b) or 19(3) (whichever is applicable).

(11) The Authority shall consider the transition plan within 6 weeks from the date it receives the report and either—

- (a) approve it; or
- (b) if it considers the transition plan incomplete, return it to the appropriate person with directions for amendment and completion.

(12) Where paragraph (11)(b) applies, the appropriate person shall submit to the Authority the transition plan appropriately amended not later than two weeks from the date it receives the returned transition plan.

### **Matters Supplementary to regulations 18 to 20**

**21.**—(1) Where a child who is over compulsory school age but under the age of 18 has been invited to any meeting convened under regulations 18 to 20, the person or body with responsibility for convening that meeting shall at the same time inform the child's parent of that invitation in writing.

(2) Where any meeting is to be convened under regulations 18 to 20 the persons invited to that meeting shall be afforded the following period of notice—

- (a) subject to sub-paragraph (b) in the case of a manager of an Article 10(1) institution or any of the persons listed at 18(6)(a) to (e), not less than 2 weeks' notice of the date of the meeting;
- (b) in the case of a health care professional from the relevant HSC Trust, not less than 6 weeks' notice of the date of the meeting,

unless all parties consent in writing to a lesser period of notice.

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(a) 1950 c.29 (N.I.)

(3) The documents listed in sub-paragraphs (a) to (c) shall be shared by the person who completes that document with the child concerned (if over compulsory school age) or the parent of the child (in any other case)—

- (a) any advice obtained by the Authority in accordance with regulation 18(7);
- (b) the report under regulation 18(2)(b), or regulation 19(3) (as the case may be) at the same time it is shared with the Authority;
- (c) in the case of the transition plan prepared under regulation 20, once approved by the Authority.

(4) Where a child who is over compulsory school age but under the age of 18 has been provided with the documents in accordance with paragraph (3) the person who provided the document shall at the same time inform the child's parents of that fact in writing.

(5) Where any written representations are invited from a child (if over compulsory school age) or the parent of the child (in any other case) in accordance with regulations 18 and 19, the appropriate person shall, at the time the representations are invited, inform the child or parent (as the case may be) of Article 13 of the GDPR and the requirements of that provision.

(6) In this regulation "appropriate person" shall be construed in accordance with regulation 20(2).

### **Restriction on disclosure of statements**

**22.—**(1) A statement shall not be disclosed by the Authority without the consent of the child concerned (if the child is over compulsory school age), or the parent of the child (in any other case) except to the persons and for the purposes set out in paragraph (2).

(2) The persons and purposes mentioned at paragraph (1) are—

- (a) the Department for the purposes of carrying out its functions under Part II of the 1996 Order and these Regulations;
- (b) the board of governors or proprietor of a school at which the child is registered for the purposes of carrying out its functions under Part II of the 1996 Order and these Regulations;
- (c) any person from whom the Authority is seeking advice in accordance with regulation 9 for the purposes of making an assessment in respect of the child concerned under Article 15 of the 1996 Order;
- (d) any person from whom the Authority is seeking advice in accordance with regulation 18 for the purposes of conducting a periodic review in accordance with Article 19(1)(b);
- (e) the manager of an Article 10(1) institution (other than an independent school) at which the Authority has arranged special educational provision to be provided for the child, for the purposes of that institution carrying out its functions under Part II of the 1996 Order and these Regulations;
- (f) where in accordance with Part VII a person has requested mediation, with the mediation advisor, at the request of that advisor, for the purposes of carrying out their functions under Part II of the 1996 Order and these Regulations;
- (g) a person for the purposes of educational research where—
  - (i) the Authority has formed the opinion the research may advance the education of children with special educational needs; and
  - (ii) the person engaged in that research has undertaken not to publish anything contained in, or derived from, a statement otherwise in a form which does not identify the child concerned or any other person;

- (h) to the appropriate officer of a HSC Trust(a)for the purposes of carrying out an assessment required by the child concerned in accordance with s.5(5) of the Disabled Persons (Northern Ireland) Act (the 1989 Act)(b);
- (i) to the HSC Trust for the purposes of that HSC Trust performing its duties under Articles 26(1)(a), 174(6), 175(3), or 177(5) of the Children (Northern Ireland) Order 1995(c);
- (j) to RQIA for the purposes of RQIA performing its duties under Article 176(2) of the Children (Northern Ireland) Order 1995; or
- (k) to an inspector (or lay person appointed under Article 102A of the 1986 Order), on request, for the purposes of carrying out the functions under Article 102 of that 1986 Order.

(3) Paragraph (1) is subject to the provisions of the 1996 Order.

(4) The arrangements for keeping a child’s statement must be such that those to whom it is disclosed ensure, as far as is reasonably practicable, that unauthorised persons do not have access to it.

(5) Where the purpose set out at paragraph (2)(a) to (k) has been fulfilled, the statement shall be retained for no longer than is necessary for the performance of those functions.

(6) In this regulation “appropriate officer” has the same meaning as in s5(9) of the 1989 Act.

## PART VI

### CHILDREN OVER COMPULSORY SCHOOL AGE

#### **Assistance and support to a child over compulsory school age exercising rights under Part II of the 1996 Order**

**23.**—(1) This regulation applies where a child over compulsory school age determines to exercise any of the rights conferred on him or her in Part II of the 1996 Order.

(2) That child may appoint any or all of the following persons, who is 18 years or over, to provide assistance and support—

- (a) a parent;
- (b) a representative;
- (c) a solicitor, barrister or other legal representative.

(3) The Authority shall respect any appointment made under paragraph (2) and recognise the assistance and support offered by that person in respect of the child over compulsory school age.

(4) Assistance and support includes—

- (a) where paragraph (2)(c) applies, legal advice, services and representation;
- (b) in relation to any information or Notices received from the Authority, assistance with understanding;
- (c) attendance at meetings, discussions, mediation, appeals etc;
- (d) assistance in adhering to any requirements imposed by these Regulations, including the completion and submission of any necessary paperwork;
- (e) provision of, or assistance with, representations permitted to be submitted to the principal or proprietor of a school, designated officer of the Authority or the Authority (as the case may be);
- (f) accepting services of Notices.

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(a) See Article 3 of S.I.1994/429 (N.I. 2) and S.R. 1994 No. 64 for the exercise of functions, initially conferred on Health and Social Care Boards by the HSC Trusts.

(b) 1989 c.10 (N.I.)

(c) S.I.1995/755 (N.I. 2)

## Capacity Determination

24.—(1) Regulation 25 applies where any of the persons mentioned in paragraph (2) request the Authority to determine whether a child over compulsory school age lacks capacity to exercise any of the rights conferred by Part II of the 1996 Order (a capacity determination).

(2) The persons are—

- (a) the child over compulsory school age;
- (b) the parent of the child;
- (c) the Authority;
- (d) the responsible body;
- (e) the Tribunal;
- (f) a health care professional who has experience working with the child over compulsory school age in a professional capacity;
- (g) a social worker who has experience working with the child over compulsory school age in a professional capacity.

(3) Any request for a capacity determination under paragraph (1) shall be in writing.

(4) The capacity determination shall be by an Educational Psychologist in the Authority and recorded in writing.

(5) Within 4 weeks of the date the paragraph (3) is received the Authority shall send the capacity determination to —

- (a) the person mentioned in paragraph (2) who requested the capacity determination;
- (b) the parent; and
- (c) the child over compulsory school age.

(6) A “capacity determination” means a statement in writing in the form set out in Schedule 3—

- (a) recording the fact that a capacity assessment was carried out, by which Educational Psychologist in the Authority it was carried out and when;
- (b) certifying that, in the opinion of the assessor, the child over compulsory school age either—
  - (i) has capacity; or
  - (ii) lacks capacity

to exercise the rights conferred by Part II of the 1996 Order;

(c) where sub-paragraph (b)(ii) applies, specifying—

- (i) which of the things mentioned in regulation 27(1)(a) to (d) the child is, in the assessor’s opinion, not able to do because of an impairment of, or a disturbance in the functioning of, the child’s mind or brain; and
- (ii) any help or support that has been given to the child to enable them to make a decision in relation to the matter without success.

## Principles: capacity

25.—(1) The principals in paragraphs (2) to (5) must be complied with where a capacity determination has been requested in accordance with Regulation 24.

(2) The child over compulsory school age is not to be treated as lacking capacity to exercise any of the rights conferred by Part II of the 1996 Order unless it is established that the child lacks capacity in relation to that matter within the meaning given by regulation 26.

(3) Whether the child over compulsory school age is, or is not, able to make a decision for himself or herself about the matter—

- (a) is to be determined solely by reference to whether the child is or not able to do the things mentioned in regulation 27(1)(a) to (d); and

- (b) accordingly, is not to be determined merely on the basis of any condition that the child has, or any other characteristic of the child, which might lead others to make unjustified assumptions about his or her ability to make a decision.

(4) The child over compulsory school age is not to be treated as unable to make a decision for himself or herself about the matter unless all practicable help and support to enable the child to make a decision has been given without success (see regulation 28).

(5) The child over compulsory school age is not to be determined as unable to make a decision for himself or herself about the matter merely because the child makes an unwise decision.

### **Establishing whether a person has capacity**

26.—(1) For the purposes of these Regulations, a child over compulsory school age lacks capacity to exercise a right conferred by Part II of the 1996 Order if, at the material time, the child is unable to make a decision for himself or herself about the matter (within the meaning given by regulation 27) because of an impairment of, or a disturbance in, the functioning of, the mind or brain.

(2) It does not matter—

- (a) whether the impairment or disturbance is permanent or temporary; or
- (b) what the cause of the impairment or disturbance is.

(3) In particular, it does not matter whether the impairment or disturbance is caused by a disorder or disability or otherwise than by a disorder or disability.

### **Meaning of “unable to make a decision”**

27.—(1) For the purposes of these Regulations, a child over compulsory school age is “unable to make a decision” in relation to the exercise of a right conferred by Part II of the 1996 Order if the child—

- (a) is not able to understand the information relevant to the decision;
- (b) is not able to retain that information for the time required to make the decision;
- (c) is not able to appreciate the relevance of that information and to use and weigh that information as part of the process of making the decision; or
- (d) is not able to communicate his or her decision (whether by talking, using sign language or any other means);

and references to enabling or helping the child over compulsory school age to make a decision about the matter are to be read accordingly.

(2) In paragraph (1)(a) “the information relevant to the decision” includes information about the reasonably foreseeable consequences of—

- (a) deciding one way or another; or
- (b) failing to make the decision.

(3) For the purposes of paragraph (1)(a) the child over compulsory school age is not to be regarded as “not able to understand the information relevant to the decision” if the child is able to understand an appropriate explanation of the information.

(4) An appropriate explanation means an explanation of the information given to the child over compulsory school age in a way appropriate to the child’s circumstances (using simple language, visual aids or any other means).

### **Supporting a person to make a decision**

28.—(1) A child over compulsory school age is not to be regarded for the purposes of regulation 25(4) as having been given all practicable help and support to enable him or her to make a decision unless, in particular, the steps required by this regulation have been taken so far as practicable.

- (2) Those steps are—
- (a) the provision to the child, in a way appropriate to his or her circumstances, of all the information relevant to the decision (or, where it is more likely to help the child to make a decision, of an explanation of that information);
  - (b) ensuring that the matter in question is raised with the child—
    - (i) at a time or times likely to help the child to make a decision; and
    - (ii) in an environment likely to help the child to make a decision;
  - (c) ensuring that persons whose involvement is likely to help the child to make a decision are involved in helping and supporting the child.
- (3) The information referred to in paragraph (2)(a) includes information about the reasonably foreseeable consequences of—
- (a) deciding one way or another; or
  - (b) failing to make the decision.
- (4) For the purposes of providing the information or explanation mentioned in paragraph (2)(a) in a way appropriate to the child over compulsory school age’s circumstances it may, in particular, be appropriate—
- (a) to use simple language or visual aids; or
  - (b) to provide support for the purposes of communicating the information or explanation.
- (5) The reference in paragraph (2)(c) to persons whose involvement is likely to help the child over compulsory school age to make the decision may, in particular, include a person who provides support to help the child communicate his or her decision.
- (6) Nothing in this regulation is to be taken as in any way limiting the effect of regulation 25(4).

### **Compliance with regulation 25(2)**

**29.**—(1) Paragraph (2) applies where it falls to the Educational Psychologist in the Education Authority to determine whether a child over compulsory school age lacks capacity in relation to the exercise of a right conferred by Part II of the 1996 Order.

- (2) If the Educational Psychologist—
- (a) has taken reasonable steps to establish whether the child lacks capacity in relation to the matter;
  - (b) having assessed the child, reasonably believes that the child lacks capacity in relation to the matter; and
  - (c) has complied with the principles in regulation 25(3) to (5) and regulation 28,
- for the purposes of regulation 25(2) the Authority is to be taken to have sufficiently “established” that the child lacks capacity in relation to the matter.

### **Children over compulsory school age determined to lack capacity to exercise a right conferred by Part II of the 1996 Order**

**30.**—(1) This regulation applies where it has been determined by an Educational Psychologist that a child over compulsory school age lacks capacity to exercise a right conferred by Part II of the 1996 Order.

(2) Following the issue of that capacity determination that right may be exercised by the parent of the child.

(3) Before exercising that right, or making any decision connected to that right, the parent of the child must satisfy himself or herself that the exercise if the right, or decision, is in the child’s best interests (see regulation 31).

## **Best interests**

**31.**—(1) This regulation applies where it falls to the parent of the child mentioned in regulation 30(2) to determine what would be in the best interests of the child over compulsory school age.

- (2) The parent making the determination must not make it merely on the basis of—
- (a) the child’s age or appearance; or
  - (b) any other characteristic of the child’s, including any condition that the child has, which might lead to others to make unjustified assumptions about what might be in the child’s best interests.
- (3) The parent—
- (a) must consider all the relevant circumstances (that is, all the circumstances of which that person is aware and which it is reasonable to regard as relevant); and
  - (b) must in particular take the following steps.
- (4) The parent must consider—
- (a) whether it is likely that the child will at some time have capacity in relation to the matter in question; and
  - (b) if it appears likely that the child will, when that is likely to be.
- (5) The parent must, as far as practicable, encourage and help the child to participate as fully as possible in the determination of what would be in the child’s best interests.
- (6) The parent must have special regard to (so far as they are reasonably ascertainable)—
- (a) the child’s past and present wishes and feelings (and, in particular, any relevant written statement made by the child in relation to the particular matter when the child had capacity);
  - (b) the beliefs and values that would be likely to influence the child’s decision if the child had capacity; and
  - (c) the other factors that the child would be likely to consider if able to do so.
- (7) The parent must—
- (a) so far as it is practicable and appropriate to do so, consult the relevant people about what would be in the child’s best interests and in particular about the matters mentioned in paragraph (6); and
  - (b) take into account the views of those people (so far as ascertained from that consultation or otherwise) about what would be in the child’s best interests and in particular about those matters.

For the definition of “the relevant people” see paragraph (10).

(8) The parent must, in relation to any act or decision that is being considered, have regard to whether the same purpose can be as effectively achieved in a way that is less restrictive of the child’s rights.

(9) The parent must, in relation to any act that is being considered, have regard to whether failure to do the act is likely to result in harm to other persons with resulting harm to the child.

- (10) In paragraph (7) “the relevant people” means—
- (a) those engaged in the education of the child over compulsory school age or interested in the child’s welfare;
  - (b) the Authority;
  - (c) a principal or proprietor of a school or Article 10(1) institution.

## **Compliance with regulation 30(3)**

**32.**—(1) This regulation applies where the parent of the child mentioned in regulation 30(2)—

- (a) exercises a right conferred on a child over compulsory school age by Part II of the 1996 Order who lacks capacity in relation to whether the act should be done; or
  - (b) makes a decision, connected to that right, for or on behalf of a child over compulsory school age who lacks capacity to make the decision.
- (2) The parent is to be taken to have sufficiently complied with the principal in regulation 30(3) (act or decision must be in best interests) if they—
- (a) reasonably believe that the exercise of the right conferred by Part II of the 1996 Order is in the best interests of the child over compulsory school age; and
  - (b) in determining whether the act or decision is in the best interests of the child over compulsory school age, has complied with regulation 31.

### **Where a child over compulsory school age lacks capacity**

**33.** In a case where a child over compulsory school age has been determined to lack capacity at the material time, references in the 1996 Order and these Regulations to the child over compulsory school age, are to be read as a reference to the parent of the child.

## PART VII MEDIATION AND APPEALS

### **Information to be included in Notices sent by the Authority**

- 34.**—(1) Schedule 1 makes provision in relation to Notices.
- (2) The Notices mentioned in paragraph 5 of Schedule 1 shall include the information set out at sub-paragraphs (a) to (c)—
- (a) the timescales for appeal;
  - (b) contact details of the mediation adviser that the child (if over compulsory school age) or the parent of the child (in any other case) should contact to obtain the mediation certificate;
  - (c) where a person wishes to pursue mediation, the requirement to inform the mediator about the issues in respect of which they wish to pursue mediation (“mediation issues”).

### **Mediation certificates in connection with appeals at Article 21C(1)(a) to (f)**

**35.**—(1) Where a person intends to appeal to the Tribunal under any of the provisions set out as Article 21C(1)(a) to (f), that person shall contact the mediation adviser and inform them of their intention to appeal under those provisions.

(2) Not later than 2 working days from the contact mentioned in paragraph (1), the mediation adviser shall provide to the person mentioned in paragraph (1) information and advice about pursuing mediation with the Authority.

(3) Not later than 3 working days from the information and advice being provided, the mediation adviser shall issue to the person mentioned in paragraph (1) a mediation certificate.

- (4) The person mentioned in paragraph (1) is not required to—
- (a) inform the mediation adviser whether they wish (or, as the case may be, do not wish) to pursue mediation; or
  - (b) having received the mediation certificate, request or engage in mediation before proceeding to appeal.

but if the person has informed the mediation 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.

## **Mediation**

**36.**—(1) The following paragraphs apply to a person who has a right of appeal to the Tribunal and who opts to pursue mediation with the Authority.

(2) The date that person contacts the mediator shall be known as the date of contact.

(3) The mediator shall arrange a date and place of mediation to take place not later than 4 weeks from the date of contact.

(4) The mediator shall give the parties to the mediation at least 10 working days' notice of the date and place of mediation unless the parties consent to this period being reduced.

## **Attendance at the mediation**

**37.**—(1) The following persons may attend the mediation—

(a) the parties to the mediation;

(b) where a child over compulsory school age is a party to the mediation, any party listed in regulation 23(2) who has been appointed by the child to provide assistance and support (with the agreement of the mediator);

(c) where the child's parents is a party to the mediation, the child (with the agreement of the parent and mediator);

(d) any other person, with the agreement of the parties to the mediation, or where there is no such agreement, with the agreement of the mediator.

(2) The mediator shall take reasonable steps to ascertain the views of the child about the mediation issues.

## **Training and experience of mediators**

**38.** To be eligible for appointment as a mediator, a person shall—

(a) be a fully trained mediator in order to ensure that the mediation is conducted in an effective, impartial and competent way;

(b) demonstrate evidence of not less than 2 years continuous professional development;

(c) demonstrate experience of mediating with children and families; and

(d) demonstrate sufficient knowledge of legislation in relation to Special Educational Needs in Northern Ireland to effectively conduct the mediation.

## **Mediation Agreement**

**39.**—(1) This regulation applies where mediation has taken place and the parties to the mediation reach an agreement.

(2) The agreement mentioned in paragraph (1) shall be—

(a) recorded in writing; and

(b) shared with the parties to the mediation,

by the mediator not later than 3 working days from that agreement being reached (“the mediation agreement”).

(3) Where the mediation issues in the mediation agreement are those on which the child (if over compulsory school age) or parent of the child (in any other case) has a right to appeal to the Tribunal as set out in column 1 of the table in Part 1 of Schedule 4, the Authority shall comply with the period prescribed in column 3 of that table as if the mediation agreement were an order of the Tribunal.

(4) Where the mediation agreement requires the Authority to take a specific action in relation to which the child (if over compulsory school age) or parent of the child (in any other case) has no right of appeal to the Tribunal, the Authority shall take that action not later than 2 weeks from the date of the mediation agreement.

(5) The time limits referred to in paragraphs (3) and (4) do not apply where the parties to the mediation agree in writing to a different timescale.

#### **Failure to reach a mediation agreement**

**40.**—(1) This regulation applies where mediation has taken place and the parties to the mediation fail to reach an agreement.

(2) The failure to reach an agreement shall be—

- (a) recorded in writing; and
- (b) shared with the parties to the mediation

by the mediator not later than 3 working days from the failure to reach an agreement.

(3) The mediator shall, within the timeframe mentioned in paragraph (2), provide the party with the right of appeal a mediation certificate specifying that mediation took place.

## **PART VIII**

### **COMPLIANCE WITH TRIBUNAL ORDERS AND UNOPPOSED APPEALS**

#### **Compliance with Tribunal Orders**

**41.**—(1) In this regulation references to the table, are to the table set out in Part 1 of Schedule 4.

(2) Where in relation to an appeal listed at column 1 of the table, the Tribunal makes an order specified in column 2 of that table, the Authority shall comply with that order before the end of the period prescribed in column 3 of that table.

(3) For the purposes of paragraph (2) the period prescribed in column 3 of the Table is to begin with the date on which the order is made.

#### **Unopposed Appeals**

**42.**—(1) This regulation applies where an appeal is determined in favour of the appellant as a consequence of Article 18A(2).

(2) In this regulation references to the table, are to the table set out in Part II of Schedule 4.

(3) In relation to an appeal listed in column 1 of the table, the Authority shall comply with the action set out at column 2 before the end of the period prescribed in column 3 of that table.

(4) For the purposes of paragraph (3) the period prescribed in column 3 of the table is to begin on the date the Authority notifies the Tribunal that it will not, or will no longer, oppose the appeal.

## **PART IX**

### **REVOCATIONS AND TRANSITIONAL PROVISIONS**

#### **Revocations**

**43.** Subject to regulations 44 to 51, the Education (Special Educational Needs) Regulations (Northern Ireland) 2005 are revoked.

#### **Transitional provision**

**44.** In this Part “operational date” means the date on which these Regulations come into operation in accordance with regulation 1.

## Completed Statements

45. From the operational date statements made in accordance with the 2005 Regulations shall be deemed to have been made in accordance with these Regulations.

## Assessments

46. Where, immediately before the coming into operation of these Regulations, the Authority is required to serve a notice in accordance with the provisions of the 2005 Regulations mentioned in Column 1 of the Table 1, on the operational date, once served, that notice shall be deemed to have issued in accordance with the provision mentioned in column 2.

**Table 1**

<i>Column 1</i>	<i>Column 2</i>
2005 Regulations	These Regulations
Regulations 11(1)(a)	Regulation 13(5)(c)
Regulations 11(1)(b)	Regulation 13(5)(a)
Regulations 11(2)(a)	Regulation 13(2)(b)
Regulations 11(2)(b)	Regulation 13(2)(a)
Regulations 11(3)(a)	Regulation 13(5)(d)
Regulations 11(3)(b)	Regulation 13(5)(b)
Regulations 11(4)(a)	Regulation 13(5)(d)
Regulations 11(4)(b)	Regulation 13(5)(b)

## Advice (time limits and exceptions)

47.—(1) Where, immediately before the coming into operation of these Regulations—

- (a) the Authority has sought advice, in accordance with the provision of the 2005 Regulations mentioned in Column 1 of Table 2; and
- (b) that advice has not yet been received by the Authority

on the operational date, that advice shall be deemed to have been sought in accordance with the provision mentioned in column 2.

**Table 2**

<i>Column 1</i>	<i>Column 2</i>
2005 Regulations	These Regulations
Regulation 6(1)	Regulation 9

(2) Paragraph (1) is subject to paragraph (3), (4) and (5).

(3) Paragraph (4) applies where, immediately before the coming into operation of these Regulations, the HSC Trust has determined it not practicable to comply with the timeframe mentioned in regulation 11(8) of the 2005 Regulations due to a circumstance mentioned at regulation 11(9) of those 2005 Regulations.

(4) On the operational date, the circumstance mentioned in column 1 of Table 3 shall be deemed to have arisen under the circumstance mentioned in column 2 and the HSC Trust shall comply with the new timeframe mentioned in column 3.

**Table 3**

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
2005 Regulations	These Regulations	New Timeframe

Regulation 11(9)(a)	Regulation 15(11)(a)	6 weeks from the operational date
Regulation 11(9)(b)	Regulation 15(11)(b)	6 weeks from the operational date
Regulation 11(9)(c)	Regulation 15 (11)(c)	6 weeks from the operational date
Regulation 11(9)(d)	Regulation 15(11)(d)	6 weeks from the operational date

(5) Where paragraph (1) applies, and immediately before the coming into operation of these Regulations, a person or body mentioned in regulation 6(1)(a), (b), (d) or (f) of the 2005 Regulations was not subject to a timeframe within which the advice and information is required to be submitted to the Authority, on the operational date, the duty mentioned at regulation 9(6) of these regulations applies but regulation 9(6)(c) shall be deemed to read—

“in any other case case—

- (i) not later than 4 weeks from the date that body or person receives the Authority’s request for such advice and information; or
  - (ii) not later than 2 weeks from the operational date;
- whichever is the latest.”

**Authority (time limits and exceptions)**

48.—(1) Paragraph (2) applies where, immediately before the coming into operation of these Regulations, the Authority has determined it not practicable to comply with the timeframe mentioned in regulation 11(1) to (4) of the 2005 Regulations due to a circumstance mentioned at regulation 11(5) of those 2005 Regulations.

(2) On the operational date, the circumstance mentioned in column 1 of the Table 4 shall be deemed to have arisen under the circumstance mentioned in column 2 and the Authority shall serve the appropriate notice within the new timeframe mentioned in column 3.

**Table 4**

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
2005 Regulations	These Regulations	New Timeframe
Regulation 11(5)(a)	Regulation 15(5)	3 weeks from the operational date.
Regulation 11(5)(b)	Regulation 15(3)(a)	2 weeks from the operational date.
Regulation 11(5)(c)	Regulation 15(3)(b)	2 weeks from the operational date.

(3) Subject to paragraph (5), paragraph (4) applies where, immediately before coming into operation of these Regulations, the Authority has determined it not practicable to comply with the timeframe mentioned in regulation 11(6) of the 2005 Regulations due to a circumstance set out at regulation 11(7) of those 2005 Regulations.

(4) On the operational date, the circumstance mentioned in column 1 of Table 5 shall be deemed to have arisen under the circumstance mentioned in column 2 and the Authority shall complete the assessment within the new timeframe mentioned in column 3.

**Table 5**

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
2005 Regulations	These Regulations	New Timeframe
Regulation 11(7)(a)	Regulations 15(7)(d)	4 weeks from the operational date.
Regulation 11(7)(c)	Regulation 15(9)	3 weeks from the operational

Regulation 11(7)(d)	Regulation 15(12)	date. 8 weeks from the operational date.
Regulation 11(7)(e)	Regulation 15(7)(a)	4 weeks from the operational date.
Regulation 11(7)(f)	Regulation 15(7)(b)	4 weeks from the operational date.
Regulation 11(7)(g)	Regulation 15(7)(c)	4 weeks from the operational date.

(5) Where, immediately before the coming into operation of these Regulations, the Authority has determined it not practicable to comply with the timeframe mentioned in regulation 11(6) of the 2005 Regulations due to a circumstance mentioned in regulation 11(7)(b) of those 2005 Regulations, on the operational date, the Authority shall complete that assessment not later than 2 weeks from the operational date (irrespective of whether the advice mentioned in regulation 11(7)(b) of the 2005 Regulations has been received).

### Statements, proposed statements, proposed amended statements and amendment notices

49.—(1) Where, immediately before the coming into operation of these Regulations, the Authority has served, in accordance with the provisions of the 2005 Regulations mentioned in column 1 of Table 6, the documents listed in Column 2, on the operational date, those documents shall be deemed to have issued under the provisions mentioned in column 3.

**Table 6**

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
2005 Regulations	Documents	These Regulations
Regulation 17(1)(a)	Proposed statement and Notice	Regulation 14(1)
Regulation 17(2)(a)	Proposed amended statement and Notice	Regulation 14(3)
Regulation 17(6)	Amendment notice	Regulation 14(4)
Regulation 17(8)	Notice ceasing to maintain a statement	Regulation 14(7)

(2) Paragraph (3) applies where, immediately before the coming into operation of these Regulations, the Authority has determined it not practicable to comply with the timeframe mentioned in regulation 17(3) or (6) of the 2005 Regulations due to a circumstance mentioned at regulation 17(4) of those 2005 Regulations.

(3) On the operational date, the circumstance mentioned in column 1 of Table 7 shall be deemed to have arisen under the circumstance mentioned in column 2 and the Authority shall serve the completed statement or completed amended statement within the new timeframe mentioned in column 3.

**Table 7**

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
2005 Regulations	These Regulations	New Timeframe
Regulation 17(4)(a)	Regulation 15(16)(a)	4 weeks from the operational date.
Regulation 17(4)(b)	Regulation 15(16)(b)	4 weeks from the operational date.
Regulation 17(4)(c) or (d)	Regulation 15(14)	(i) not later than 2 weeks following the time within which any representations

may be received,  
and

- (ii) if a meeting has been or is to be held, not later than 2 weeks following the last such meeting arranged under paragraph 7(1)(b) or (2) of Schedule 2 of the 1996 Order.

Regulation 17(4)(e)

Regulation 15(17)

3 weeks from the operational date.

(4) Where, immediately before the coming into operation of these Regulations, regulation 17(5) of the 2005 Regulations applies and the Authority has not yet made a decision under paragraph (a) or (b) of that Regulation on the operational date—

- (a) regulation 14(8) shall apply to that request; and
- (b) the reference to “6 weeks” shall be deemed to read “8 weeks”.

#### **Reviews and Transitional Plan**

**50.**—(1) Where, immediately before the coming into operation of these Regulations, the Authority has taken any action under the provisions of the 2005 Regulations mentioned in column 1 of the Table 8, on the operational date, that action shall be deemed to have been taken under the provision or provisions (as the case maybe) mentioned in column 2.

#### **Table 8**

*Column 1*  
2005 Regulations  
Regulation 18  
Regulation 19  
Regulation 20

*Column 2*  
These Regulations  
Regulation 18  
Regulation 18 and 20  
Regulation 18, 19 and (where the child is in year 10) regulation 20.

#### **Mediation certificates and mediation provisions**

**51.**—(1) Where, immediately before the coming into operation of these Regulations, the Authority has issued a notice, in accordance with the provisions of the 2005 Regulations, on the

operational date, with the exception of regulation 34, Part VII (mediation and appeals) shall have effect in relation to those notices.

Sealed with the Official Seal of the Department of Education on xx



*Deirdre Ward*

A senior officer of the Department of Education

## SCHEDULE 1 Regulations 13(11), 14(10) and 34(1)

### ADDITIONAL INFORMATION TO BE CONTAINED IN NOTICES

#### PART I

##### GENERAL INFORMATION TO BE CONTAINED IN NOTICES

1. Subject to paragraph 3, each of the Notices referred to in regulations 13 and 14 shall contain the additional information set out at paragraph 2 to 4—

2. The availability, from the Authority, of—

- (a) advice and information on matters related to the child's special educational needs, in accordance with Article 21A;
- (b) arrangements with a view to avoiding or resolving disagreements between—
  - (i) the Authority or Board of Governors of grant-aided schools (on the one hand) and a relevant party (on the other) as to the exercise by the Authority or Boards of Governors of their functions under Part II of the 1996 Order;
  - (ii) the Board of Governors or proprietor (as the case may be) of a relevant school (on the one hand) and a child with special educational needs who is a pupil attending that school (where that child is over compulsory school age), or the parent of the child (in any other case) in relation to the special educational provision made for that child.

3. In the case of a notice mentioned in regulation 13(6) and (7) (an Article 21(5) Notice and Article 21(8) Notice), the notice need not contain the information set out at paragraph 2(b).

4. In the case of a child over compulsory school age—

- (a) the right of that child to nominate a person aged 18 years or over to provide assistance and support so that the child may exercise fully their rights set out in Part II of the 1996 Order. Assistance and support is defined in Part VI of the Regulations and is required to be recognised by the Authority; and
- (b) where it has been determined by the Authority that the child lacks capacity in relation to the exercise of any of their rights set out in Part II of the 1996 Order, the right of a parent to exercise those Part II rights on behalf of that child and in that child's best interests.

#### PART II

##### SPECIFIC INFORMATION TO BE CONTAINED IN CERTAIN NOTICES

5. The Notices mentioned in sub-paragraphs (a) to (j) shall contain the additional information set out at paragraph 6—

- (a) an Article 20(3) Notice (see regulation 13(2));

- (b) an Article 20A(8) Notice (see regulation 13(5)(b));
- (c) an Article 21(5) Notice (see regulation 13(6));
- (d) and Article 21(8) Notice (see regulation 13(7) and (8));
- (e) an Article 17(1) Notice (see regulation 13(9));
- (f) a paragraph 4(2) of Schedule 2 to the 1996 Order Notice (see regulation 14(1), (3) and (4));
- (g) an Article 19(1A) Notice (see regulation 14(2));
- (h) a paragraph 9(2) of Schedule 2 Notice (see regulation 14(6));
- (i) a paragraph 13(2) of Schedule 2 Notice (see regulation 14(7));
- (j) a paragraph 11(3) of Schedule 2 Notice (see regulation 15(8)).

**6.** The additional specific information is—

- (a) the right of a person to appeal to the Tribunal, subject to sub-paragraphs (c) and (d).
- (b) information as to mediation arrangements for a person who intends to appeal to the Tribunal as set out at Part VII.
- (c) the requirement under Article 21C(3) to obtain a mediation certificate before an appeal can be made to the Tribunal, where a person intends to appeal to the Tribunal under any of the heads mentioned at (i) to (vi)—
  - (i) Article 17(2)(b);
  - (ii) Article 18(1);
  - (iii) Article 20(3)(b);
  - (iv) Article 20A(8)(b);
  - (v) Article 21ZA(1);
  - (vi) paragraph 13(2)(b) of Schedule 2 to the 1996 Order;
- (d) information that sub-paragraph (c) does not apply in relation to an appeal to the Tribunal which relates only to—
  - (i) the school or other institution named in a statement maintained under Article 16;
  - (ii) the type of school or other institution named in a statement under that Article;
  - (iii) the fact that a statement does not name a school or other institution.

**7.** The Notices referred to in sub-paragraphs (a) to (f) shall contain the information set out at Article 13 of the General Data Protection Regulation—

- (a) an Article 15(1) Notice (see regulation 13(1));
- (b) an Article 15(4) Notice (see regulation 13(5)(c));
- (c) an Article 20A(3) Notice (see regulation 13(3));
- (d) an Article 20A(7) Notice (see regulation 13(5)(d));
- (e) an Article 21(5) and (8) Notice (see regulation 13(6) and (7));
- (f) a paragraph 9(2) of Schedule 2 Notice (see regulation 14(6)).

**8.** A paragraph 9(2) of Schedule 2 Notice shall inform the child (if over compulsory school age) or the parent of the child (in any other case) of their right to request a review meeting to inform the periodic review (see regulation 18(4)).

**9.** In this Schedule—

“relevant party” means—

- (a) children over compulsory school age, or
- (b) the parents of other children, and

“relevant school” has the meaning given in Article 21B(3).

STATEMENT OF SPECIAL EDUCATIONAL NEEDS

PART I

INTRODUCTION

1. This statement is made by the Education Authority in respect of the child whose name and other particulars are mentioned below. This statement is made in accordance with—

- The Education (Northern Ireland) Order 1996 (“the 1996 Order”);
- The Special Educational Needs and Disability Act (Northern Ireland) 2016; and
- The Education (Special Educational Needs) Regulations (Northern Ireland) 2026 (“the Regulations”).

[Set out here whether regulation 17(d) or (e) applies.]

## **Child**

Surname Other names

Home address

Email address (only if the child is over compulsory school age)

Sex

Date of Birth

Home language

### **Child's parent or person(s) with parental responsibility**

Surname Other names

Home address

Email address Relationship to child

Telephone Number Home language

2. When assessing the child's special educational needs the Authority took into consideration the representations, evidence and advice listed in the Appendices to this statement, in accordance with regulations 9 and 12.

## **PART II**

### **SPECIAL EDUCATIONAL NEEDS**

[As required by Article 16(3)(a) of the 1996 Order, give details here of the Authority's assessment of the child's special educational needs (as defined in the 1996 Order as any learning difficulty of the child's which calls for special educational provisions).]

## **PART III**

### **SPECIAL EDUCATIONAL PROVISION**

[As required by Article 16(3)(b) of the 1996 Order, specify the nature and extent of the special educational provision to be made for the purpose of meeting the needs set out in Part II of this statement. In particular set out:

- (a) the nature and extent of the Authority's special educational provision for the child such as, appropriate facilities, equipment staffing arrangements, advice and assistance, training etc; and
- (b) the school's special educational provision for the child (from within its own resources) such as any appropriate modifications to, or exclusions from the application of the Northern Ireland curriculum in detail, and the provision which it is proposed to substitute for any such exclusions in order to maintain a balanced and broadly based curriculum.

- (c) where applicable, any provision made by a health and social services authority which is educational in nature. Provision of a non-educational nature made by a health and social services authority is to be included separately at Part 6 (non-educational provision).

Objectives

[Set out here the objectives for the child which the special educational provision should aim to meet.]

**PART IV  
PLACEMENT**

[As required by Article 16(4) of the 1996 Order specify here—

- (a) the type of school (special or ordinary) or other institution (Article 10(1)) which the Authority considers appropriate for the child;
- (b) subject to para (c), the name of the grant-aided school for which the child, if over compulsory school age, or the parent of the child concerned in any other case has expressed a preference; or
- (c) where the preference expressed in (b) is unsuitable to the child's age, ability or aptitude or to his or her special educational needs, or the attendance of the child at the school would be incompatible with the provision of efficient education for the children with whom the child would be educated or the efficient use of resources, the Authority is required to specify the name of a school or institution which it considers appropriate for the child; or
- (d) any provision for the child's education in accordance with Article 10(1)(b) otherwise than in a school or institution which the Authority considers appropriate; or
- (e) where residential accommodation is appropriate, that fact.]

**PART V  
NON-EDUCATIONAL NEEDS**

[Set out here the non-educational needs of the child for which the Authority considers non-educational provision is appropriate, based on the advice received under regulation 9, if the child is to benefit properly from the special educational provision set out in Part III.]

**PART VI  
NON-EDUCATIONAL PROVISION**

Non-Educational provision to meet the non-educational needs and objectives

[Set out here any non-educational provision which will be made available including the arrangements for its delivery. In particular set out any relevant treatment or service identified by a health and social services authority as likely to be of benefit in addressing the special educational needs of the child and which it shall provide as part of its statutory functions under Article 14(4A) and (4B) of the 1996 Order.]

Objectives

[Set out here the objectives(s) that any non-educational provision should aim to meet]

## PART VII

### MONITORING OF SPECIAL EDUCATIONAL PROVISION (PART III) AND NON-EDUCATIONAL PROVISION (PART VI)

#### (i) Monitoring of Special Educational provision (PART III)

[Set out here the arrangements to be made for monitoring the effectiveness of the educational provision at Part III in meeting the child's special educational needs and associated objectives, including arrangements for—

- (a) establishing and regularly monitoring expected outcomes in furtherance of these objectives and preparing or revising the child's personal learning plan (PLP);
- (b) regularly monitoring the appropriateness of any modifications to, and of any provision substituted for exclusions from, application of the Northern Ireland curriculum.]

#### (ii) Monitoring of non-educational provision (PART VI)

[Set out here the arrangements to be made for monitoring the effectiveness of the non-educational provision at Part (VI).]

(iii)[Here also set out any special arrangements for reviewing this statement.]

Signature

(A duly authorised officer of the Authority)

Date

Appendices (to be included when serving a proposed statement, proposed amended statement or an amendment notice. In all other circumstances, available on request)

Appendix A: Information from the child (if over compulsory school age) or the parent of the child (in any other case)

[Include

1. any written representations made by the child or the child's parent under Article 15(1)(d) or 20A(3)(d) of or paragraph 7(1) of Schedule 2 to the 1996 Order and a summary which the child or parent has accepted of any oral representations so made or record that no such representations were made,

2. any written evidence either submitted by the child or the parent of the child under Article 15(1)(d) or 20A(3)(d) of the 1996 Order or record that no such evidence was submitted,

3. advice obtained under regulation 9(1).]

Appendix B: Educational Advice

[Include the advice obtained under regulation 9(2)(a)]

Appendix C: Psychological Advice

[Include the advice obtained under regulation 9(2)(b)]

Appendix D: Health Advice

[Include the advice obtained under regulation 9(2)(c)]

Appendix E: Social Care Advice

[Include the advice obtained under regulation 9(4)(a)]

Appendix F: Other Advice Obtained

[Include the advice obtained under regulation 9(4)(b)]

## SCHEDULE 3

Regulation 24(6)

### CAPACITY DETERMINATION

A capacity determination can only be carried out by an educational psychologist who has received specific training in the 36 months prior to making the capacity determination and has 2 years' experience in the last 10 years in working with children /persons who lack capacity.

The educational psychologist must ensure that the reason for the capacity determination are carefully recorded on this form. Supporting evidence can be provided from the child's statement or personal learning plan. It is not necessary to duplicate supporting evidence on this form but a careful note should be made of where it can be found.

#### **1.Details of the child over compulsory school age**

Name:

Address:

Date of Birth:

HSC Number (if known):

#### **2.Details of the educational psychologist (the assessor)**

Name:

Work Address:

Phone Number:

Job Title:

### **3.Date of formal assessment of capacity**

Date the assessment was carried out:

### **4.Support to the child over compulsory school age**

Before determining whether a child over compulsory school age lacks capacity, all practical help and support must be provided to enable the child to make a decision by themselves. This includes considering the environment and timing of the decision, ensuring that appropriate communication support is provided to the child/young person and involving all relevant people who might help the child/young person make the decision.

(delete as appropriate)

Has the environment for the decision been considered? **Yes/No**

Has the timing for the decision been considered? **Yes/No**

Has all the practical help and support, including communication support, been given?  
**Yes/No**

Have all the relevant people who may help the child/young person make a capacitous decision been included?  
**Yes/No**

Has the information relevant to the decision been provided and/or explained in a way which is appropriate? For example, in a simple language?  
**Yes/No**

Provide details.

Further sheets can be added if required.

## **5.Three elements test of mental capacity**

### **(1) Functional test (Unable to make a decision)**

In relation to exercising rights conferred by Part II of the Education (NI) Order 1996 (the 1996 Order), the child over compulsory school age(a) is unable to(b):(delete as appropriate)

- (a) understand the information relevant to the exercise of those rights;
- (b) retain that information long enough to make a decision;
- (c) appreciate and use and weigh that information;
- (d) communicate his/her decision (whether by talking or any other means).

Provide details on how the child over compulsory school age is unable to do at least one of the above and how this has been determined:

Further sheets can be added if required.

If the child over compulsory school age can do all of the above matters (and therefore make a decision) that should be stated below:

### **(2) Impairment or disturbance test**

There is no need for a formal diagnosis, it is sufficient to have reasonable belief that there is an impairment of, or disturbance in the functioning of, the mind or brain(c).

Provide details on the impairment of, or disturbance in the functioning of, the mind or brain:

Further sheets can be added if required.

If it is considered that there is no impairment of, or disturbance in the functioning of, the mind or brain, that should be stated below:

- (a) Referenced in regulation 25 of Education (Special Educational Needs) Regulation (NI) 2026
- (b) Referenced in regulation 26 of Education (Special Educational Needs) Regulation (NI) 2026
- (c) Referenced in regulation 27 of Education (Special Educational Needs) Regulation (NI) 2026

### **(3) Casual link**

For a determination that a child over compulsory school age lacks capacity to be provided there must be a casual link between the functional test, (the inability to make a decision in relation to the rights conferred by Part II of the 1996 Order), and the impairment of, or the disturbance in the following functioning of, the mind or brain. If there is no casual link, then the child over compulsory school age does not lack capacity within the meaning of the Education (Special Educational Needs) Regulations (Northern Ireland) 2026.

Provide details on the causal link.

Further sheets can be added if required.

If there is no causal link that should be stated below:

### **6. Decision**

**Delete as appropriate, either**

#### **Lacks capacity**

**The child over compulsory school age is unable to make a decision because they have an impairment, of, or disturbance in the functioning of, the mind or brain a determination that a person lacks capacity can be made; or**

#### **Has Capacity**

**If the above does not apply, a determination that the child over compulsory school age has capacity can be made.**

Capacity Determination

I certify that \_\_\_\_\_ (name) has capacity / lacks capacity [delete as appropriate] within the meaning of the Special Educational Needs (SEN) Regulations (Northern Ireland) 2026 and that I am suitably qualified to make a capacity determination.

Signature:

Date:

**COMPLIANCE WITH TRIBUNAL ORDERS AND UNOPPOSED  
APPEALS**

**PART I**

**COMPLIANCE WITH TRIBUNAL ORDERS**

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<b>Appeal</b>	<b>Tribunal Order</b>	<b>Prescribed period</b>
In the case of an appeal under Article 17(2)(b)	order the Authority to make and maintain a statement under Article 16; or	8 weeks
	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 may have calls for.	2 weeks
In the case of an appeal under Article 18(1)	order the Authority to amend the statement under Article 16, 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; or	8 weeks
	order the Authority to cease to maintain the statement.	with immediate effect or on a date proposed by the Authority, whichever is later
In the case of an appeal under Article 20(3)(b)	order the Authority to arrange for an assessment to be made in respect of the child under Article 15	arrange for assessment process to commence not later than 4 weeks
In the case of an appeal under Article 20A(8)(b)	order the Authority to arrange for an assessment to be made in respect of the child under Article 15	arrange for the assessment process to commence not later than 4 weeks
In the case of an appeal under Article 21ZA(1)(a)	order the Authority to make and maintain a statement under Article 21; or	8 weeks
	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	2 weeks

In the case of an appeal under Article 21ZA(1)(b)	the child has may call for. order the Authority to amend the statement under Article 21, 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.	8 weeks
In the case of an appeal under paragraph 11(3)(b) of Schedule 2	order the Authority to substitute for the name of the school or other institution specified in the statement the name of the grant-aided school specified in the request under this paragraph.	2 weeks; or where the school is closed to pupils, 2 weeks from the school reopening to pupils.
In the case of an appeal under paragraph 13(2)(b) of Schedule 2	order the Authority to continue to maintain the statement in its existing form; or with such amendments of the description in the statement of the Authority'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.	with immediate effect.  2 weeks

## PART II

### UNOPPOSED APPEALS

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<b>Appeal</b>	<b>Authority Action</b>	<b>Prescribed period</b>
In the case of an appeal under Article 17(2)(b)	make and maintain a statement under Article 16 of the child's educational needs;	8 weeks
In the case of an appeal under Article 20(3)(b)	make an assessment of the child's educational needs;	8 weeks
In the case of an appeal under Article 20(3)(b)	make an assessment of the child's educational needs;	8 weeks
In the case of an appeal under article 21ZA(1)(a)	make a statement under Article 21;	8 weeks
In the case of an appeal under paragraph 11(3)(b) of Schedule 2	comply with the request to substitute for the name of the school or other institution specified in the statement the name of the grant-aided	2 weeks; or where the school is closed to pupils, 2 weeks from the school reopening to pupils.

## **EXPLANATORY NOTE**

*(This note is not part of the Educational (special Educational Needs Regulations) 2026*

These Regulations relate to the assessment of special educational needs (SEN) and to statements of such needs under Part II of the Education (Northern Ireland) Order 1996 (the 1996 Order). These Regulations revoke and replace with modifications the Education (Special Educational Needs) Regulations (Northern Ireland) 2005 (the 2005 Regulations).

Part I contains interpretation provisions and clarifies time periods for the purposes of the Regulations (Regulation 2).

Part II provides that the Education Authority (Authority) must prepare and publish an annual plan of arrangements for SEN provision.

Regulation 3 provides that the annual plan of arrangements must include SEN priorities, provision, and access arrangements.

Regulation 4 provides for how the Authority shall prepare, review and revise the plan including consulting stakeholders and publishing a draft plan for consultation by the end of March immediately preceding the school year to which the plan relates.

Part III contains the roles and responsibilities of the Boards of Governors (BoG) in relation to SEN provision in both ordinary and special schools including-

Regulation 5 requires BoG to notify the Authority of prolonged absences of pupils with SEN.

Regulation 6 requires BoG to ensure that learning support co-ordinators in an ordinary school have at least three years' relevant experience.

Regulation 7 requires BoG to ensure that learning support co-ordinators in a special school have one year's experience in a special setting.

Regulation 8 requires BoG to ensure training, time, and reporting arrangements for learning support co-ordinators.

Parts IV and V supplement the procedural framework for making an assessment and a statement of SEN contained in Part II of the 1996 Order and Schedules 1 and 2 to the 1996 Order.

Regulations 9 to 11 provide for the advice to be sought by the Authority in making the assessment of a child's SEN and associated time within which the advice is to be received. The advice required is educational advice, psychological advice, medical advice, and any other advice from a social worker or registered health professional which it considers appropriate for the purpose of arriving at a satisfactory assessment.

Regulation 12 provides that in making an assessment the Authority shall take into consideration representations from the child (if over compulsory school age) or the child and the child's parent (in any other case), and the advice which has been obtained.

Regulations 13 to 14 provide for the time limits relating to statutory assessment, statements, periodic reviews and re-assessment reviews that the Authority and Health and Social Care Trust (HSC Trust) must comply with, including the issuing of decision Notices by the Authority.

Regulation 15 provides for exceptions to the time limits and the circumstances in which the Authority and HSC Trust may apply them, and the new timeframes.

Regulation 16 provides that children admitted to a special school for assessment may remain at that school until a statement is made for the child or until the conclusion of an appeal or mediation process.

Part V prescribes the form that statements of SEN must follow and sets out procedures for periodic reviews, transition planning, and restrictions on disclosure of statements.

Regulation 17, and Schedule 2 prescribe the form and content of a statement.

Regulations 18 contains detailed provision as to how a review of a statement under Article 19 of the 1996 Order is to be carried out.

Regulation 19 provides that in the event where a child does not attend school, a designated officer of the Authority shall prepare and submit the report referenced in Regulation 18.

Regulation 20 provides detail on the transition planning process for children with a statement of SEN. During Year 10 of compulsory school education the first transition plan must be prepared.

Regulations 21 and 22 provide additional procedural safeguards and requirements that apply to the processes in Regulations 18,19 and 20 including strict rules on confidentiality and controlled sharing of a child's statement of SEN.

Part VI provides that children over compulsory school age may exercise their own rights under Part II the 1996 Order.

Regulation 23 provides that a child over compulsory school age, who has elected to exercise their rights, may appoint a person aged 18 or over, for support and assistance, and the Authority must respect any appointment made by the child.

Regulations 24 to 30 set out the procedures to be followed when the Authority is asked to determine whether a child over compulsory school age lacks capacity to exercise their own rights, and the principles governing the determination of capacity.

Regulations 31 to 33 provide that decisions must be in the best interests of the child over compulsory school age.

Part VII provides the process for mediation and appeals in connection with certain Authority decisions.

Regulation 34 prescribes that Schedule 1 of the Regulations makes provision for Notices and the information which should be included.

Regulations 35 and 36 provide that a mediation certificate must be issued before an appeal against decisions at Article 21C(1)(a) to (f) can proceed. The mediation must be arranged within four weeks of initial contact, with attendance requirements defined at Regulation 37.

Regulation 38 specifies the training and professional experience of mediators.

Regulations 39 and 40 provide that any agreements reached during mediation must be formally recorded and implemented. Where mediation fails to achieve agreement, this outcome must also be documented.

Part VIII provides that the Authority must comply with Tribunal orders and actions following unopposed appeals within prescribed timeframes.

Regulation 41 and Part 1 of Schedule 4 prescribe the time limits for compliance with orders made by the Tribunal (and time limits are also prescribed within which the Authority must take specified action following the concession of certain appeals to the Tribunal).

Regulation 42 and Part II of Schedule 4 prescribe the time limits for compliance with orders made by the Tribunal on unopposed appeals.

Part IX provides that the 2005 Regulations are revoked and sets out transitional arrangements for assessments, statements, reviews, and mediation.

A full impact assessment has not been completed for these Regulations.

An Explanatory Memorandum is available alongside this Statutory Rule on the website:  
[legislation.gov.uk](http://legislation.gov.uk).