

---

STATUTORY INSTRUMENTS

---

**1987 No. 167 (N.I. 2)**

**NORTHERN IRELAND**

**The Education (Northern Ireland) Order 1987**

*To be laid before Parliament in draft*

*Made - - - - 10th February 1987*

*Coming into Operation 1st April 1987*

At the Court at Buckingham Palace, the 10th day of February 1987

Present,

The Queen's Most Excellent Majesty in Council

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

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1 of Schedule 1 to the Northern Ireland Act 1974 and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

**Title and commencement**

- 1.—(1) This Order may be cited as the Education (Northern Ireland) Order 1986.
- (2) This Order shall come into operation on 1st April 1987.

**Interpretation**

2.—(1) The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order “the principal Order” means the Education and Libraries (Northern Ireland) Order 1986 and any expression to which a meaning is assigned by that Order has the same meaning in this Order as in that Order.

**Transfer of responsibility for education of mentally handicapped children**

- 3.—(1) On 1st April 1987 the following statutory provisions shall cease to have effect, namely—
  - (a) Article 35 of, and Schedule 12 to, the principal Order (duty of board to determine what children in its area are suffering from a disability of mind of such a nature or to such an extent as to make them unsuitable for education at school and to give notification of such children to health and social services board); and

(b) sections 8, 10 and 11 of the Mental Health Act (Northern Ireland) 1961 (powers of health and social services board in relation to supervision and training of children requiring special care).

(2) In Article 133 of the principal Order for paragraph (2) (application of Order to persons suffering from mental disorder or detained in pursuance of court order) there shall be substituted the following paragraph—

“(2) No power or duty conferred or imposed by this Order on the Department or boards or parents shall be construed as relating to any person who is detained in pursuance of an order made by any court.”.

(3) The transitional provisions set out in Schedule 1 shall have effect.

#### **Duty to implement proposals as to primary and secondary education which are approved by the Department'**

4. In Article 14 of the principal Order (proposals as to primary and secondary education) after paragraph (9) there shall be inserted the following paragraphs—

“(9A) Subject to paragraph (9B), where a proposal under paragraph (1), (2) or (3) is approved by the Department after 1st April 1987, it shall be the duty of the board or person making the proposal to implement the proposal.

(9B) The Department may modify any proposal which is required to be implemented under paragraph (9A), but shall not do so except at the request of the board or person making the proposal.”.

#### **Regulations as to carrying on of grant-aided schools**

5. After Article 17 of the principal Order there shall be inserted the following Article—

##### **“Regulations as to carrying on of grant-aided schools**

17A.—(1) The Department may by regulations make provision as to the carrying on of grant-aided schools.

(2) Without prejudice to the generality of paragraph (1), regulations under that paragraph may include provision—

- (a) prescribing the terms and conditions on which a school may remain a grant-aided school;
- (b) with respect to the number and composition of the teaching staff to be provided in grant-aided schools;
- (c) with respect to the duration of the school day and school year at such schools;
- (d) with respect to the curriculum and time-table to be followed in such schools;
- (e) enabling the Department to prohibit the use in such schools of any book or the teaching material of which the Department does not approve;
- (f) preventing the use of the premises of such schools for such purposes as may be prescribed.

(3) Regulations under this Article may enable the Department to authorise such exceptions, grant such approvals and make such determinations for the purposes of the regulations as are specified therein.”.

### **Regulations as to special schools**

6. In Article 34 of the principal Order (regulations as to special schools) at the end there shall be added the following paragraph—

“(3) Without prejudice to the generality of paragraph (1), regulations under that paragraph may impose requirements which call for arrangements to be approved by the Department.”.

### **Registration of pupils at school**

7. In Article 48(1) of the principal Order (duty of proprietor of school to keep register of all persons of compulsory school age who are pupils at the school) the words “of compulsory school age” shall cease to have effect.

### **Regulations as to employment of teachers**

8. For Article 70 of the principal Order there shall be substituted the following Article—

#### **“Regulations as to employment of teachers**

70.—(1) The Department may make regulations as to—

- (a) the eligibility of persons to be employed as teachers; and
- (b) the terms and conditions of employment of teachers.

(2) Without prejudice to the generality of paragraph (1), regulations under that paragraph may include provision—

- (a) requiring teachers to have such qualifications as may be approved by the Department;
- (b) requiring that, subject to such exceptions as may be prescribed, only teachers recognised by the Department be employed as teachers and providing for the grant, suspension, withdrawal and restoration of such recognition;
- (c) requiring teachers to serve probationary periods;
- (d) imposing requirements as to the age, health and physical capacity of teachers;
- (e) prohibiting or restricting the employment or further employment of teachers on medical grounds, in cases of misconduct and on educational grounds.

(3) The terms and conditions upon which a teacher (other than a temporary or part-time teacher) is employed shall be set out in an agreement entered into between the teacher and the employer and the agreement shall be in such form as may be approved by the Department.

(4) This Article applies to—

- (a) teachers in grant-aided schools;
- (b) teachers in institutions of further education;
- (c) peripatetic teachers; and
- (d) supply teachers.”.

### **Regulations as to employment of certain non-teaching staff**

9. After Article 88 of the principal Order there shall be inserted the following Article—

**“Regulations as to employment of certain non-teaching staff**

**88A.**—(1) The Department may make regulations as to—

- (a) the eligibility for employment of persons to whom this Article applies; and
- (b) the terms and conditions of employment of such persons.

(2) Without prejudice to the generality of paragraph (1), regulations under that paragraph may include provision—

- (a) for imposing requirements as to the health and physical capacity of persons to whom this Article applies;
- (b) for prohibiting or restricting the employment or further employment of such persons on medical grounds and in cases of misconduct.

(3) This Article applies to persons employed by a board or by the managers of a voluntary school (other than a maintained school) in work otherwise than as teachers which brings them regularly into contact with persons who have not attained the age of nineteen years.”.

**Recovery of possession of residence provided by board for caretaker, groundsman, etc.**

**10.** In Article 89 of the principal Order (provision of residences by boards) in paragraph (5) for the words “on giving six months notice to the occupant” there shall be substituted the words “subject to paragraph (5A)” and after paragraph (5) there shall be inserted the following paragraph—

“(5A) A board shall, before proceeding to recover possession of any house or residence provided and maintained or maintained as mentioned in paragraph (1)(a), give six months notice to the occupant.”.

**Use of spare capacity of computers of board**

**11.** After Article 91 of the principal Order there shall be inserted the following Article—

**“Use of spare capacity of computers of board**

**91A.**—(1) If a board—

- (a) has provided a computer for the purpose of enabling the board to perform any of its functions other than functions under this Article; and
- (b) considers that the computer can, without detriment to its use for that purpose, be used for the benefit of the board in pursuance of the following provisions of this Article, the board may enter into agreements with other persons for the provision by the board of facilities for using the computer or of services provided by means of the computer.

(2) An agreement in pursuance of this Article may contain such terms as to payment or otherwise as the parties consider appropriate; and it shall be the duty of a board, in settling the terms of such an agreement, to ensure that they are terms on which the board considers that a person other than a board could reasonably be expected to provide the facilities or services in question.

(3) In this Article “computer” means any device for storing and processing information.”.

**Abolition of annual report by Department**

**12.** Article 104 of the principal Order (annual report by Department) shall cease to have effect.

### **Grants in connection with provision of milk and meals**

13. In Article 115 (grants by Department) for paragraphs (4) and (5) there shall be substituted the following paragraph—

“(4) This Article does not apply to—

- (a) the trustees or Board of Governors of a direct grant voluntary intermediate school, except in so far as it empowers the Department to make such grants as are referred to in paragraph (3)(a) and (b);
- (b) the trustees or Board of Governors of a voluntary grammar school.”.

### **Evidence of documents**

14. In Article 131 of the principal Order (evidence of documents) in paragraph (b) for the words from “managers of a grant-aided school” to the end there shall be substituted the words “Board of Governors of a grant-aided school and to be signed by the chairman or secretary of the Board of Governors”.

### **School attendance orders**

15. In Schedule 13 to the principal Order (school attendance orders) the words “or would be in conflict with the policy of the board” shall be added after the word “resources”—

- (a) in paragraph 1(4) (b); and
- (b) in paragraph 2(1) (b).

### **Repeals**

16. The statutory provisions set out in Schedule 2 are hereby repealed to the extent specified in the third column of that Schedule.

*G. I. de Deney*  
Clerk of the Privy Council.

## SCHEDULES

1

Article 3(3).

### TRANSITIONAL PROVISIONS RELATING TO TRANSFER OF RESPONSIBILITY FOR EDUCATION OF MENTALLY HANDICAPPED CHILDREN

#### *Interpretation*

1. In this Schedule—'

“child” means a person who has not attained the age of 19 years;

“terms and conditions of employment” includes terms and conditions relating to superannuation benefit;

“transferred functions” means functions of the Department of Health and Social Services in relation to the supervision and training of children under sections 8(3) and 10 of the Mental Health Act (Northern Ireland) 1961;

“transferred officer” means an officer transferred under a scheme made under paragraph 3(1).

#### *Duty to secure special educational provision for mentally handicapped children*

2.—(1) The following provisions of this paragraph apply in relation to—

(a) any child in respect of whom, immediately before 1st April 1987, a decision has been recorded under paragraph 2 of Schedule 12 to the principal Order which has not been cancelled under that paragraph; and

(b) any other child in relation to whom, immediately before that date, transferred functions are exercisable.

(2) The child shall be taken to have special educational needs and the board shall be taken to have made an assessment of his educational needs under Article 29 of the principal Order and to have formed the opinion that his special educational needs call for the board to determine the special educational provision that should be made for him.

(3) During the period of 2 years beginning with 1st April 1987 the board shall not be under the duty imposed by Article 31 of the principal Order to make and maintain a statement of the child's special educational needs.

(4) A statement made in respect of the child under Article 31 of the principal Order but before an assessment of his educational needs is made under Article 29 of that Order, need not give details of the board's assessment of those needs until such time as an assessment has been made under Article 29.

(5) Until such time as the board makes a statement in respect of the child under Article 31 of the principal Order it shall be under a duty to secure, either in a grant-aided school or otherwise, the provision for the child of such special educational provision as appears to the board to be appropriate.

### *Transfer of staff*

3.—(1) The Department may make a scheme providing for the transfer on 1st April 1987 to the employment of such board as may be specified in the scheme of officers who immediately before that date are employed by a health and social services board wholly or mainly for the purposes of transferred functions.

(2) A transferred officer shall, so long as he continues in the employment of the board to which he is transferred in accordance with a scheme under sub-paragraph (1) and until he is served with a statement in writing by that board setting out his new terms and conditions of employment, enjoy terms and conditions of employment not less favourable than those he enjoyed immediately before 1st April 1987.

(3) The new terms and conditions referred to in sub-paragraph (2) shall be such that—

- (a) as long as a transferred officer is engaged in duties reasonably comparable to those in which he was engaged immediately before 1st April 1987, the scale of his salary or remuneration; and
- (b) the other terms and conditions of his employment;

are taken as a whole not less favourable than those he enjoyed immediately before 1st April 1987.

(4) A written statement given in accordance with section 4 of the Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965 shall not be regarded as a statement of new terms and conditions of employment for the purposes of sub-paragraph (2) unless the statement so indicates.

(5) A transferred officer shall not be taken to have been dismissed from his employment by a health and social services board by reason of redundancy and for the purposes of the Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965 and the Industrial Relations (Northern Ireland) Orders 1976 to 1982, his period of employment by a health and social services board shall count as a period of employment by the board to whose employment he is transferred and the transfer shall not break the continuity of the period of employment.

(6) Any question arising in relation to a transferred officer as to—

- (a) whether he is or was employed wholly or mainly for the purposes mentioned in sub-paragraph (1);
- (b) whether he is engaged in duties reasonably comparable to those in which he was engaged immediately before 1st April 1987; or
- (c) whether his terms and conditions of employment taken as a whole are less favourable than those he enjoyed immediately before that date, shall, if not otherwise determined, be referred for determination by an industrial tribunal whose decision shall be final.

(7) The Department may make regulations providing for the payment by a board, on such terms and subject to such conditions as may be specified in the regulations, of compensation to, or in respect of, any transferred officer who suffers subsequent to his transfer loss of employment or loss or diminution of emoluments (including superannuation rights) which is attributable to the provisions of Article 3 and this Schedule or who on grounds which the Department considers reasonable is unable or unwilling to accept employment with the board to which he has been transferred.

(8) Regulations under sub-paragraph (7) may include provision—

- (a) as to the manner in which, the time within which and the person to whom any claim for compensation is to be made;
- (b) for the determination by an industrial tribunal of questions arising under the regulations.

(9) Regulations under sub-paragraph (7)—

- (a) shall be subject to negative resolution; and

*Status: This is the original version (as it was originally made).*

- (b) may have effect from a date earlier than that on which the regulations are made but not so as to place any person in a worse position than he would have been in if the regulations had effect only from the date of the making thereof.

*Transfer of property*

4.—(1) The Department of Health and Social Services, with the approval of the Department, may enter into an agreement with a board for the transfer to the board of—

- (a) any real or personal property situated in the area of the board which immediately before 1st April 1987 was held by the Department of Health and Social Services wholly or partly for the purposes of transferred functions; and
- (b) any rights and liabilities to which the Department of Health and Social Services was entitled or subject immediately before that date in relation to, or in connection with, any such property.

(2) A health and social services board may enter into an agreement with a board for the transfer to the board of—

- (a) any personal property situated in the area of the board which immediately before 1st April 1987 was held by the health and social services board wholly or partly for the purposes of transferred functions; and
- (b) any rights and liabilities to which the health and social services board was entitled or subject immediately before that date in relation to, or in connection with, any such property.

(3) An agreement under sub-paragraph (1) or (2) may include provision for the transfer to a board of property held on trust by the Department of Health and Social Services or a health and social services board.

(4) Where any property held on trust is transferred to a board by an agreement under sub-paragraph (1) or (2), it shall be held by the board on trust for such purposes relating to services provided by the board as the board thinks fit; but in exercising its discretion under this sub-paragraph the board shall secure, as far as is reasonably practicable, that the objects of the trust are not prejudiced.'

(5) Stamp duty shall not be chargeable on any instrument or other document executed for the purposes of transferring property to a board under this paragraph.

*Relaxation of Article 14 of principal Order in relation to proposals made as a consequence of Article 3 and this Schedule*

5.—(1) Where as a consequence of the provision made by Article 3 and the preceding provisions of this Schedule a board proposes to establish a new controlled school, Article 14 of the principal Order (proposals as to primary and secondary education) shall have effect in relation to that proposal as if the following provisions were omitted, namely—

- (a) paragraphs (5) and (6); and
- (b) in paragraph (7) the words from “after considering” to “paragraph (6)(b)”.

(2) Any dispute as to whether, for the purposes of this paragraph, a proposal is made as a consequence of the provision made by Article 3 and the preceding provisions of this Schedule, shall be determined by the Department.

*Power to make other transitional provision*

6. The Department may by order subject to negative resolution make such other transitional provision as appears to the Department to be necessary or expedient in connection with the coming into operation of Article 3 and this Schedule.

2

Article 16.

## REPEALS

Chapter or Number	Short Title	Extent of Repeal
1961 c. 15 (N.I.).	The Mental Health Act (Northern Ireland) 1961.	Section 7(2) and (3). Sections 8, 10 and 11. Section 118(1).
1972 NI 14.	The Health and Personal Social Services (Northern Ireland) Order 1972.	Article 9(1)(b). In Article 9(8) in the definitions of “dental treatment” and “medical treatment” the words “or to whom paragraph (1)(b) of this Article applies”.
1986 NI 3.	The Education and Libraries (Northern Ireland) Order 1986.	Article 35. In Article 36(1) the words “or that he is suffering from a disability of mind that may make him unsuitable for education at school”. In Article 36(2) the words “any disability of mind or”. In Article 48(1) the words “of compulsory school age”. Article 104. Schedule 12.
1986 NI 4	The Mental Health (Northern Ireland) Order 1986.	In part II of Schedule 5, the amendments to the Mental Health Act (Northern Ireland) 1961, Article 9(1)(b) of the Health and Personal Social Services (Northern Ireland) Order 1972 and the principal Order. In Schedule 6, paragraph 31.

## EXPLANATORY NOTE

(This Note is not part of the Order.)

**Status:** *This is the original version (as it was originally made).*

This Order transfers to education and library boards the responsibility for the education of mentally handicapped children. It also imposes a duty to implement proposals as to primary and secondary schools which are approved by the Department, makes new provision regulating the carrying on of grant-aided schools and the employment of teachers and certain other non-teaching staff, empowers boards to make available the use of spare computer capacity and makes other miscellaneous amendments to the Education and Libraries (Northern Ireland) Order 1986.