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STATUTORY INSTRUMENTS

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**1998 No. 1759**

**Education (Northern Ireland) Order 1998**

**PART V**

**PRE-SCHOOL EDUCATION**

**CHAPTER I**

**PROVISION OF PRE-SCHOOL EDUCATION**

**Plans for pre-school education**

17.—(1) Within such time after the coming into operation of this Article as the Department may direct, each board shall prepare and submit to the Department a plan for the provision (whether by the board or by other persons) of pre-school education for children resident in the area of the board in such period as may be specified in the plan.

(2) In preparing a plan under paragraph (1) a board shall, in accordance with arrangements approved by the Department, consult bodies and persons likely to be affected by the plan.

(3) In preparing a plan under paragraph (1) a board shall take into account any guidance given by the Department as to the provisions it regards as appropriate for inclusion in a plan under that paragraph.

(4) The Department may, after making such modifications (if any) in a plan submitted to it by a board as after consultation with the board it considers necessary or expedient, approve the plan.

(5) It shall be the duty of a board to give effect to the provisions of a plan under paragraph (1) as approved by the Department.

(6) Where—

(a) a board fails to submit a plan to the Department under paragraph (1) by the date directed by the Department; or

(b) it appears to the Department that a plan submitted by the board as required by that paragraph does not accord with any guidance given by the Department under paragraph (3) and cannot be made to do so merely by modifying it, the Department may, after consultation with the board and such other persons as appear to the Department to be concerned, make a plan which shall be treated for the purposes of paragraphs (5) and (7) as if it had been prepared by the board and approved by the Department under this Article.

(7) A board may at any time, and shall if the Department so directs, prepare and submit to the Department a revised plan and paragraphs (2) to (6) shall apply in relation to any revised plan as they apply in relation to the original plan.

(8) In this Part “pre-school education” means education provided for a child (whether at a school or any other premises) at any time—

(a) after he has attained the age of 2 years; and

(b) before he has attained compulsory school age, otherwise than in a reception class as defined by Article 18(4)(b) of the Education (Northern Ireland) Order 1997.

### **Grants in respect of pre-school education**

**18.**—(1) Subject to the following provisions of this Article, a board may make grants to any person in respect of pre-school education provided by that person.

(2) A board shall not make a grant to a person under paragraph (1) unless that person complies with such requirements as are specified by the Department.

(3) Grants under paragraph (1) shall be of such amount as the Department may determine.

(4) Grants under paragraph (1)—

(a) shall be paid at such times and in such manner; and

(b) shall be subject to such conditions, as the board may determine.

(5) Conditions imposed under paragraph (4)(b)—

(a) may be imposed on, or at any time after, the making of any grant by reference to which they are imposed;

(b) may at any time be varied, waived or revoked; and

(c) may, in particular, require repayment of the whole or any part of the grant to which they relate in such circumstances as are specified in the conditions.

### **Inspection of pre-school education**

**19.** Any premises in which is provided—

(a) pre-school education in respect of which a board is making, or is to make, grants under Article 18(1); or

(b) pre-school education in respect of which a board is considering whether to make such grants, shall, if they would not otherwise fall within the definition of a

“relevant establishment” for the purposes of Articles 102 and 102A of the 1986 Order (establishments to be open to inspection at all reasonable times), be treated as a relevant establishment for the purposes of those Articles.

### **Nursery schools to be eligible for grant maintained integrated and controlled integrated status**

**20.** The following provisions of the 1989 Order are hereby repealed, namely—

(a) Article 68(2)(a) (nursery schools not eligible for grant-maintained integrated status); and

(b) Article 90(2)(a) (nursery schools not eligible for controlled integrated status).

### **Information as to funded pre-school education provided otherwise than in a grant-aided school**

**21.**—(1) Every board shall, for each school year, publish at such time and in such manner as the Department may direct, particulars of the arrangements for the admission of children to funded pre-school education.

(2) In this Article “funded pre-school education”, in relation to a board, means pre-school education—

(a) which is provided otherwise than at a grant-aided school; and

(b) in respect of which the board is making, or is to make, grants under Article 18(1).

(3) The particulars to be published under paragraph (1) shall include particulars of—

(a) the persons providing funded pre-school education;

- (b) the number of children for whom such education is to be provided by each such person; and
  - (c) the criteria to be applied by each such person in selecting children for admission to such education.
- (4) Every board shall publish such information as may be required by regulations with respect to its policy and arrangements in respect of any matter relating to funded pre-school education.

## CHAPTER II

### ADMISSION TO PRE-SCHOOL EDUCATION AT GRANT-AIDED SCHOOLS

#### *Introductory*

#### **Application and interpretation of this Chapter**

**22.**—(1) Subject to paragraphs (2) and (3), this Chapter applies in relation to the admission of children to pre-school education at grant-aided schools.

(2) This Chapter applies in relation to the admission of a child to pre-school education at a grant-aided school taking effect, or proposed admission which would take effect, in the school year ending on 31st July 2000 and in any subsequent school year.

- (3) This Chapter does not apply in relation to—
- (a) special schools;
  - (b) schools established in hospitals; or
  - (c) the admission to pre-school education at grant-aided schools of children in respect of whom statements are maintained under Article 16 of the Education (Northern Ireland) Order 1996.
- (4) In this Chapter—
- (a) any reference to a school is a reference to a grant-aided school at which pre-school education is provided;
  - (b) any reference to full-time pre-school education is a reference to pre-school education normally provided for at least 4 hours and 30 minutes on each school day, and any reference to part-time pre-school education is a reference to pre-school education normally provided for less than that amount of time but for at least 2 hours and 30 minutes on each school day;
  - (c) any reference to full-time pupils registered at a school is a reference to pupils registered at a school who are receiving full-time pre-school education, and any reference to part-time pupils registered at a school is a reference to pupils registered at a school who are receiving part-time pre-school education;
  - (d) any reference to an appeal tribunal is a reference to an appeal tribunal constituted in accordance with regulations under Article 15(8) of the Education (Northern Ireland) Order 1997;
  - (e) any reference to a school year is a reference to a year ending on 31st July.
- (5) The Department may by order amend paragraph (4)(b).
- (6) Directions and approvals of the Department under this Chapter shall be given in writing.

#### **Arrangements for admission to pre-school education at grant-aided schools**

**23.**—(1) Every board shall make arrangements for the parent of a child resident in the area of the board to apply for admission of the child to pre-school education at a school if he wishes to do so.

- (2) Such arrangements shall include provision—

- (a) for applications to be made by the parent directly to the Board of Governors of the school concerned; and
  - (b) where the school provides both full-time and part-time pre-school education, for separate applications to be made for admission to full-time and part-time pre-school education.
- (3) Subject to Article 32(4) (children resident outside Northern Ireland), this Chapter applies in relation to an application for admission of a child to pre-school education at a school whether or not the child is resident in the area of the board in which that school is situated.
- (4) It shall be the duty of the Board of Governors of a school to make arrangements for the admission of children—
- (a) to full-time pre-school education at the school, in accordance with Articles 24 to 27, 32 and 33; and
  - (b) to part-time pre-school education at the school, in accordance with Articles 28 to 31, 32 and 33.

*Admission to full-time pre-school education*

**Duties of Board of Governors in relation to admission to full-time pre-school education**

**24.**—(1) The Board of Governors of a school shall not cause or permit the number of full-time registered pupils at the school at any time to exceed the school's full-time enrolment number.

(2) In calculating for the purposes of paragraph (1) the number of full-time registered pupils at a school at any time, no account shall be taken of any child registered at the school in compliance with—

- (a) a direction of an appeal tribunal; or
- (b) a direction under Article 42 of the Education (Northern Ireland) Order 1996.

**Determination of full-time enrolment number for a school**

**25.**—(1) In this Chapter any reference to a school's full-time enrolment number is a reference to the number for the time being applying under the following provisions of this Article to the school.

(2) The full-time enrolment number applying to a school shall be such number as the Department may determine having regard in particular to—

- (a) the requirements of directions under Article 18 of the 1986 Order which apply in relation to the school;
- (b) the accommodation available for use by pupils in pre-school education at the school; and
- (c) the extent to which part-time pre-school education is to be provided in the school.

(3) The full-time enrolment number of a school may be nil.

(4) The Department may at any time vary a school's full-time enrolment number.

(5) Before making any determination under paragraph (2) or variation under paragraph (4) in relation to a school, the Department shall consult the bodies mentioned in paragraph (8).

(6) Paragraph (5) does not require consultation with the Board of Governors of a school in relation to a variation of the school's full-time enrolment number made by the Department at the request of the Board of Governors.

(7) After making any determination under paragraph (2) or variation under paragraph (4) in relation to a school, the Department shall send notice of the determination or variation to the bodies mentioned in paragraph (8).

(8) The bodies referred to in paragraphs (5) and (7) are—

- (a) the Board of Governors of the school;
- (b) the board for the area in which the school is situated; and
- (c) where the school is a Catholic maintained school, the Council for Catholic Maintained Schools.

### **Admission decisions in relation to full-time pre-school education**

**26.**—(1) In this Article and Article 27 any reference to the admission of a child to a school is a reference to the admission of a child to full-time pre-school education at the school.

- (2) In this Article—
  - (a) paragraph (3) applies to an application for the admission of a child to a school where the proposed admission is to take effect at the beginning of the first term of the school year; and
  - (b) paragraph (4) applies to an application for the admission of a child to a school where the proposed admission is to take effect at any later time in the school year.
- (3) Where an application to which this paragraph applies is made, the Board of Governors—
  - (a) shall admit the child to the school if the total number of such applications does not exceed the full-time enrolment number of the school;
  - (b) in any other case, shall—
    - (i) apply the criteria drawn up under Article 32(1) to select for admission to the school a number of children equal to the school's full-time enrolment number; and
    - (ii) admit, or refuse to admit, the child to the school accordingly.
- (4) Where an application to which this paragraph applies is made, the Board of Governors shall—
  - (a) if, at the time the application is considered there are vacant full-time places at the school—
    - (i) admit the child to the school, if the total number of such applications falling to be considered at that time does not exceed the number of vacant full-time places;
    - (ii) in any other case, apply the criteria drawn up under Article 32(1) to select for admission to the school a number of children equal to the number of vacant full-time places and admit, or refuse to admit, the child to the school accordingly;
  - (b) if, at that time, there are no vacant full-time places at the school refuse to admit the child to the school.
- (5) For the purposes of this Article—
  - (a) there are vacant full-time places at a school at any time if at that time the full-time enrolment number of the school exceeds the number of full-time pupils registered at the school;
  - (b) the number of vacant full-time places at a school at any time is the number obtained by subtracting the number of full-time pupils registered at the school at that time from the full-time enrolment number of the school.

### **Appeals against certain admission decisions under Article 26**

**27.**—(1) Every board shall make arrangements for enabling the parent of a child to appeal against any decision made under Article 26 by the Board of Governors of a school situated in the area of the board refusing the child admission to the school.

(2) An appeal under this Article shall be to an appeal tribunal constituted in accordance with regulations under paragraph (8) of Article 15 of the Education (Northern Ireland) Order 1997; and paragraphs (9) to (11) of that Article apply in relation to appeals under this Article as they apply in relation to appeals under that Article.

(3) An appeal under this Article may be brought only on the ground that the criteria drawn up under Article 32(1) by the Board of Governors of a school—

- (a) were not applied; or
- (b) were not correctly applied, in deciding to refuse the child admission to the school.

(4) On the hearing of an appeal under this Article—

- (a) if it appears to the tribunal that the criteria were not applied, or were not correctly applied, in deciding to refuse the child admission to the school, the tribunal shall, subject to paragraph (5), allow the appeal and direct the Board of Governors of the school to admit the child to the school;
- (b) in any other case, the tribunal shall dismiss the appeal.

(5) If, in any case mentioned in paragraph (4)(a), it appears to the tribunal that had the criteria been applied, or (as the case may be) been correctly applied, the child would have been refused admission to the school, the tribunal shall dismiss the appeal.

(6) It shall be the duty of the Board of Governors of a school to comply with any direction given under paragraph (4)(a).

#### *Admission to part-time pre-school education*

#### **Duties of Board of Governors in relation to admission to part-time pre-school education**

**28.**—(1) The Board of Governors of a school shall not cause or permit the number of part-time registered pupils at the school at any time to exceed the school's part-time enrolment number.

(2) In calculating for the purposes of paragraph (1) the number of part-time registered pupils at a school at any time, no account shall be taken of any child registered at the school in compliance with—

- (a) a direction of an appeal tribunal; or
- (b) a direction under Article 42 of the Education (Northern Ireland) Order 1996.

#### **Determination of part-time enrolment number for a school**

**29.**—(1) In this Chapter any reference to a school's part-time enrolment number is a reference to the number for the time being applying under the following provisions of this Article to the school.

(2) The part-time enrolment number applying to a school shall be such number as the Department may determine having regard in particular to—

- (a) the requirements of directions under Article 18 of the 1986 Order which apply in relation to the school;
- (b) the accommodation available for use by pupils in pre-school education at the school; and
- (c) the extent to which full-time pre-school education is to be provided at the school.

(3) The part-time enrolment number of a school may be nil.

(4) The Department may at any time vary a school's part-time enrolment number.

(5) Before making any determination under paragraph (2) or variation under paragraph (4) in relation to a school, the Department shall consult the bodies mentioned in paragraph (8).

(6) Paragraph (5) does not require consultation with the Board of Governors of a school in relation to a variation of the school's part-time enrolment number made by the Department at the request of the Board of Governors.

(7) After making any determination under paragraph (2) or variation under paragraph (4) in relation to a school, the Department shall send notice of the determination or variation to the bodies mentioned in paragraph (8).

(8) The bodies referred to in paragraphs (5) and (7) are—

- (a) the Board of Governors of the school;
- (b) the board for the area in which the school is situated; and
- (c) where the school is a Catholic maintained school, the Council for Catholic Maintained Schools.

### **Admission decisions in relation to part-time pre-school education**

**30.**—(1) In this Article and Article 31 any reference to the admission of a child to a school is a reference to the admission of a child to part-time pre-school education at the school.

(2) In this Article—

- (a) paragraph (3) applies to an application for the admission of a child to a school where the proposed admission is to take effect at the beginning of the first term of the school year; and
- (b) paragraph (4) applies to an application for the admission of a child to a school where the proposed admission is to take effect at any later time in the school year.

(3) Where an application to which this paragraph applies is made, the Board of Governors—

- (a) shall admit the child to the school if the total number of such applications does not exceed the part-time enrolment number of the school;
- (b) in any other case, shall—
  - (i) apply the criteria drawn up under Article 32(1) to select for admission to the school a number of children equal to the school's part-time enrolment number; and
  - (ii) admit, or refuse to admit, the child to the school accordingly.

(4) Where an application to which this paragraph applies is made, the Board of Governors shall—

- (a) if, at the time the application is considered there are vacant part-time places at the school—
  - (i) admit the child to the school, if the total number of such applications falling to be considered at that time does not exceed the number of vacant part-time places;
  - (ii) in any other case, apply the criteria drawn up under Article 32(1) to select for admission to the school a number of children equal to the number of vacant part-time places and admit, or refuse to admit, the child to the school accordingly;
- (b) if, at that time, there are no vacant part-time places at the school refuse to admit the child to the school.

(5) For the purposes of this Article—

- (a) there are vacant part-time places at a school at any time if at that time the part-time enrolment number of the school exceeds the number of part-time pupils registered at the school;
- (b) the number of vacant part-time places at a school at any time is the number obtained by subtracting the number of part-time pupils registered at the school at that time from the part-time enrolment number of the school.

**Appeals against certain admission decisions under Article 30**

**31.**—(1) Every board shall make arrangements for enabling the parent of child to appeal against any decision made under Article 30 by the Board of Governors of a school situated in the area of the board refusing the child admission to the school.

(2) An appeal under this Article shall be to an appeal tribunal constituted in accordance with regulations under paragraph (8) of Article 15 of the Education (Northern Ireland) Order 1997; and paragraphs (9) to (11) of that Article apply in relation to appeals under this Article as they apply in relation to appeals under that Article.

(3) An appeal under this Article may be brought only on the ground that the criteria drawn up under Article 32(1) by the Board of Governors of a school—

- (a) were not applied; or
- (b) were not correctly applied, in deciding to refuse the child admission to the school.

(4) On the hearing of an appeal under this Article—

- (a) if it appears to the tribunal that the criteria were not applied, or were not correctly applied, in deciding to refuse the child admission to the school, the tribunal shall, subject to paragraph (5), allow the appeal and direct the Board of Governors of the school to admit the child to the school;
- (b) in any other case, the tribunal shall dismiss the appeal.

(5) If, in any case mentioned in paragraph (4)(a), it appears to the tribunal that had the criteria been applied, or (as the case may be) been correctly applied, the child would have been refused admission to the school, the tribunal shall dismiss the appeal.

(6) It shall be the duty of the Board of Governors of a school to comply with any direction given under paragraph (4)(a).

*General***Admission criteria**

**32.**—(1) Subject to the following provisions of this Article, the Board of Governors of each school shall draw up, and may from time to time amend, the criteria to be applied in selecting children for admission to the school under Article 26 or 30.

(2) When drawing up or amending criteria under paragraph (1)—

- (a) the Board of Governors of a controlled school shall consider any representations made to it by the board responsible for the management of the school;
- (b) the Board of Governors of a Catholic maintained school shall consider any representations made to it by the Council for Catholic Maintained Schools.

(3) Where the criteria to be applied in respect of any school year have been published under Article 33(2), the Board of Governors shall not amend those criteria in respect of that school year without the approval of the Department.

(4) The criteria drawn up by the Board of Governors of a school under paragraph (1) shall provide for all children resident in Northern Ireland at the time of their proposed admission to the school to be selected for admission to the school before any child not so resident may be selected for admission.

(5) The criteria drawn up under paragraph (1) shall be such as to ensure that the Board of Governors by applying those criteria can comply with Article 26 or 30 before the criteria are exhausted.

(6) Regulations may provide that the criteria drawn up under paragraph (1)—

- (a) shall include such matters or matters of such description as are specified in the regulations;
- (b) shall not include such matters or matters of such description as are so specified.

### **Information as to schools and admission arrangements**

**33.**—(1) Every board shall, for each school year, publish at such time and in such manner as the Department may direct, particulars of—

- (a) the arrangements made by the board under Articles 23(1), 27(1) and 31(1);
- (b) the arrangements for the admission of children to pre-school education at each school in its area.

(2) The particulars to be published under paragraph (1)(b) for each school year in relation to a school shall include particulars of—

- (a) the school's full-time and part-time enrolment numbers;
- (b) the respective functions of the Board of Governors and the principal in relation to admissions to the school; and
- (c) the criteria drawn up under Article 32(1) for the school.

(3) The Board of Governors of every school shall, as respects that school, publish—

- (a) such information as may be required by regulations;
- (b) such other information, if any, as the Board of Governors thinks fit.

(4) Every board shall publish such information as may be required by regulations with respect to its policy and arrangements in respect of any matter relating to pre-school education at grant-aided schools in its area.

(5) A board may, with the agreement of the Board of Governors of any school situated in the area of the board, publish on behalf of the Board of Governors, the information relating to the school referred to in paragraph (3).

(6) References in paragraphs (3) and (5) to publication are references to publication at such times and in such manner as may be required by regulations.