

**Subject:**

**Circular Number:**

1990/45

**TEMPORARY EXCEPTIONS FROM THE  
STATUTORY CURRICULUM AND  
ASSESSMENT PROVISIONS FOR INDIVIDUAL  
PUPILS**

**Date of Issue:**

28 August 1990

**Target Audience:**

- Principals and Boards of Governors of all grant-aided schools;
- Education and Library Boards;
- Council for Catholic Maintained Schools.

**Summary of Contents:**

This Circular contains advice for principals on the making of directions excepting pupils from the statutory curriculum and assessment requirements on a temporary basis.

**Enquiries:**

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Essential

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Advice  
Information for schools

**Related Documents:**

SR 1990 No.288

**Superseded Documents:**

None

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Not applicable

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B. PROCEDURES FOR PARENTAL REQUESTS AND APPEALS

## **I INTRODUCTION**

1. The Education Reform (Northern Ireland) Order 1989 places a duty on principals to ensure that the statutory requirements relating to the curriculum and assessment laid down in Articles 5 (religious education, areas of study, attainment targets and programmes of study), 6 (compulsory contributory subjects and compulsory assessment) and 8 (educational themes), as in force at the start of the school year, are put into effect for all pupils of compulsory school age on the register of their school, subject to certain limited exceptions authorised by directions. The purpose of this Circular is to describe the effect of the Education (Curriculum) (Temporary Exceptions) Regulations (Northern Ireland) 1990 (SR 1990 No 288) which allows principals to make directions exempting pupils from the statutory curriculum and assessment requirements on a temporary basis. Copies of the Regulations are available from HMSO, 80 Chichester Street, Belfast BT1 4LE, price £1.70.

### **Statutory powers**

2. The Regulations are made under Article 17 of the 1989 Order and will come into force on 1 September 1990. The guidance in this Circular does not constitute an authoritative legal interpretation: that is exclusively a matter for the Courts.

## **II SCOPE OF REGULATIONS**

### **Which schools?**

3. The power to make temporary exceptions extends to the principals of all grant-aided schools except nursery schools - ie all those who are required under Articles 5, 6 and 8 to secure that the curriculum provisions and assessment arrangements are implemented in their school.

### **Which pupils?**

4. The Regulations empower principals to give, vary or revoke directions modifying or lifting for a brief period the curriculum and assessment requirements as they affect any individual registered pupil. Where exceptional arrangements already apply to such a pupil - through a modification or disapplication, made under Article 16, of the requirements as shown in the child's statement of special educational needs; for groups of pupils in the particular cases or circumstances specified in any Regulations which may be made under Article 15; or for pupils in schools or classes which are the subject of directions made by the Department under Article 14 for experiments and development work - it will still be possible to make a temporary exception under Article 17. However, before giving directions, the principal should satisfy him- or herself that the pupil's needs cannot be accommodated within any of the exceptional provisions already available and in the case of a pupil with a statement of special educational needs, must consult the relevant Board.

### **Which provisions?**

5. The temporary exceptions that may be made under these Regulations can modify or disapply any or all of the curriculum and assessment provisions of the 1989 Order. Temporary exceptions cannot be made to the provisions in Article 4(2) of the Order relating to the general requirement for a balanced and broadly based curriculum, or the requirements in respect of qualifications and syllabuses (Article 9), information (Articles 31 and 32) or complaints (Article 33). These provisions all offer important general safeguards for pupils and their parents.

### III CASES AND CIRCUMSTANCES

6. Article 17 Regulations allow, but in no circumstances require, temporary exceptions to be made under certain conditions. All pupils should have the opportunity of benefiting from the full curriculum. The Department expects that principals will, therefore, use their powers of direction sensitively and sparingly and that temporary exceptions will only rarely be made. The curriculum framework provides wide scope for teachers to provide teaching and learning opportunities at a pace and depth appropriate to the full range of individual pupils' needs without the need for exceptional arrangements.

In particular, it will seldom be necessary to exempt young children from the statutory curriculum requirements inasmuch as the activities appropriate for them, sand and water play, constructive play, listening to stories and rhymes, simple matching and counting and so on, are activities which underpin the development of language and of concepts in, for example, Science and Mathematics.

7. A principal may give directions in respect of an individual pupil only if he or she is of the opinion that it is for the time being inappropriate to offer the curriculum and assessment arrangements as they currently apply to the child (ie subject to any existing exceptions through a SEN statement, under Article 7 orders specifying attainment targets, programmes of study, assessment arrangements or the objectives of educational themes, or under Article 15 Regulations or Article 14 directions). The Department expects a principal to consider making a temporary exception for a particular pupil only in rare cases when it is clear that the pupil's present circumstances or conduct mean that he or she cannot fully participate in and benefit from the curriculum and assessment provisions. Exceptions should be limited to modifying, or if necessary lifting, only as many aspects of the statutory requirements as are inappropriate for the pupil.

8. The Regulations define two further circumstances, one of which must be met before a principal can make a temporary exception. The first circumstance, set out in Regulation 3(1)(b)(i) - "general directions", is that the factors necessitating the exception are likely to have changed significantly in 6 months so that the pupil can be expected to undertake the full curriculum and assessments as they apply to him or her thereafter. (See paragraphs 10-15 below.) The second circumstance, set out in Regulation 3(1)(b)(ii) - "special directions", is that the principal believes that the pupil has a longer-term need for exceptions or modifications to the statutory requirements, which can only be made through a statement of special educational needs, and temporary exception is necessary while the process of assessment or reassessment by the board takes place. (See paragraphs 16-17 below.)

9. Principals will need to exercise discretion in deciding when particular arrangements made for a pupil are sufficient to require an Article 17 direction. Schools may sometimes find it necessary to meet a pupil's particular needs in ways which require him or her to concentrate, perhaps for several weeks, on areas of particular weakness. Teachers should continue to be able to make such arrangements, and a direction will not be required to meet such a short term contingency.

#### **General Directions**

10. General directions are those given by virtue of Regulation 3(1)(b)(i) - see paragraph 8 above. The Regulations do not list specific cases in which a temporary exception of this type may be made. Examples are given below where general directions could be needed to allow exceptions from aspects of the curriculum or assessment arrangements. This list is not intended to be exhaustive. Nor should it be assumed that all such cases as those listed below will need temporary exceptions. It is only in rare circumstances that a temporary exception should be considered.

- a. Pupils who arrive from such a different educational system that they require a period of adjustment to the curricular requirements;
- b. Pupils who have had spells in hospital, been educated at home or been excluded from school and need time to adjust;
- c. Pupils who temporarily have severe emotional problems (perhaps because of a family crisis) and need special arrangements.

11. A principal's duty to implement the statutory curriculum and assessment requirements for all registered pupils extends to those pupils who are on the school's register but are being educated away from the school under temporary arrangements made by the principal, the Board of Governors or the board. It therefore extends to registered pupils being educated at home, in hospital or, for example, in an educational guidance unit. Where it is impossible to offer pupils in such circumstances the full curricular provisions, the principal must give Article 17 directions. As long as pupils remain on the register, the school has a legal obligation to their continuing education.

12. The Department does not expect principals to give Article 17 directions if pupils are absent from school because of illness, holidays or other reasons beyond the principal's control. Where absence from school is avoidable, it would expect the school to take other appropriate steps to secure the pupil's full-time attendance.

13. Nor does the Department expect directions to be given in the case of pupils who are not receiving education because they have been temporarily excluded from school under the provisions of a scheme made under Article 49 of the Education and Libraries (Northern Ireland) Order 1986 ("the 1986 Order") (suspension and expulsion of pupils). It would however expect the school and, as appropriate, the education and library board to work within the relevant provisions to secure the early resolution of such cases so that pupils return to full-time education as soon as possible.

14. In cases of extended absence whether for reasons such as those given in paragraphs 12 and 13 above or for other reasons, it may nevertheless be appropriate to give general directions exempting the pupil from the full range of the statutory requirements to enable him or her to adjust on return to school or full-time education. Principals will however wish to avoid making any temporary exceptions which mean that the pupil may lose further ground unnecessarily.

15. The continuity offered by the programmes of study should allow pupils who change schools frequently to be more readily integrated into a new school. There should be no assumption that pupils arriving from other schools will need a period of exceptional treatment.

### **Special directions**

16. Special directions are those given by virtue of Regulation 3(1)(b)(ii) - see paragraph 8 above. They may be given to cover the period while pupils are being assessed for special educational needs or SEN statements are being prepared: section IX of this Circular gives further guidance on this.

17. The Department expects principals to give special directions only when they can present evidence to suggest a prima facie case for SEN assessment and should not do so before consultation with the relevant Board. Even then a special direction will not always be necessary. Principals should bear in mind that it may be more difficult to carry out such assessment if pupils have been exempted from aspects of the curriculum. They should consider in each case if there is a clear case for a direction, and should not assume that this will be so or prejudge the outcome of the board's assessment procedures. It will remain for the board to determine whether or not there are sufficient grounds for assessment.

## **IV GIVING DIRECTIONS - PROCEDURES**

18. This section outlines the requirements to be followed when a principal gives a direction. Unless otherwise specified, the requirements apply to both general and special directions.

19. A direction should be given separately for each pupil. This will enable variations or revocations to be made (see sections V-VI below) according to each pupil's circumstances and progress.

20. The Department expects that, before giving a direction, the principal will discuss the pupil's circumstances and needs with his or her parents and teachers, and where appropriate consult educational psychologists, medical officers or other specialist staff. In the case of a special direction, the Regulations require the principal to consult the education and library board before giving a direction (see paragraph 45 below).

21. The principal should normally allow one calendar month after giving a direction before it comes into effect. This will allow parents (and, in the case of a special direction, the board) the opportunity to query the reasons or suggest changes. However, when there is an urgent need for the temporary exception to start more quickly, the principal may give a direction that comes into effect in less than one month. In such cases the reason for the urgency should be specified in the direction.

### **Reasons for the direction**

22. The direction must explain the action that is being taken, specify whether it is a general or special direction, and state why exceptional arrangements are necessary.

23. For a general direction, the Department expects the principal to include why the pupil's present circumstances make it inappropriate to continue offering the curriculum provisions that currently apply to him or her, or for him or her to undergo the associated assessments. The direction should also include a statement indicating how those circumstances seem likely to be changed over the period of the direction, and how the pupil will be enabled to adjust to those requirements that have been modified or lifted during the direction.

24. The slightly different requirements for special directions are outlined in paragraph 46 below.

### **Effect of the direction**

25. Any direction must state which aspects of the curriculum are to be modified or lifted, and what alternative provision is being made for the pupil's education whilst the direction lasts. The Department expects principals to offer positive alternative arrangements in all cases, bearing in mind the overriding principles of Article 4 of the Order.

### **Duration of the direction**

26. Any direction must specify when the exceptional arrangements will start and end, or the factors which will determine their ending. An initial direction may last no longer than six calendar months.

27. For a general direction, a principal may set a shorter duration in terms of calendar months or some other event if that occurs before the six-month limit. Such events might include, for instance, return from an educational guidance unit. A general direction must also outline how the principal proposes to secure the reapplication of those provisions that have been modified or lifted by the direction when it comes to an end.

28. The duration of special directions is explained in paragraphs 48-50 below.

29. Any direction will cease to have effect if a pupil is removed from the register of a school. It is for the principal of any school to which such a pupil transfers to judge the pupil's needs and make provision accordingly. (But a direction given by one principal will continue if he or she leaves the post: it will be treated as if given by his or her successor for the purposes of variation, revocation or renewal, as in sections V-VII below.)

30. The Department is also making Regulations under Articles 17A and 134(1) of the Education and Libraries (Northern Ireland) Order 1976 requiring Boards of Governors to maintain a curricular record on every registered pupil and to transfer the record on request to any school to which the pupil transfers. The Department would expect such records to include details of any directions given under Article 17.

### **Information about the direction**

31. Annex A sets out how principals should inform the various parties concerned of any direction or its renewal. They must include information about parents' right of appeal. (See section VIII below.)

## **V VARIATIONS**

32. Principals may vary directions, whether general or special - for example, if the pupil's circumstances change or new information about them comes to light. Directions may be varied in any respect other than by increasing their length.

33. The Department expects principals to keep the progress of pupils who are the subject of temporary exceptions under review. Where the need to vary a direction arises, the principal should discuss the pupil's changing circumstances and needs with his or her parents and teachers, and where appropriate consult specialist staff before making the variation.

34. Notice must be given in writing of any variation to the chairman of the Board of Governors of the school, to at least one of the child's parents and, in the case of a special direction, to the education and library board. The notice must set out which provisions of the direction are to be varied, giving brief details of each variation and reasons for it. A variation should normally take effect one month after the principal has given notice of it unless exceptional circumstances make more urgent revision necessary.

35. The notice of variation should meet all the information requirements of an initial direction (see Annex A).

## **VI REVOCATIONS**

36. Principals may also revoke directions of either type - eg if the pupil's circumstances change so markedly that exceptional arrangements cease to be appropriate. The Department expects that before doing so, a principal will discuss his or her plans with the pupil's parents, teachers and any specialist staff who have been involved in the case.

37. When revoking a direction, the principal must give notice in writing to the chairman of the Board of Governors, to at least one of the child's parents, and, in the case of a special direction, to the education and library board, and must specify the date when it will take effect. He or she must also give reasons for revoking the direction and outline plans for securing the reapplication of the lifted or modified curriculum or assessment provisions, unless the plans are the same as originally specified in the direction in all respects except timing.

## **VII RENEWALS**

38. Article 17 directions are not intended to provide long-term exemptions from the statutory curriculum and assessment provisions. The majority of pupils for whom a general direction is given will be able to resume the full requirements that would normally apply to them within six months. There may however be exceptional cases where the original expectation that a pupil's circumstances would change sufficiently within six months to return to the curriculum and assessment provisions is not fulfilled.

39. In such cases, the principal may renew a general direction by issuing a further direction to run on consecutively. He or she may do this on up to 2 occasions for a further 3 calendar months only in each case. Before doing so on either occasion, the written consent of three members of the Board of Governors must be obtained. Directions may not be renewed for a third time. (See paragraphs 50-51 below for renewals of special directions.)

40. In rare cases, a pupil who has already been the subject of a temporary exception may undergo a further change in circumstances and require a new direction that does not fall within paragraph 39 above. In such cases, a principal who proposes to give a new direction for a pupil for whom he or she has given a previous direction must obtain the prior written consent of three members of the Board of Governors and, where the new direction is a special direction, he or she must also first consult the education and library board. A new direction may only be made if the reasons for it are different from those which gave rise to a previous direction.

41. Boards of Governors may be involved in hearing appeals as well as giving consent to renewals or new directions. The Department expects them to make arrangements for considering renewals or new directions in such a way that would allow any subsequent appeal to be heard by governors who had not been involved in the earlier consideration of a particular case - eg by delegating an appeal hearing to a committee composed of different governors.

42. The Department expects that, before making a renewal or new direction, the principal should again discuss the pupil's circumstances and needs with parents, teachers and any specialist staff involved in the case.

43. Whenever a renewal or new direction is made, the principal must make information available in accordance with Annex A. Parents have the right to make requests and appeal, as described below.

## **VIII PARENTAL REQUESTS AND APPEALS**

44. Parents may ask for any direction to be given, varied, revoked or renewed. In cases of dissatisfaction they may appeal to the school's Board of Governors. Annex B sets out in detail the procedures to be followed.

## **IX SPECIAL DIRECTIONS**

45. This section outlines the requirements to be followed when a principal gives a direction for a pupil who in his or her opinion has or probably has special educational needs which are such that the education and library board would be required to determine the special educational provision that should be made for him or her, whether initially or on review of an existing statement. These requirements apply also to directions which started as general directions but have been varied for the purpose of a SEN assessment. Because of boards' responsibilities for the assessment of children in their area who need, or may need, special educational provision to be determined by the board to meet their needs, all the requirements apply to all grant-aided schools.

46. The principal must consult the board before giving a special direction. If, having done so, he or she decides to proceed with giving a special direction, it must include reasons for his or her opinion that the pupil has or probably has special educational needs requiring an assessment or the amendment of an existing statement. The Department expects the principal to refer to any procedures the school has used to analyse and monitor the pupil's needs and difficulties, and any action taken to address them, including any special support offered.

47. The principal need not describe at the outset plans for reapplying the statutory curriculum and assessment provisions to the pupil in the event of a statement not being made or amended. But in other respects the direction should follow the requirements in section IV above, except where otherwise specified.

48. Special directions will automatically end as soon as the statement is made or amended, and should be superseded by the special educational provision specified in that statement. If the board decides against assessment or has assessed (or reassessed) the pupil and decides not to make (or amend) a statement, it should inform the principal as soon as possible. The principal must then arrange for the pupil to resume the curriculum and/or assessment provisions which have been modified or lifted by the direction. Resumption must take place within one calendar month of the principal's receiving the board's notification, when the direction will expire. If the month expires during a school holiday, the statutory provisions should be re-applied when term resumes. The Department expects principals to keep parents informed.

49. If after six months the board has neither made (nor amended) a statement, nor informed the principal that it does not intend to do so, a special direction will automatically expire. In such cases, the principal may renew the direction twice by issuing further directions to run on consecutively; if a second further special direction is necessary, it may only be made with the prior approval of the Department. Any renewed direction should end no later than one calendar month after the statement has been made (or amended), and in any event after six calendar months.

50. A principal may also renew a special direction, by issuing a further consecutive direction, if there is an appeal under Schedule 11 to the 1986 Order, either against the decision of a board not to make a statement, or against the content of a statement. A renewal for this purpose may last no longer than one month after completion of the appeal and in no event longer than six calendar months. Only one renewal may be made if the appeal is against a board's decision not to make a statement. If necessary, more than one renewal may be made if the appeal is against the content of a statement.

51. Whenever a renewal is made, the principal must make information available in accordance with Annex A. Parents have the right to make requests and appeal, as described in Annex B.

52. If principals are to make plans either to reapply curriculum and/or assessment requirements or to renew directions in good time, education and library boards will need to keep them informed of progress in assessing pupils or in deciding not to assess them. In particular, if assessment is still taking place towards the end of a direction, the principal will need to know whether the board expects this process to be completed within the period of the direction and, if not, when.

S PEOVER  
Assistant Secretary

## ANNEX A

### INFORMATION TO BE PROVIDED ABOUT DIRECTIONS, VARIATIONS, REVOCATIONS AND RENEWALS

1. The principal must give a direction, whether an initial direction or a renewal, in writing. He or she must also give notice of a variation or revocation in writing.
2. A copy must be kept at the school with the pupil's curricular record.
3. Copies must be sent as soon as a direction or notice of variation or revocation is given and in any event within 3 school days to the chairman of the Board of Governors, the education and library board (in the case of a special direction) and at least one of the pupil's parents as registered at the school. Copies must be sent by first-class post.
4. Parents' copies must be sent to their registered address. Directions should include details of parents' right to appeal (see section VIII and Annex B).
5. When a principal renews a general direction or gives any new direction for a pupil for whom he or she has given a previous direction (see section VII ), the requirements outlined in paragraphs 2-4 of this Annex apply to the written consent of three members of the Board of Governors (and, where a new direction is a special direction, the education and library board) as well as the direction.

## PROCEDURES FOR PARENTAL REQUESTS AND APPEALS

1. Parents may ask a principal to give a direction temporarily excepting their child from the statutory curriculum and/or assessment provisions. They may also ask for any direction that is already in force to be varied, revoked or renewed.
2. The Department expects that principals will discuss requests with parents and seek to resolve any differences without resort to formal procedures. Should this fail, parents may make a formal request either in writing or orally to the principal. They must give reasons for it.
3. Principals must respond to requests within a fortnight. If they accept the request, they must send copies of the direction or notice of variation or revocation to the parent, the Board of Governors and, in the case of a special direction, the education and library board, as outlined in Annex A.
4. If the principal decides not to meet the request, he or she should write to the parent giving reasons for rejecting it and details of the parent's right of appeal. Copies should be sent to the Board of Governors.
5. If the principal does not respond within a fortnight, the parent has the right of appeal to the Board of Governors.
6. The Department expects Boards of Governors to hear appeals with all due speed. It proposes that Boards of Governors should have discretion to delegate the hearing of appeals under Article 17 to any member of the Board of Governors (except the principal) or to committees of governors.
7. The Department expects Boards of Governors to allow representations from parents, accompanied by a friend if they wish, as well as the principal and other specialist staff if necessary.
8. The Board of Governors may either confirm the principal's action or direct him or her to take any other action they consider appropriate within the scope of the Regulations - ie give, vary or revoke a direction in the manner permitted. They must notify the parent and principal in writing of their decision.
9. The principal must comply with the decision of the Board of Governors.
10. In order to avoid continuing dispute and uncertainty, principals need not consider more than one request from a parent for a direction to be varied or revoked during the course of that direction. They must however consider a further request, if parents choose to make one, once a direction has been renewed.
11. If parents remain dissatisfied, they may make a complaint to a complaints tribunal appointed by the board under Article 33 of the 1989 Order.