

# Draft General Scheme of an Education (Admission to Schools) Bill 2013

## Regulatory Impact Analysis

### 1. Summary of RIA

| Summary of Regulatory Impact Analysis (RIA)   |   |
|---|---|
| <b>Department/Office:</b><br>Department of Education and Skills   | <b>Title of Legislation:</b><br><a href="#">Draft General Scheme of an Education (Admission to Schools) Bill 2013</a> |
| <b>Stage:</b><br>Draft  | <b>Date:</b><br>July 2013   |
| <b>Related Publications:</b><br><a href="#">Discussion Paper on a regulatory framework for school enrolment June 2011</a>   |   |
| <b>Available to view or download at:</b><br><a href="http://www.education.ie">www.education.ie</a>  |   |
| <b>Contact for enquiries:</b><br>School Governance Section<br>Department of Education and Skills,<br>Cornamaddy,<br>Athlone<br>Co. Westmeath  | <b>E-mail:</b><br><a href="mailto:schoolgovernance@education.gov.ie">schoolgovernance@education.gov.ie</a>            |
| <b>What policy objectives have been pursued?</b><br>The overall objective of the proposed legislation is to better ensure that schools' enrolment policies and procedures are non-discriminatory and are applied fairly in respect of all applicants. The aim is to provide for a regulatory framework that will result in school enrolment arrangements that support access to all pupils through inclusive, transparent and fair enrolment policies and practices in all schools.   |   |
| <b>What policy options have been considered? Please summarise the costs, benefits and impacts relating to each of the options below and indicate whether a preferred option has been identified.</b><br>1. Do nothing.<br><br>2. Use the existing provisions (Section 33 (g)) of the Education Act 1998 to regulate school admission but make no changes to primary legislation.<br><br>3. Introduce a comprehensive range of provisions in primary legislation that will underpin a cohesive and integrated legislative framework for school enrolment so as to better ensure that schools' enrolment policies and procedures are non-discriminatory and are applied fairly in respect of all applicants.<br><br>Preferred Option: Introduce legislation to provide for 3 above. |   |

| <b>OPTIONS</b> |   |   |  |
|----------------|---|---|--|
|                | <b>COSTS</b>  | <b>BENEFITS</b>   | <b>IMPACTS</b>   |
| 1.             | <ul style="list-style-type: none"> <li>Continuing administrative costs and the risk of additional exchequer costs if the operation of Section 29 appeals continues to give rise to judicial review.</li> </ul>  | <ul style="list-style-type: none"> <li>No additional benefits</li> </ul>  | <ul style="list-style-type: none"> <li>Existing difficulties in relation to school admission will continue</li> <li>Parents and schools will continue to be pressed into futile contention in oversubscription situations.</li> </ul>  |
| 2.             | <ul style="list-style-type: none"> <li>As for option 1 plus the risk of legal costs arising if the regulations are challenged.</li> </ul>   | <ul style="list-style-type: none"> <li>Schools are required to adhere to regulations in relation to school admission</li> </ul>   | <ul style="list-style-type: none"> <li>Continuation of situation where some children may not be able to secure any school place</li> <li>Continuation of situation where there is a lack of appropriate and proportionate sanctions in respect of schools that operate unfair or unlawful admission policies and practices.</li> <li>Regulations may give rise to legal challenges that the Minister is exceeding the powers provided under Section 33 (g) of the Education Act 1998.</li> </ul> |
| 3.             | <ul style="list-style-type: none"> <li>While there is potential for some limited additional costs to arise for schools in administering a local appellate process this is more likely to be more than offset by the elimination of time spent in dealing with grievances locally in an</li> </ul> | <ul style="list-style-type: none"> <li>Better clarity for parents and schools in relation admission policies and practices.</li> <li>No costs in administering Section 29 appeals against decisions to refuse enrolment.</li> <li>Elimination of costs of home</li> </ul> | <ul style="list-style-type: none"> <li>Greater equity, transparency and consistency in school admission policies and practices across schools.</li> <li>Positive impact on the socially excluded</li> <li>The number of cases where compliance sanctions must be taken is expected to be small and the impact of these is therefore not expected to be significant</li> </ul>  |

|  |  |   |  |
|--|--|---|--|
|  | <p>unstructured manner.</p> <ul style="list-style-type: none"> <li>• Minor costs to the Exchequer arising from the establishment of an Appeals Committee to deal with appeals in relation to school designations.</li> <li>• Some minor costs may arise in the limited circumstances where the patron or Minister has to intervene in the area of school enrolment.</li> </ul> | <p>tuition provided to those who have no school place</p> <ul style="list-style-type: none"> <li>• No costs in respect of legal challenges to Section 29 appeal decisions.</li> </ul> |  |
|--|--|---|--|

## 2. Policy Context and Objectives

### Policy Context

In June 2011, the Minister published a [Discussion Paper](#) on a Regulatory Framework for School Enrolment. This set out in detail the background, including the existing legal framework and the policy context for the introduction of a regulatory framework for school enrolment. The [Discussion Paper](#) is available to download at [www.education.ie](http://www.education.ie).

In summary, the impetus for developing a new framework derives from (i) an audit of school enrolment policies undertaken by the Department in 2007 to examine the degree to which disparities existed between schools in terms of the enrolment of newcomer pupils; (ii) a report published in 2009 by the Economic and Social Research Institute (ESRI) “Adapting to Diversity: Irish Schools and Newcomer Students”; and (iii) the Department’s experience of difficulties and limitations with the existing legislative provisions in the Education Act, 1998.

At a general level, while the audit found no evidence of any system wide enrolment practices that give rise to concern, it did give rise to wider policy questions relating to:

- The need for enhanced information for parents about their rights, should a school refuse to enrol their child.
- Those aspects of the written enrolment policies of schools which may be deemed exclusionary, e.g. pre-enrolling children from birth or providing preference to

children of past pupils, thereby putting newcomers to communities at a disadvantage.

- The potential for improved inter-school co-operation in a given area in order to address enrolment anomalies.
- Possible proposals for intervention in local admissions where inter-school co-operation is not achieved.

The ESRI report looked at a broad range of issues in relation to the integration of newcomer pupils in schools. An element of the overall research considered the effects of admission practices and policies on the distribution of newcomer pupils across schools.

The research found that 80% of schools surveyed enrolled all children who presented and selection criteria were used for the other 20% of schools. It also found among the schools concerned that there were a small number of schools with high concentrations of migrant pupils i.e. over 50% migrant pupils and a few which had over 80% migrant pupils.

In looking at the distribution of newcomer pupils across the schools surveyed, the precise factors influencing enrolment patterns could not easily be identified. However, the authors reported that some of the selection criteria commonly applied by schools tended to disadvantage newcomer pupils. Examples of such criteria are preference to those applicants with siblings already in the school, date of application, preference to children of staff or past pupils and primary school attended. In some cases, the use of religion as a criterion was also found to disadvantage newcomers.

The existing legislative framework for school admission derives mainly from the Education Act, 1998, although some provisions relevant to school admission are contained in other legislation namely the Education Welfare Act 2000, the Education for Persons with Special Educational Needs Act 2004 and in the Equal Status Act 2000. (A more detailed outline of the current legislative framework is contained in the [Discussion Paper](#) published on the Department's website [www.education.ie](http://www.education.ie) ).

The current legislative framework while including a power for the Minister to make regulations, is in essence confined to specifying that establishing and maintaining an enrolment policy as a function of a school and providing for an appellate process under Section 29 of the Education Act 1998, to the Secretary General of the Department of Education and Skills (and/or a VEC) when a school has refused admission.

Under current arrangements, the onus is largely on the individual parent to pursue concerns about schools enrolment policies or practices either through a section 29 appeal or through other legal avenues such as under equality legislation provisions. The costs and time involved in pursuing these other legal avenues are prohibitive for most parents.

This means that there are at present effectively only two remedies provided for in statute for resolving difficulties relating to school admission practice. One is an appeal initiated

by a parent under Section 29 of the Education Act 1998. The second is the potential use of Sections 16 or 17 of the Education Act 1998 by the Minister or the Patron which is a general power to remove a Board of Management where there is a concern about how a Board has discharged its functions, which could include its handling of school admission.

While Section 29 does provide an appellate process for parents and students it is a one size fits all approach and does not distinguish between a refusal to enrol simply because the number of applications exceeds the number of available places (oversubscription) as distinct from a situation in which a student cannot get a place in any school in an area.

The intention behind Section 29 would appear to have been to provide to parents a non-judicial appeal process that could be easily accessed. In reality the Section 29 process has become burdensome for parents, schools and Department. The number of appeals has steadily increased particularly in relation to enrolment, with the overwhelming majority of those appeals concerning situations where demand for school places exceeds supply. It has also become more litigious with schools challenging the determinations made by appeal committees.

In summary, Section 29 appeals have become a cumbersome, ineffective and costly process that does not distinguish between a refusal to enrol simply because the number of applications exceeds the number of available places (oversubscription) from the much more serious situation where a student cannot get a place in any school in an area.

A new legislative framework will enable school enrolment to be addressed in a cohesive and integrated manner and with regard to the roles of the different agencies that interact with schools in relation to admission principally the Department of Education and Skills, the NEWB, the NCSE and the Equality Authority.

## **Objectives**

The overall objective of the proposed legislation is to ensure that schools' enrolment policies and procedures are non-discriminatory and are applied fairly in respect of all applicants.

The [Draft General Scheme's](#) aim is to provide in primary legislation the overarching framework that will ultimately result in school enrolment arrangements that support access by all pupils through inclusive, transparent and fair enrolment policies and practices in all schools.

A key objective is to create greater transparency and confidence for parents that the admission criteria laid down by schools and the procedures used by them are legitimate, reasonable and fair. This can be achieved through regulations that foster greater transparency and consistency in terms of how schools communicate and interact with parents. To that end the [Draft General Scheme](#) sets out clearly the specific matters relating to enrolment that regulations may address. Regulating in the areas specified will ensure best practice in relation to what schools do and how they do it and thereby also reduce difficulties or the need for grievance resolution subsequently.

The [Draft General Scheme](#) aims to maintain the principle of “subsidiarity” whereby decision making should reside at school level (principal, board of management and patron) as far as possible. The approach is not to unduly interfere with the Board’s authority to determine and manage the admission of pupils to its school.

The [Draft General Scheme](#) recognises the critical distinction between two different situations which can arise in relation to non-admission of a student. All refusals by schools to enrol a pupil do not have equal gravity in terms of impact on an individual student. For example where a pupil, along with other pupils, is refused enrolment simply because the demand for places exceeds supply in that particular school, the pupil may readily find an alternative place in another school. In such a case the pupil is effectively being denied his or her place of preference but can access education. In contrast where a pupil is being denied a place by a school or schools that have no shortage of places the pupil concerned is effectively being denied access to an education. The [Draft General Scheme](#) provides a remedy for this latter situation by enabling the NEWB to designate a school for a child with no school place and to require the identified school to admit that child with an appellate process available to the school. At present the NEWB can seek a place for such a child but schools are not required to act on any request made. This change should increase significantly the capacity of the NEWB to secure a school place for a child with no place in a more cost effective and timely manner.

Existing public policy is that schools should be inclusive and this is being reinforced through a proposed amendment to the Education Act, 1998 requiring every recognised school to explicitly state in its admission policy that it will not discriminate against an applicant for admission on the grounds of disability, special educational needs, sexual orientation, family status, membership of the traveller community, race, civil status, gender, faith or religious tradition or on the grounds of the applicant being of no faith. In terms of discrimination this new requirement does not displace existing provisions, exemptions or remedies available in equality legislation but rather seeks to compliment them.

A further objective is to put in place a range of appropriate measures at local and national level to ensure good practice, compliance and to provide for new and improved remedies that can be employed when and where difficulties arise. The current one size fits all statutory appeal is being replaced by providing in primary legislation for specific local appellate processes along with new powers of intervention for the school patron and the Minister. In line with the concept of subsidiarity the Minister will exercise some of his new powers only where the exercise of a similar power by the patron has not resolved the difficulty. Such intervention by a party external to the Board (e.g. a person appointed by the Patron or the Minister) will be confined to particular circumstances where a Board is not complying with the requirements of the new statutory framework.

In furtherance of the objective to ensure inter-school co-operation where it is in the best interests of pupils in an area, the [Draft General Scheme](#) provides a statutory basis for such co-operation by providing the Minister with a power to direct, if required, particular schools to co-operate in relation to the admission process and to also define the terms of any such co-operation process.

### **3. Identification and Description of Options**

#### **Option 1: Do nothing**

Doing nothing will maintain the status quo and will allow the existing difficulties in relation to school admissions to persist. There will be no change in relation to the current lack of transparency and consistency in the setting of admissions policy or its operation at school level. Schools will continue to apply practices and selection criteria that, though currently lawful, can disadvantage certain categories of pupils, particularly newcomers to a locality.

The burden of Section 29 appeals in relation to enrolment will continue for parents, schools and the Department. The number of Section 29 appeals may continue to rise and further legal challenges may ensue. There will continue to be a dearth of remedies and compliance measures to address the range of problems and grievances that arise in relation to school enrolment.

#### **Option 2: Regulate in relation to school admission under existing provisions of Section 33 (g) of the Education Act 1998.**

As the current section 33 (g) is not explicit in relation to the nature and scope of regulations in relation to school admission, any regulations made by the Minister may be limited if the Minister is not to exceed his powers.

Even, if Section 33 were amended to clarify the nature and scope of the Minister's regulatory power, regulating under Section 33 cannot resolve those problems or issues that require new primary legislation or amendment of existing primary legislation. For example, the existing provisions of Section 29 do not provide a solution to a situation where a parent is unable to secure any school place. Such a parent at present can only mount one or more appeals (depending on the number of schools that refused) and hope that in at least one instance the appeal is successful and is not subsequently overturned by judicial review. Similarly there is no power to require schools to co-operate in relation to school enrolment or to put in place any compliance measures that would involve removal of enrolment from the control of the Board of Management in serious cases of malpractice.

#### **Option 3: Introduce comprehensive primary legislation to underpin a cohesive and integrated legislative framework for school enrolment so as to better ensure that schools' enrolment policies and procedures are non-discriminatory and are applied fairly in respect of all applicants.**

This option entails the introduction of new primary legislation that will:

- Clarify the power of the Minister to make regulations in relation to the admission of students to schools and set out certain admission related matters that may be regulated.

- Remove the section 29 appeal process in so far as it relates to refusals to enrol and provide instead for a local appeal to the Board of Management and provide other alternative remedies in primary legislation.
- Provide for the NCSE to designate a school for a child with special educational needs and for the NEWB to designate a school in the case of a child for whom no school place is available (other than a child with special educational needs).
- Require all schools to make an explicit statement in their admission policy that it will not discriminate against an applicant for admission on any of the grounds specified while including provision for single sex schools and denominational schools to reflect, in their admission policy, the exemptions applicable to such schools under equality legislation.
- Provide the Minister with the power to require schools to co-operate in relation to admission.
- Provide a power to enable a patron to appoint a person independent of the school to operate the school admission policy in cases where there are significant issues with the operation of the enrolment process.
- Provide for a sanction of last resort whereby the Minister may remove from the control of the Board and the patron, the operation of the policy and appoint an independent person to lawfully operate the admission policy of the school for whatever period the Minister deems necessary.
- Repeal Section 19 of the Education Welfare Act, 2000 as this section's provisions will be incorporated into the proposed regulatory framework for admissions.

In addressing the areas outlined above, new primary legislation will create a more comprehensive and integrated legislative framework for school enrolment, provide for greater transparency and consistency in school enrolment generally and thereby give greater confidence to parents (and other schools) that the admission criteria laid down by schools and the procedures used by them are legitimate, reasonable and fair.

Option 3 is the preferred Option.

## **4. Analysis of Costs, Benefits and Impacts for all Options**

### **Option 1: Do nothing**

The current costs of the Section 29 process (for the exchequer, schools and parents) will continue with the risk that judicial review will continue to be triggered giving rise to potential legal costs. There are no benefits identified in relation to persevering with the status quo. There may also be credibility damage to the political and administrative systems if issues that have been identified in reports and through the experience of the operation of the limited provisions in the Education Act, 1998 are not addressed.

**Option 2: Regulate in relation to school admission under existing provisions of Section 33 (g) of the Education Act 1998.**

**Costs:**

- Ongoing costs of administering Section 29 appeals against decisions to refuse enrolment and any legal proceedings regarding Section 29 decisions.
- Ongoing cost of home tuition for those without a school place.

**Benefits:**

- Schools are required to adhere to regulations in relation to school admission

**Impacts:**

- Continuation of situation where some children may not be able to secure any school place.
- Continuation of situation where there is a lack of appropriate and proportionate sanctions in respect of schools that operate unfair or unlawful admission policies and practices.
- The Minister may be open to challenge on basis of exceeding his powers under Section 33 (g).

**Option 3: Introduce comprehensive primary legislation to underpin a cohesive and integrated legislative framework for school enrolment so as to better ensure that schools' enrolment policies and procedures are non-discriminatory and are applied fairly in respect of all applicants.**

Although, some relatively minor costs as outlined below may arise, it is envisaged that Option 3 will ultimately result in savings to parents, schools and to the Exchequer. A breakdown of the costs, benefits and impacts of Option 3 are as follows:

**Costs:**

- Some limited additional costs may arise for schools in administering the enrolment and local appeals process
- Minor costs to the Exchequer arising from the establishment of an Appeals Committee to deal with appeals in relation to school designations
- Some minor costs may arise in the limited circumstances where the patron or Minister has to intervene in the area of school enrolment.

**Benefits:**

- Increased clarity for parents and schools in relation to appropriate admission policies and practices.
- No costs for schools, parents and the Department in administering Section 29 appeals against decisions to refuse enrolment.
- Elimination of costs of home tuition provided to those who have no school place
- No costs in respect of legal challenges to Section 29 appeal decisions
- Reduction in cases brought to the Ombudsman for Children and the Equality Tribunal.

- Discontinuation of current situation where some schools might apply a selection process which disadvantages certain pupils or which is not applied fairly in respect of all applicants.
- No loss of self-esteem for students who might otherwise have been refused enrolment due to unfair practices.
- Increased diversity and inclusiveness amongst schools.

## **Impacts**

### **National Competitiveness**

No direct effects.

### **The Socially Excluded and Vulnerable Groups**

The proposed provisions will impact positively on the socially excluded and vulnerable groups by ensuring that schools' enrolment policies and procedures are non-discriminatory and are applied fairly in respect of all applicants. The NEWB/NCSE will also be able to designate a school place for students who have no school place.

### **The Environment**

No direct effects.

### **Economic market, Consumers and Competition**

No direct effects.

### **The Rights of Citizens**

The proposed provisions will ensure greater equity, transparency and consistency in school admission policies and practices across schools and are designed to improve the experience of parents and students in relation to access to education and access to education in a place of choice subject only to lawful oversubscription criteria being used by schools.

### **Disabilities**

The proposals will have a positive impact on those with disabilities and those who have special educational needs by ensuring greater equity, transparency and consistency in school admission policies and practices across schools and by reinforcing and underpinning the principle of maximum accessibility to and inclusiveness in all recognised schools.

### **Poverty**

While not strictly a poverty proofing provision, the proposed provisions will impact positively on the socially excluded and vulnerable groups by ensuring that schools' enrolment policies and procedures are non-discriminatory and are applied fairly in respect of all applicants.

## Compliance Burdens

The proposed provisions will provide a mechanism for applying a sanction against schools who do not comply with the legislation. The patron will be able to appoint a person independent of the school to operate the school admission policy in cases where there are significant issues with the operation of the enrolment process. The Minister may, as a last resort, remove from the control of the Board and the patron, the operation of the policy and appoint an independent person to lawfully operate the admission policy of the school for whatever period the Minister deems necessary. The number of cases where such compliance sanctions must be taken is expected to be small and the burden in relation to these measures is therefore not expected to be significant

## North-South and East-West Relations

No direct effects.

## 5. Consultation

A [Discussion Paper](#) on a Regulatory Framework for School Enrolment was published in June 2011. Education partners and interested parties were invited to submit their views to the Department by 28 October 2011. In total 90 submissions were received. All were reviewed with a view to identifying the issues and perspectives raised. The feedback from this consultation has been taken into account and has informed the content of the Draft General Scheme.

Table 1 below categorises the submissions received.

Table 1: Categorisation of Submissions

| Category   | Number of Submissions |
|--|-----------------------|
| <a href="#">Education Partners*</a>                          | 15                    |
| <a href="#">Patron Bodies</a>                                | 11                    |
| <a href="#">Representative Groups &amp; Statutory Bodies</a> | 20                    |
| <a href="#">Schools</a>                                      | 13                    |
| <a href="#">Personal Submissions</a>                         | 31                    |

**\*Note Details of the education partners who made submissions including a key to the abbreviations used in this section are available at Appendix I.**

The [Discussion Paper](#) outlined proposals in relation to both primary legislation and regulations. The following focuses on the views expressed in relation to changes to primary legislation.

Generally the submissions welcomed the [Discussion Paper](#) and expressed broad support for the introduction of a regulatory framework. There was broad agreement in relation to providing for regulation in many areas of both the content of admissions policies and the operation of the admissions process.

There was also broad agreement that the current Section 29 process needed review. However, there were a variety of views on whether an alternative school level appeals process such as to the Board of Management or possibly the Patron would be appropriate.

In relation to the legislative option whereby a Patron or the Minister might have a power of last resort to remove enrolment from the Board's control in the event that a Board was not complying with its legal obligations in relation to enrolment, a number of submissions supported this approach, these included the NPC- p, TUI, ASTI, NCSE and a number of personal submissions. However, the CPSMA, Church of Ireland General Synod, JMB, Educate Together, NABMSE, Committee on Management of Protestant Secondary Schools, patrons, some school authorities and some personal submissions had either reservations about this proposal or were entirely against it. Some submissions indicated a preference for board training and support over sanctions. A role for the Department's Inspectorate in monitoring compliance was proposed by the NAPD and IVEA.

The [Discussion Paper](#) also suggested that legislation might provide a mechanism to designate a school in circumstances where no school placement at all is available to an individual child. NABSME and the NPC-p supported further consideration of this suggestion. The CSPMA supported it in principle but stated that this should be strictly subject to the caveat that it must be feasible and that the rights of all must be taken into account. The INTO expressed concerns about implementation of the designation of schools under the EPSEN Act and stated that further guidance was necessary in relation to this. The JMB stated that any attempt to legislate for designation would be futile and counterproductive as resolution generally is found with local co-operation and goodwill. The Church of Ireland Board of Education expressed a concern that this might lead to a situation where a Protestant school would have to accept a person who does not actively support a Protestant ethos.

There was general agreement that inter-school co-operation is desirable and both NPC-p and NPC-pp welcomed the proposal to give the Minister powers in this area. However, management bodies expressed concerns about whether legislation should provide the Minister with powers to direct such co-operation. Concerns were also expressed about how this would operate across schools of a different ethos and patronage.

## **6. Enforcement and Compliance**

The proposed General Scheme provides a power to enable a patron to appoint a person independent of the school to operate the school admission policy in cases where there are significant issues with the operation of the enrolment process. The Draft General Scheme also provides for a sanction of last resort whereby the Minister may remove from the control of the Board and the patron, the operation of the policy and appoint an independent person to lawfully operate the admission policy of the school for whatever period the Minister deems necessary.

The Principal is responsible for implementing the policy and making decisions on individual applications. Parents can appeal a decision by the School Principal to refuse admission to the Board of Management of a school.

The NCSE can designate a school for a child with special educational needs and the NEWB can designate a school in the case of a child for whom no school place is available (other than special needs). A single appeals committee will consider appeals arising from either type of designation.

## **7. Review**

The legislation, once enacted, will be kept under review to ensure that it is meeting its objectives.

## **8. Publication**

The Regulatory Impact Analysis will be published on the Department's website: [www.education.ie](http://www.education.ie).

## **9. Further regulatory impact analysis**

This regulatory impact analysis is confined to proposed changes to primary legislation. Further regulatory impact analysis will be carried out in relation to regulations that may be made under any new legislation that is enacted.

# Appendix I

Submissions were received from the following education partners:

- An Foras Pátrúnachta;
- Association of Community and Comprehensive Schools (**ACCS**);
- Association of Secondary Teachers, Ireland (**ASTI**);
- Catholic Primary Schools Management Association (**CPSMA**);
- Church of Ireland General Synod Board of Education;
- Educate Together;
- Irish National Teachers Organisation (**INTO**);
- Irish Vocational Education Association (**IVEA**);
- Irish Primary Principals Network (**IPPN**);
- Joint Managerial Body (**JMB**);
- National Association of Boards of Management in Special Education (**NABMSE**);
- National Association of Principals and Deputy Principals (**NAPD**);
- National Parents Council- Post Primary (**NPC-pp**);
- National Parents Council- Primary (**NPC-p**);
- Teachers Union of Ireland (**TUI**).