



**AN BILLE OIDEACHAIS (LIGEAN ISTEACH I
SCOILEANNA), 2015
EDUCATION (ADMISSION TO SCHOOLS) BILL 2015**

EXPLANATORY MEMORANDUM

Purpose of Bill

The overall objective of the Bill is to provide a new framework for school enrolment that is designed to ensure that every child is treated fairly and that the way in which schools decide on applications for admission is structured, fair and transparent. The approach taken aims to strike the right balance between school autonomy and fairness in the education system. The Bill will apply to recognised schools.

Provisions of the Bill

Section 1: Definition

Section 1 defines the “Act of 1998” as the Education Act 1998.

Section 2: Amendment of section 2 of Act of 1998

Section 2 amends section 2 (Interpretation) of the Act of 1998 by inserting the term “admission policy”, into section 2 of the Act of 1998, which is defined as having the meaning assigned to it by section 62 of the Bill.

Section 3: Amendment of section 9 of Act of 1998

Section 3 amends section 9 (Functions of a school) of the Act of 1998 by substituting a reference in section 9(i) to “regulations made from time to time by the Minister under section 33” with a reference to “regulations made from time to time by the Minister under this Act”. This provides for a school to conduct its activities in compliance with any regulations made from time to time by the Minister under the Act of 1998 and not just regulations under section 33 of the Act.

This section also removes the specific reference to subsection 15(2)(d) from section 9(m). Section 9(m) requires a school to establish and maintain an admission policy which provides for maximum accessibility to the school.

Section 4: Amendment of section 10 of Act of 1998

This section amends section 10 (Recognition of schools) of the Act of 1998 by replacing the existing reference in section 10(2)(f) to “with such regulations as may be made by the Minister from time to time under section 33 and with this Act” with a reference to “with this Act and such regulations as may be made by the Minister from time to time under this Act”.

Section 5: Amendment of section 15 of Act of 1998

This section amends section 15 (Functions of a board) of the Act of 1998 by providing that the reference to a board publishing the admission policy of a school in section 15(2)(d) be amended to “publish, subject to this Act” and that the principle of inclusion be considered in addition to the principles already specified in section 15(2)(d).

The amendment also provides for the removal of the requirement on a Board to publish the policy of the school in relation to the “admission to and participation by students with disabilities or who have other special educational needs” as the schools admission policy should set out the arrangements for admission of all categories of students.

In addition, the requirement on a board to publish the policy of the school “relating to the expulsion and suspension of students” is being removed, as this policy is a separate policy to the admission policy of a school and the existing requirement to publish such a policy will be addressed by an amendment to section 23 of the Education (Welfare) Act, 2000 which is outlined in section 8 of this explanatory memo.

The amended section 15(2)(d) will read as follows: “subject to this Act, publish the admission policy of the school and ensure that as regards that policy principles of inclusion, equality and the right of parents to send their children to a school of the parents’ choice are respected and such directions as may be made from time to time by the Minister, having regard to the characteristic spirit of the school and the constitutional rights of all persons concerned, are complied with.”.

Section 6: Amendment of section 23 of Act of 1998

This section amends section 23 (The Principal) of the Act of 1998 by including a requirement in section 23(1)(a) for the principal to be accountable to the board of management for the implementation of the admission policy of the school and in section 23(2)(b) by replacing the reference to “regulations made under section 33” with a reference to “regulations made under this Act”.

Section 7: Admission to schools

This section provides for the insertion of Part X (Admission to Schools) in the Act of 1998.

Part X contains subsections 60- 70 and aims to set out the key provisions of the regulatory framework for school admissions in primary legislation.

Subsection 60: Definitions

This subsection provides the definitions which apply to the new Part X of the Act of 1998.

Subsection 61: Admission Statement

This subsection requires the admission policy of a school to include a statement that the school shall not discriminate in its admission of a student to the school on the following grounds, which are provided in section 3 of the Equal Status Act, 2000: gender, civil status, family status, sexual orientation, religion, disability, race, Traveller community ground or special educational needs of the student or of the applicant in respect of the student concerned.

The existing provisions in Equality legislation in relation to admission to single sex schools and denominational schools are also provided for. These enable single sex schools to refuse admission to students who are not of the gender of the school. Schools where the objective is to provide education in an environment that promotes certain religious values, can admit a student of a particular religious denomination in preference to other students or such a school can refuse to admit a student who is not of that denomination, provided it can prove that such a refusal is essential to maintain the ethos of the school.

Subsection 62: Admission Policy

Subsection 62 sets out the arrangements by which a board shall draft, obtain patron approval for and publish an admission policy.

It also sets out some mandatory requirements for a school's admission policy, which include, inter alia:

- setting out the characteristic spirit of the school;
- including an admission statement as required by subsection 61;
- providing details of the school's arrangements for students who do not wish to attend religious instruction;
- providing that the school shall enrol each student seeking admission other than in the following circumstances: (a) where the number of students seeking admission is greater than the number of places being made available by the school, (b) where the parents fail to accept the Code of Behaviour of the school or, (c) in accordance with the existing exemptions in the Equal Status Act for schools of one gender and schools where the objective is to provide education in an environment that promotes certain religious values;
- setting out the selection criteria to be applied where the number of students seeking admission to a school is greater than the number of places being made available by the school and the manner and sequence in which selection criteria will be applied;
- providing details of procedures for appealing a decision to refuse admission;
- setting out the procedures for admission of students after the commencement of the school year and to classes or years other than the school's intake group;
- including a statement that no fees or contributions can be requested as part of the admissions process, subject to subsection 63 (which provides for exceptions in the case of fees charged by schools known as fee charging schools, the boarding element of boarding schools and for post leaving certificate courses insofar as those fees relate to the cost of providing such courses).

Subsection 63: Prohibition on charging admission and enrolment fees

Subsection 63 prohibits the charging of fees or seeking payment or contributions for an application for admission to a school or for the enrolment or continued enrolment of a student in a school. Exceptions are provided in the case of fees charged by schools known as fee charging schools, fees charged by boarding schools for the boarding element and fees charged by schools for post leaving

certificate courses insofar as those fees relate to the cost of providing such courses.

Subsection 64: Regulations

Subsection 64 clarifies the power of the Minister to make regulations, following consultation with the relevant education stakeholders, for the purpose of the preparation and publication by schools of admission policies and the admission of students to schools.

While section 33(g) of the Act of 1998 (which is being repealed by Section 9(a) of the Bill) provides for regulations for the admission of students to schools, this subsection will not only clarify the power of the Minister to make regulations but make clear what such regulations can cover. This may include matters relating to the preparation, content, publication and review of school admission policies and the procedures in relation to the admission process.

Regulations may contain different provisions in relation to different categories of schools or different categories of students.

The Minister may prescribe selection criteria that schools shall be permitted to apply and/or selection criteria that schools shall be prohibited from applying in cases where the number of students seeking admission to the school is greater than the number of places available at the school.

The selection criteria that schools shall be prohibited from applying may include criteria based on the following:

- a student's connection to a school by virtue of his/her relationship with a specified category or categories of person;
- a student's prior attendance at a specified category or categories of pre-school or pre-school service;
- the payment of fees or contributions to the school;
- the occupation or financial status of the parents of a student;
- a student's academic ability, skills or aptitude;
- a requirement that a student, or his or her parents, attend an interview, open day or other meeting as a condition of admission;
- the date on which an application for admission was received by the school.

The Minister may, where he/she considers it appropriate to do so, prescribe for a derogation to be granted to a school, category of school or category of student, in respect of a prohibition which may be made on the use of "a student's connection to a school by virtue of his/her relationship with a specified category of person" as a selection criterion and may set out the circumstances in relation to which such a derogation may be granted or extended, the application process for same and conditions that may attach to such a derogation.

Subsection 65: Co-operation between boards

Subsection 65 enables the Minister, following consultation with the patron(s) and boards of the schools concerned, to direct two or more boards to co-operate with each other in relation to their admission processes where the Minister considers that this would be in the best

interests of students in an area or in order to accommodate students in the case of a school closure.

The Minister may set out procedures in relation to the co-operation and shall, following consultation with the patron(s) and the boards, specify the period of the direction.

Such a direction may, following consultation with the patron(s) and the boards, be reviewed at any stage and may subsequently be cancelled, extended or amended.

Subsection 66: Designation of school by Council or Child and Family Agency

Subsection 66 provides for the National Council for Special Education (NCSE) to designate a school for a child who has no school place for reasons related to their special educational needs and for the Child and Family Agency to designate a school in the case of a child, other than a child to which an NCSE designation may apply, who has no school place.

Subsection 66 also sets out criteria to which the NCSE and the Child and Family Agency should have regard when making a designation.

This subsection also provides for the Minister to establish an Appeals Committee to deal with appeals that might arise in relation to designations by either the NCSE or the Agency or in relation to a failure to designate appeal taken by a parent and sets out the process for making, hearing and providing notification of the outcome of such appeals.

The Minister may, following consultation with the Minister for Children and Youth Affairs, the NCSE and the Child and Family Agency, make regulations to specify the time limits applicable to such appeals and to further set out the procedures to be followed by an appeals committee.

Subsection 67: Direction to board and appointment of independent person by patron

Subsection 67 enables a patron to issue a direction to a Board if he or she is of the opinion that (a) the Board has failed to prepare and publish an admission policy (b) the admission policy of the school does not comply with the Act of 1998 or (c) students are not being admitted to the school in accordance with the Act of 1998 or the admission policy of the school. If the Board fails to comply with the direction the Patron may, appoint an independent person to comply with the direction.

Before a patron can issue a direction he/she must firstly issue a notice to the board informing them of his/her intention to issue a direction and provide the reasons for same, seek representations from the board, consider the representations and only if the patron considers the direction is still required can he/she proceed to issue the direction.

The direction will set out the action to be taken by the board and where the patron subsequently is of the opinion that the board has failed to comply with the direction the patron may issue a notice to the board, informing them that he/she proposes to appoint an independent person and provide the reasons for same. The board may make representations to the patron and where following consideration of the representations the patron still remains of the

opinion that an independent person is required to comply with the direction the patron may inform the board and, subject to the consent of the Minister, appoint an independent person.

Subsection 68: Direction to board by Minister

Subsection 68 enables the Minister to issue a direction to a board in the following three defined circumstances where the Minister is of the opinion that: (a) the board has failed to prepare and publish an admission policy; (b) the admission policy of the school does not comply with the Act of 1998, or (c) students are not being admitted to the school in accordance with the admission policy of the school or the Act of 1998.

Before the Minister can issue such a direction he/she must firstly issue a notice to the board and the patron informing them of his/her intention to issue a direction and provide the reasons for same, seek representations from the board and the patron and consider the representations.

If the Minister considers that he/she should proceed with issuing a direction the Minister will be required to nominate an authorised person to prepare a report and the authorised person will consider the representations made and set out what action, if any, he/she considers should be taken by the board. If after considering the report the Minister is of the opinion that a direction should be issued the Minister may issue the direction which shall, inter alia, set out the remedial action to be taken by the board and provide a copy of the report to the board.

Subsection 69: Request to patron by Minister

Subsection 69 provides for the Minister to request the patron to direct the board to comply with a direction under subsection 68 and where the board has failed to comply with such a direction to appoint an independent person.

Before issuing such a request the Minister must firstly issue a notice to the board and the patron stating that the Minister is of the opinion that the board has failed to comply with the direction and provide the reasons for his/her opinion. The board and the patron may subsequently make representations to the Minister and if the Minister remains of the opinion that the direction has not been complied with the Minister may request the patron to direct the board to comply with the direction.

If, after directing the board to comply with a direction under subsection 68, the patron is of the opinion that the board hasn't complied with the direction the patron may notify the board of same and that the patron proposes appointing an independent person. The board will be provided with an opportunity to make representations and the patron, after considering any representations, may appoint an independent person, subject to the consent of the Minister, to comply with the direction.

The role of the independent person will be confined to the matters specified in the direction by the Minister under subsection 68.

Subsection 70: Appointment of independent person by Minister

Subsection 70 enables the Minister to appoint an independent person to comply with a direction under subsection 67 or subsection 68 where the Minister is of the opinion that the patron (a) has failed to direct the board to comply with a direction (b) has failed to appoint an independent person or (c) has appointed an independent

person and the appointed person has failed to comply with a direction.

Before appointing an independent person the Minister must issue a notice to the patron informing the patron that he/she proposes to appoint an independent person, provide the reasons for same and provide an opportunity for the patron to make representations in relation to the proposed appointment.

If the Minister is of the opinion that he/she should proceed with appointing an independent person the Minister must request an authorised person to prepare a report and the authorised person will consider the representations made and set out what action, if any, he/she considers should be taken by the independent person. If, after considering the report, the Minister is of the view that an independent person should be appointed the Minister may appoint an independent person to comply with the direction. The patron and board shall be informed that an independent person has been appointed and shall be provided with a copy of the report.

The role of the independent person will be confined to the matters specified in the direction by the Minister under subsection 68 and, where the patron had appointed an independent person, to only those matters that have not been complied with by the patron's independent person.

Section 8: Amendment of Education (Welfare) Act 2000

Section 8 amends section 23 (Code of Behaviour) and section 26 (Right of Board to appeal etc. decision of board of management under section 29 of Act of 1998) of the Education (Welfare) Act 2000.

Section 23 of the Education (Welfare) Act, 2000 provides that the board shall prepare a Code of Behaviour which specifies, inter alia, "the procedures to be followed before a student may be suspended or expelled from the school concerned", but does not include a reference to publication. Section 8 provides for an amendment to section 23 to require a board to publish the Code of behaviour. This requirement has been removed from section 15(2)(d) of the Act of 1998 as detailed in section 5 of this explanatory memo.

Section 26 of the Education (Welfare) Act, 2000 enables the Child and Family Agency to take an appeal under section 29 of the Act of 1998 against a decision of a school to permanently exclude a student from a school or to refuse enrolment of a student. To avoid a conflict of interest due to the new role of the Agency, as a designated authority under subsection 66, section 8 provides that the Agency may appoint a person independent of the Agency to undertake this role.

Section 9: Repeals

Section 9 provides for the repeal of the following:

- section 33(g) of the Act of 1998;
- section 10 of the Education for Persons with Special Educational Needs Act, 2004, and,
- section 19 of the Education (Welfare) Act, 2000.

Section 33(g) of the Act of 1998 provides for the Minister to make regulations for the admission of students to schools.

Section 10 of the Act of 2004 provides the NCSE with the power to designate a particular school for a child with special educational needs and provides that the designated school must admit the child concerned.

Section 19 of the Education (Welfare) Act, 2000 provides for the board of a school to refuse admission in accordance with its admission policy.

The above provisions are being repealed as they are addressed in the provisions of the Education (Admission to Schools) Bill.

Section 10: Short title, collective citation and commencement

Section 10 provides for the short title of the Act, for the collective citation of the Education Acts and for standard provisions relating to the commencement of this Act.

*An Roinn Oideachais agus Scileanna,
Aibreán, 2015.*