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**AN BILLE OIDEACHAIS (UIMH. 2), 1997**  
**EDUCATION (NO. 2) BILL, 1997**

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**EXPLANATORY AND FINANCIAL MEMORANDUM**

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*General*

The Bill provides for a range of issues relating to rights and duties arising in respect of education, other than third level education, and provides for the structure and administration of the education system. A central objective of the Bill is to provide a statutory framework within which the education system can function in a spirit of partnership between the various parties involved, in the interests of ensuring the provision of a high quality education to each person, including a person who has special educational needs. In legislating for a complex system which, by and large, has not previously been subject to legislation, the Bill seeks to respect the traditions and diversity in the school system while introducing more contemporary concepts such as partnership, transparency and accountability.

The main provisions of the Bill provide for:

- the recognition of schools for the purposes of funding by public funds;
- the establishment of the Inspectorate on a statutory basis;
- the establishment of boards of management of schools;
- the establishment and role of parents' associations;
- the functions of Principals and teachers;
- appeals by students or their parents;
- the making of regulations by the Minister;
- the establishment of the National Council for Curriculum and Assessment and;
- regulation of the State examination system.

*Provisions of the Bill*

**PART I**

**PRELIMINARY AND GENERAL**

*Section 1* provides that the short title of the Act is the Education Act, 1997. It also provides that the Act is to be brought into effect by Ministerial order and that different parts of the Act may be brought into effect by different orders.

*Section 2* defines the terms used in the Act.

*Section 3* provides that any expenses incurred by the Minister in the administration of the Act shall be paid out of moneys provided by the Oireachtas.

*Section 4* provides a mechanism for the service of notices, directions or other documents under the Act.

*Section 5* provides that every regulation and order made under the Act must be laid before the Houses of the Oireachtas. These will be effective, unless annulled by either the Dáil or Seanad within 21 sitting days after they are laid.

*Section 6* provides that every person concerned in the implementation of the Act shall have regard to the objects listed. The first object is that, within available resources, an appropriate level and quality of education is available to each person in the State. Further objects are to promote equality of access to, and participation in education and the means whereby students may benefit from education; to promote opportunities for adults to avail of education; to promote the right of parents to send their children to a school of their choice; to promote effective liaison between the various partners in education and local structures; to contribute to the realisation of national policies and objectives in relation to education and in relation to the extension of bi-lingualism in Irish society; and to enhance accountability and transparency.

*Section 7* provides that the general functions of the Minister are to determine education policy and to plan and co-ordinate the provision of education and support services. Other functions of the Minister include: to provide funding to schools and centres for education and support services to students and their parents; to assess the economy and effectiveness of the education system; to lease land to any person or body for the purpose of establishing a school; to provide services through Irish to schools which teach through the medium of Irish and other schools, if requested; and generally to do all acts and things which may be necessary to further the objects of the Act.

*Subsection (4)* provides that in carrying out his or her functions the Minister shall have regard to the resources available, the provision for education and training made by other State funded agencies, the need to reflect the diversity of provision of education services and the right of schools to manage their own affairs. When carrying out his or her functions the Minister is also required, wherever practicable, to consult with recognised bodies having an interest in education and other persons who have a special interest in or knowledge of education matters.

## PART II

### SCHOOLS

*Section 8* provides a procedure for identifying the person or body who is the "patron" of a school for the purposes of the Act. The section recognises the status quo as at the commencement of the Act and provides that the persons who are already recognised as patrons of primary schools and the trustees or boards of governors of post-primary schools, or the owners of such post-primary schools if they have neither trustees nor governors, shall be registered as patrons for the purposes of the Act. Except as described above, the patron of a school will be the person who requested recognition of the school or his or her nominee. The names of patrons shall be entered onto a special register. Amendment of the register may occur only



with the consent of the person registered or his or her successor. The patron of vocational education committee schools will be the committee. The patron of a school shall carry out the functions and exercise the powers conferred on him, her or them by the Act and any other instrument relating to the establishment or operation of the school. Provision is made in *subsection (5)* for joint patronage.

*Section 9* provides for the functions of a school. They include ensuring that the educational needs of all students, including students with special needs, are identified and provided for; ensuring that the education provided meets the requirements determined by the Minister; promoting the students' moral, spiritual, social and personal development, in consultation with parents, and having regard to the characteristic spirit of the school; promoting Irish language and culture; ensuring that parents have access to records relating to their children's educational progress; complying with Ministerial regulations; ensuring that there is provision for addressing management and staff development needs in the school; establishing procedures to assess the efficiency of its operations, including the quality of teaching and academic standards of students; establishing contacts at appropriate levels in the community served by the school; establishing an admissions policy providing, within the resources available, for maximum accessibility to the school.

*Section 10* provides for the recognition of schools, which is a prerequisite to funding under *subsection 12(3)*. Following a request from a patron of a school or a proposed school, the Minister may designate the school as a recognised school. In deciding on recognition, the Minister must be satisfied that the school satisfies, or the proposed school would satisfy, a number of criteria.

*Subsection (2)* sets out the criteria. The Minister must be satisfied that the school has, or is likely to have, enough students to make the school viable and, in the case of a proposed school, that the needs of students attending or likely to attend cannot be met by existing schools.

Other criteria relate to a school's capacity and willingness to provide the curriculum, to co-operate with Inspectors, to meet health and safety standards as determined by the Minister, and to operate in accordance with regulations made by the Minister and with the provisions of the Act.

*Subsection (3)* is a statutory recognition of the status quo. A school which, at the date of coming into effect of this section, is already receiving public money for its education activities or for its teachers' salaries, shall be deemed to be a recognised school.

*Section 11* provides that the Minister may withdraw recognition from a school which does not satisfy the requirements for recognition or is not effectively performing its functions. The Minister must give the board of management, teachers, parents and the patron notice of, and reasons for, the intention to withdraw recognition and must consider any representations made. A period of three months is provided for this process of making representations. If at the end of that period a decision is taken to withdraw recognition, then this shall be effective from the end of the school year following the school year in which the decision was made or such later date as the Minister shall decide. In no case therefore will the notice period of withdrawal of recognition be less than 12 months.



*Subsection (3)* imposes a duty on the Minister to arrange alternative educational facilities for students enrolled in a school from which recognition is withdrawn, where the students require this.

*Subsection (4)* provides that the Minister may restore recognition to a school which he or she is satisfied fulfils the necessary criteria and is performing its functions effectively. However, that school will not be entitled to receive public funds in respect of the period during which recognition was withdrawn.

*Section 12* provides that each year the Minister shall determine the criteria by which recognised schools are to be funded, which criteria may allow for additional funding in the case of schools whose students experience educational disadvantage. Each year, on a date determined by him or her, the Minister shall make grants to recognised schools except as otherwise provided in the Act.

In the case of the schools of a vocational education committee, grants will be paid to the committee which will then disburse them, in accordance with the criteria, to its schools.

*Subsections (6) and (7)* provide for the continuance of the existing practice, whereby certain schools are funded by way of a block grant.

### PART III

#### THE INSPECTORATE

*Section 13* provides for the Inspectorate, composed of the Chief Inspector and Inspectors, which will include persons who hold qualifications as psychologists. This provision places the existing Inspectorate of the Department of Education and Science on a statutory basis and provides a statutory statement of its functions.

The functions of an Inspector will be to support and advise recognised schools, centres for education and teachers on matters relating to education provision, and in particular: to visit schools and centres for education to evaluate their management and the quality and effectiveness of the education provided, including the quality of teaching and the effectiveness of individual teachers; to evaluate education standards; to advise teachers and boards of management on their duties and to assist teachers in improving methods and conducting classes; to advise parents and parents' associations; to assess the implementation of Ministerial regulations and to report to the Minister on these or other matters relating to the activities of such schools or centres for education; and to assess the educational needs of students and advise in relation to their educational development. The Inspectors who are psychologists may assess the educational and psychological needs of students and advise them, their parents and the schools in relation to the educational and psychological development of such students.

Inspectors will also have the following functions: to evaluate the quality and effectiveness of educational provision nationally; to assist in the formulation of policy by the Minister; to advise the Minister on any matter relating to educational policy and provision; and to supervise the operation of the national examinations system.

The section also provides that the Minister may second teachers to the Inspectorate.



Inspectors shall have all powers necessary for the performance of their functions and shall carry out their functions in accordance with criteria for inspections determined by the Minister, following consultation with patrons, school management organisations, teacher unions and other persons the Minister considers appropriate.

*Subsection (8)* provides that the Chief Inspector shall review an inspection carried out by an Inspector following a request for review from a teacher or board of management.

## PART IV

### BOARDS OF MANAGEMENT

*Section 14* provides that it is the duty of a patron to appoint, where practicable, a board of management composed as agreed between patrons of schools, national associations of parents, recognised school management organisations, teacher unions and staff associations, and the Minister. Boards of management are given body corporate status and obliged to fulfil in respect of schools the functions assigned to schools by the Act.

*Subsection (3)* provides that the status quo with regard to the management of schools shall continue until such time as boards of management are established.

Members of boards of management shall be appointed by the patron and the Minister may, with the agreement of the patron, national associations of parents, recognised school management organisations, teacher unions and staff associations, make regulations relating to the appointment of the board.

*Subsection (6)* provides that no action shall lie against any member of a board acting in good faith and in pursuance of the provisions of this Act or Ministerial regulations.

*Section 15* provides that it is the duty of a board of management to manage the school on behalf of the patron and for the benefit of students and their parents and to provide education for students. In performing its functions the board shall: act in accordance with Ministerial policies; uphold the characteristic spirit of the school and be responsible to the patron for upholding it; act in accordance with all instruments relating to the establishment or operation of the school; consult with and inform the patron of decisions and proposals; publish, with the agreement of the patron, a school's admission policy and ensure that the policy respects principles of equality and the right of parents to send their children to a school of their choice and that the directions of the Minister are complied with; promote respect for different values and traditions; have regard to the efficient use of resources, transparency and accountability, and make reasonable accommodation for students with special educational needs.

*Section 16* provides that a patron may, subject to the consent of the Minister, dissolve a board, if he or she is satisfied that its functions are not being effectively discharged, or remove any member of a board, provided that he or she has given the board or member one month's notice in writing explaining the reasons for the decision and has considered any representations made.

On dissolution of the board, the patron may, subject to the approval of the Minister, appoint any body or person to perform the



board's functions for a period of up to six months, or such longer period as the patron, with the consent of the Minister, considers appropriate. At the end of that period a new board will be established.

*Section 17* provides that the Minister may require a patron to dissolve a board if the board is not discharging its functions effectively, if it does not comply with any Ministerial direction under the Act, or if it fails to comply with any court judgement or order. The Minister must inform the board and patron of his or her intention one month before requiring the patron to dissolve the board and consider any representations they may make. A new board will be established as provided for in *section 16*.

*Section 18* provides that a board shall keep accounts of all receipts and expenditure and ensure that the accounts are audited and made available for inspection insofar as they relate to public monies.

*Section 19* provides that the Minister or patron may appoint a person or persons to prepare a report where the Minister or the patron is of the opinion that the board is not properly discharging its functions and the person so appointed shall be facilitated as necessary by the school. Before appointing such person the Minister or patron must inform the board of the reasons for believing it is not discharging its functions and consider any representations made. The section also provides that a Principal or board shall supply the patron or the Minister with such information regarding its performance as he or she may require.

*Section 20* provides that a board shall establish procedures for keeping parents informed about the performance of the school, which procedures may include circulating to parents, teachers and other school staff a report on the performance of the school with particular regard to the objectives set out in the school plan.

*Section 21* provides that a board shall make arrangements for the preparation of a school plan and shall make arrangements for the preparation of future plans at intervals of not more than five years. The school plan shall be prepared in accordance with Ministerial directions, including directions as to consultation with parents, patron, staff and students. A board shall make arrangements for circulation of the plan.

## PART V

### THE PRINCIPAL AND TEACHERS

*Section 22* provides that the Principal and teachers of a school are responsible for the instruction of students and must contribute to their education and personal development.

Principals' and teachers' functions include: encouraging learning in students; evaluating students and periodically informing parents and students of the results of such evaluations; promoting co-operation between the school and the community; in the case of teachers, carrying out duties assigned to them by the Principal; and, in the case of Principals, carrying out duties assigned to them by the board of management.

*Section 23* provides that the board of management shall appoint the school Principal in accordance with procedures to be agreed between the Minister, the patron, recognised school management



organisations and teacher unions and staff associations, subject to terms and conditions determined by the Minister, with the consent of the Minister for Finance. In addition to the functions in *section 22* the Principal is responsible for day to day school management, for providing leadership, for creating an environment which fosters learning and promotes teacher professional development, for setting and monitoring school objectives and for encouraging the participation of parents.

*Subsection (4)* provides that the Principal shall be entitled to be a member of every committee appointed by the board.

*Subsection (5)* provides that where, before the commencement of the Act, the employer of a post-primary Principal is a body other than a board of management, that body shall, after the commencement of the Act, have the role outlined above for the board of management in relation to the appointment of the Principal.

*Subsection (6)* provides that in carrying out his or her functions a Principal shall consult wherever practicable with teachers and other staff.

*Section 24* provides that a board may appoint as many teachers and other staff of a school as are necessary for the performance of its functions, but that the numbers, qualifications and pay of staff who are to be paid from public monies are subject to the approval of the Minister. The appointment, suspension and dismissal of these staff will also be subject to procedures agreed between the Minister, patron, recognised school management organisations and teacher and staff unions and associations (*subsection (3)*).

*Subsection (4)* provides that existing appointment, suspension and dismissal procedures shall remain in place pending agreement being reached as provided for in *subsection (3)*.

*Subsection (5)* provides that the terms and conditions of teachers and other staff who are to be paid from public funds shall be determined by the Minister, with the concurrence of the Minister for Finance.

*Subsection (6)* provides that the rates of pay and pension of teachers and other staff who are to be paid from public funds shall be determined by the Minister, with the concurrence of the Minister for Finance.

Where, before the commencement of the Act, the employer of staff in a post-primary school is a body other than a board of management, that body shall, after the commencement of the Act, have the role outlined above for the board of management in relation to staff.

This section does not apply to staff of a vocational school who are covered by vocational education legislation.

## PART VI

### MISCELLANEOUS

*Section 25* provides that the Minister may, following consultation with patrons, national associations of parents, recognised school management organisations and recognised teacher trade unions and staff associations, prescribe the minimum number of teaching days per annum and teaching hours per day or week, and any other matters relating to the length and organisation of the school day, week or year.



*Section 26* provides that parents of students may set up a parents' association for the school. The parents' association may advise the Principal or the board and generally may promote the involvement of parents in the operation of the school. The board shall encourage contact between the school and parents and facilitate the establishment of a parents' association.

*Section 27* provides that a board of management shall establish mechanisms to keep students informed of school activities, which mechanisms shall facilitate the involvement of students in the operation of the school.

The section also provides that in post-primary schools students shall be encouraged to establish a student council and the board of management shall help students to establish the council and shall assist the council once it has been established. A student council must promote the interests of the school in co-operation with the board, parents and teachers.

*Section 28* provides that the Minister may, with the agreement of patrons, national associations of parents, recognised school management organisations, and recognised trade unions and staff associations representing teachers, prescribe procedures in accordance with which the parents of the student concerned, or, if the student is 18 years of age or over, the student, may appeal against decisions of a teacher or other member of staff to the board of management of a school. The section also provides that the Minister may with the agreement of the persons, bodies and associations set out above, prescribe procedures under which the grievances of students or their parents in relation to the students' school may be heard and appropriate remedial action may be taken to address those grievances.

*Section 29* provides that where a board of management expels, suspends for a prescribed period or refuses to enroll a student or makes such other decision as shall be agreed between patrons, national associations of parents, recognised school management organisations, recognised trade unions and staff associations representing teachers and the Minister, then the parents of the student, or, if the student is 18 years of age or over, the student, may appeal that decision to the Secretary General of the Department of Education and Science.

For the purpose of hearing appeals, the Minister will establish appeals committees each including in its composition an Inspector, a practising barrister or solicitor of ten years' standing and such other persons as the Minister, following consultation, determines.

Procedures for hearings will also be determined following consultation and will ensure that hearings will be conducted without unnecessary formality and as quickly as possible.

Once the appeals committee has made a decision it will notify the Secretary General of the Department of Education and Science and, where the appeal has been upheld and the committee believes the matter should be remedied, it will make recommendations as to the action to be taken. The Secretary General will then notify the appellant and the board of the decision and the reasons why it was reached and may give directions to the board to remedy the matter, if appropriate.

*Subsection (8)* provides that the Minister shall, within two years of the commencement of this section and from time to time thereafter,



in consultation with patrons, national associations of parents, recognised school management organisations, recognised trade unions and staff associations representing teachers, review the operation of this section and *section 28*.

*Subsections (9) and (10)* deal with the case of vocational education committee schools and provide that an appeal against a decision of a board in such a school will initially lie to the vocational education committee and then to the Secretary General and that the procedures for such appeals will be prescribed by the Minister following consultation.

*Section 30* provides that the Minister may, following consultation with patrons, national associations of parents, recognised school management organisations, and recognised trade unions and staff associations representing teachers, prescribe the curriculum, that is the subjects to be offered in schools, the syllabus of each subject and the amount of time to be allotted to each subject.

The Minister may also prescribe different subjects for different types of school, and shall have regard to the characteristic spirit of the school in prescribing the curriculum. The Minister shall ensure that there is sufficient time available to allow for instruction in subjects arising from the characteristic spirit of the school and shall not require any student to attend instruction against the conscience of the parent or of the student if he or she is 18 years of age or over.

The section also provides that the Minister may consult with the National Council for Curriculum and Assessment and other bodies he or she considers appropriate and may establish bodies to advise or carry out research on curricular matters.

A school may provide such subjects as it considers appropriate in addition to the curriculum determined by the Minister.

*Section 31* provides that the Minister shall establish a body to plan and co-ordinate the provision of text books and aids to learning and teaching through Irish and to advise the Minister on the promotion of education through Irish and the provision of support services through Irish and to conduct research on such matters. The Minister's functions in respect of these matters may be delegated to the body established under this section.

*Section 32* provides that the Minister may, following consultation with patrons, national associations of parents, recognised school management organisations, recognised trade unions and staff associations representing teachers and such other persons as the Minister considers appropriate, establish a committee to advise him or her on strategies to tackle educational disadvantage. Up to half of the membership of this committee shall be nominees of voluntary bodies.

*Section 33* provides that the Minister may make rules and regulations to give effect to any of the provisions of the Act, following consultation with patrons, national associations of parents, recognised school management organisations, recognised trade unions and staff associations representing teachers.

*Section 34* defines the term "financial year" as used in the Act.

*Section 35* repeals part of section 5 of the Intermediate Education (Ireland) Act, 1878. The Act is the basis for the conduct of the Junior and Leaving Certificate examinations and the amendment will permit the introduction of religion as an examination subject.



*Section 36* amends sections 105(1), 106 and 107 of the Vocational Education Act, 1930 by allowing a person other than an officer of the Minister to carry out a local enquiry under that Act.

## PART VII

### NATIONAL COUNCIL FOR CURRICULUM AND ASSESSMENT

*Section 37* provides that the Minister shall by order determine the day when the Council is to be established.

*Section 38* provides that the Council shall be established on the day determined in accordance with *section 37* and shall be known as the National Council for Curriculum and Assessment or, in Irish, An Chomhairle Náisiúnta Curaclaim agus Measúnachta and shall perform the functions given it by the Act. The Council is given body corporate status and the power to acquire and dispose of land and property. The provisions of *Schedule 1* relating, inter alia, to the regulation of Council business and membership, will apply to the Council.

*Section 39* provides that the composition of the Council is to be determined by the Minister following consultation with national associations of parents, recognised school management organisations, recognised trade unions and staff associations representing teachers and such other bodies as the Minister considers appropriate, and that, as far as practicable, the membership should be representative of bodies involved in primary and post-primary education and include other persons with experience and skills, including business and industry skills. The members of the Council are to be appointed by the Minister in accordance with regulations drawn up following consultation with patrons of schools, national associations of parents, recognised school management organisations, recognised trade unions and staff associations representing teachers and such other persons or bodies as the Minister considers appropriate.

*Section 40* provides that the general objects of the Council shall be to advise the Minister in relation to school curriculum and assessment in schools. In particular, the following shall be functions of the Council: to review the curriculum and syllabuses and advise the Minister; to advise the Minister on methods of assessment; to advise the Minister on methods to ensure a successful transition of students from primary to post-primary school; to advise the Minister on the standards students should be attaining and how to assess this; to review the inservice training needs of teachers and to advise the Minister; to manage the assets of the Council; to accept gifts; and generally to do all such acts and things as may be necessary to further its objects, including functions relating to review and reform of the curriculum and assessment of education.

*Subsection (3)* provides that in carrying out its functions the Council shall: have regard to resource implications and quantify the resources necessary for implementing its proposals, where practicable; have regard to the desirability of equality of access to, participation in and benefit from education; act in accordance with Ministerial directions; and have regard to the practicalities of implementing the advice given.

*Section 41* provides that the Council shall have a whole-time chief executive officer who will be appointed by the Minister to administer and manage the Council and whose terms and conditions of employment will be determined by the Minister with the consent of the



Minister for Finance. In the case of the first chief executive officer, this person shall be the chief executive officer of the existing non-statutory National Council for Curriculum and Assessment if he consents.

*Section 42* provides that the Council will be staffed by persons appointed by the Minister on terms and conditions determined by the Minister and that the Minister may provide administrative and secretarial support to the Council.

*Section 43* provides that the Minister may make grants to the Council each year.

*Section 44* provides that the Council shall keep accounts which will be submitted annually to the Comptroller and Auditor General for audit. The accounts and the report of the Auditor will be presented to the Minister who will lay them before the Houses of the Oireachtas. The Council must give the Minister such information on the performance of its functions as he or she requires.

*Section 45* provides that the Council may establish committees to which it may delegate any of its functions.

*Section 46* provides that the Council shall give the Minister an annual report on its performance.

## PART VIII

### EXAMINATIONS

*Section 47* defines some terms used in this Part of the Act.

*Section 48* provides that this Part of the Act shall apply to the examinations listed in *Schedule 2* and to such other examinations as the Minister may prescribe.

*Section 49* provides that the Minister may make regulations relating to the conduct of examinations including regulations relating to the preparation of examination papers; the procedures at examination centres; the marking of examinations; the issuing of examination results; the charging of fees for examinations; the terms and procedures for appeals of examination results; and the penalties for breaches of regulations or other misconduct relating to examinations. The Minister may appoint a body to advise him or her on any matter relating to examinations.

*Section 50* provides that it is an offence to do any of the following or to assist in doing any of the following: to publish an examination paper without authority; to have an examination paper in one's possession without authority prior to the holding of the examination; in the case of a person preparing examinations, to give information to a candidate or other person without authority; to give a candidate higher or lower marks than he or she deserves; to impersonate or help someone to impersonate a candidate at an examination; to destroy or damage any material relating to an examination without authority; to obstruct a candidate or otherwise interfere with the conduct of an examination; to alter a certificate containing the results of an examination without authority; or to issue a document containing false examination results.

*Subsection (3)* provides that a person guilty of an offence will be liable on summary conviction to a fine of up to £1,500 or imprisonment for a term of up to six months or both and on conviction on indictment to a fine of up to £5,000 or imprisonment for up to two years or both.



*Section 51* provides that the Minister may refuse access to information which would permit the compilation of information on the overall performance of a school in examinations or on comparative overall results of a number of schools.

#### SCHEDULES

##### *Schedule 1 — The Council*

This schedule provides for a number of practical matters in relation to the operation of the Council including that it shall have a seal, the appointment of the chairperson and deputy-chairpersons, the terms of office of members of the Council, filling of casual vacancies, removal from office, resignation, eligibility for membership, conflicts of interest, allowances for expenses and the holding and conduct of meetings.

##### *Schedule 2 — Examinations*

This schedule lists the examinations to which *Part VIII* of the Act applies.

*An Roinn Oideachais agus Eolaíochta,  
Nollaig, 1997.*