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**AN BILLE UM OIDEACHAS DO DHAOINE FAOI  
MHÍCHUMAS, 2002**  
**EDUCATION FOR PERSONS WITH DISABILITIES BILL, 2002**

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**EXPLANATORY AND FINANCIAL MEMORANDUM**

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*Introduction*

The purpose of this Bill is to provide a statutory framework within which the education of children and people who have special educational needs because of disabilities can be guaranteed as a right enforceable in law. The Bill sets out a range of services which must be provided, including assessments, individual education plans and support services and provides for a process of mediation and appeals where needs are not met. The central role of parents in the education of their children is also provided for. The Bill establishes the National Council for Special Education through which the Bill, as enacted, will be given effect.

*Section 1* sets out the definitions used in the Act. “Child” is defined as a person not less than 3 years of age nor more than 18 years of age. “Child with special educational needs” is defined as a child who, due to a disability, is unable to benefit from an ordinary school programme without special classes or other special education services.

*Section 2* provides for integrated education for children with special educational needs and those who do not have such needs. In deciding on an integrated approach to the education of the child regard has to be had to the needs of the child, the wishes of his or her parents, the needs of the children with whom the child is to be educated, and the efficient use of resources. The section goes on to provide that the education of a child with special educational needs shall occur in special classes, separate schools or other settings removed from the ordinary school environment only when education in that environment with the use of appropriate support services cannot adequately meet the needs of the child.

*Section 3* provides that a school shall make all practicable efforts to assist a child who is not benefiting from the regular education programme, prior to concluding that he or she is a child with special educational needs — unless of course the child’s special needs are obvious. If, having made those efforts the child is still experiencing difficulty, the school will prepare an individual education plan for the child. To assist the school in this the National Council for Special Education (the Council) will set down guidelines under *section 10(3)*. This section goes on to provide that the special educational needs organiser for the school will arrange for the assessment of the child and the plan will be based on that assessment. Under *section 7* the consent of the child’s parents is required before an assessment can take place. Provision is also made for consultation with the parents and other relevant people in preparing the plan. The section recognises that there may be circumstances where, given the nature and

extent of a child's disability, it may not be practicable for the school to develop the plan. In that case the special educational needs organiser will draw up the plan in accordance with *section 9*. Once a plan is prepared the child is to be entered in the Register of the Council provided for in *section 8*.

*Section 4* provides that where a Health Board is of the opinion that a child either has or is likely to have special educational needs it must inform the parents of the child and the Council as soon as possible. The purpose of this provision is to alert parents and the Council to the needs of the child concerned so that, in the case of the Council, it can plan ahead for the child and intervene early in his or her education if that is appropriate.

*Section 5* provides a mechanism where parents who have concerns that a child may have special education needs may themselves bring the matter to the attention of the Council, by seeking to have the child entered in the Register. An application should be accompanied by any relevant assessments and information concerning the child, as the Council deems necessary to reach an informed conclusion regarding the application. The Council having considered the application may decide to either register the child or decline to register the child. Where the Council declines to register the child, the parents may within one month appeal the decision to an independent Appeals Board (see *section 34*).

*Section 6* provides that where the Council considers it appropriate, it may arrange for an assessment of the child's special educational needs.

*Section 7* sets out the procedures for the assessment of a child with special educational needs — the assessment is to be carried out by people with appropriate expertise, including expertise in psychology, medicine and education. Parental consent to an assessment is required. In carrying out the assessment regard will be had to any relevant assessment that has been commissioned or carried out by a Health Board. This is part of the process of ensuring that the different services provided to the child are co-ordinated. A report on the assessment is to be made available, as soon as possible after the assessment is completed, to the parents of the child and to any people engaged in the education of the child who have a need to know.

*Section 8* provides for the establishment and maintenance of a register of all children who have special educational needs. The purpose of the Register is to ensure that as far as practicable children with special educational needs are identified as early as possible, to ensure that their needs are met and that provision is regularly reviewed. The Register will also enable the Council and other public agencies involved with the education of children with special needs to engage in effective planning of services.

*Section 9* relates to individual education plans. In *section 3*, provision was made for schools to draw up plans. This would arise in cases where the needs of the child concerned were less complex and would be guided by guidelines drawn up by the Council. This section provides for a more formal planning process, intended for children whose needs are more complex. The section would also cover pre-school educational planning where this arises. In preparing the plan, the special educational needs organiser is required to convene a team of people, including the parents of the child and various professionals, to assist in its preparation. As in the case of assessments,

the planning process must take account of assessment of needs carried out by health boards.

*Section 10* sets out the matters to be addressed in an education plan. These include the nature and degree of the child's disability, the present level of educational performance, where this is relevant, the child's special educational needs and the services to be provided to him or her and the outcomes or goals which the child is to achieve over a specified period. This period cannot be longer than 12 months. The transition of a child with special educational needs from primary to post-primary school and from school to adult services is recognised as particularly important milestones and the plan is specifically required to address these, from as early as 14 years in the case of transition out of school to adult appropriate provision.

The section also provides that the Council may prepare guidelines with respect to the matters to be provided in an education plan which is prepared by a school (see section 3). The object of this provision is to provide assistance to schools in the planning process in the interests of the child and consistency of service.

*Section 11* provides for the review at regular intervals of individual education plans. Subsection (1) requires schools to review plans in the first instance and to report to the special educational needs organiser. Where the latter is of the opinion that the child concerned is not benefiting from the established plan, he or she may reconvene the relevant team to review and where necessary amend the plan. Where the parents of the child concerned believe that the established plan is inadequate and a review of the plan has not occurred in the previous six months they may request that the plan be reviewed. If their request is denied they may appeal this decision.

*Section 12* sets out the conditions for appeals in relation to education plans. Parents of the child concerned may appeal to the Appeals Board against any statement or description of their child's special educational needs or any other statement or description appearing in the educational plan which they consider incorrect or inadequate to meet the child's special educational needs. Before processing an appeal the Appeals Board shall give notice in writing to the parents concerned of the procedures that are available for mediation. The Appeals Board shall not deal with an appeal if the parents concerned choose to avail of the mediation procedure, except where they decide to withdraw from the mediation process. On hearing the appeal, the Appeals Board may give directions to the Council, which it must implement, or may dismiss the appeal.

*Section 13* imposes a statutory duty on the Minister for Education and Science, with the consent of the Minister for Finance, to make resources available to schools for the provision of appropriate education to children with special educational needs.

*Section 14* sets out the duty of schools and their boards of management to children with special educational needs. These duties are in addition to the duties which schools already have under various Acts, including the Education Act, 1998. The section provides that the board of management of a school shall ensure that, as regards admission to and participation in the school, a policy of maximum accommodation for children with special educational needs is in place and implemented. Schools must make all reasonable efforts to meet the needs of students, co-operate with the Council and contribute to awareness among staff and students of the needs of children with special educational needs.

*Section 15* provides for early intervention where, having regard to the particular disability of the child concerned, a parent or health board request the Council to register a child who is younger than 3 years of age. The purpose of the registration is to cause steps to be taken to provide an education service for the child.

*Section 16* sets out conditions for the provision of education for adults with disabilities. If the Council considers that on the person's reaching 18 years of age, his or her special educational needs can be met most effectively by providing for a continuation of his or her education in the school which he or she is attending it shall arrange for the person to remain at that school for the period of one further school year. If, on the other hand, the Council considers that the person concerned can have his or her special educational needs can be met more effectively in a setting other than a school it is required to inform the relevant health board not less than one year prior to the eighteenth birthday of the person concerned. The Council and the relevant board shall following consultation with parents and others with appropriate expertise consider what is the most appropriate educational provision that can be made for a person who is to leave school.

If the Council and the health board is of the opinion that the person concerned can benefit from training or employment support services then FAS will be informed and it will exercise its statutory functions to make appropriate provision. If the Council and the health board consider that the person concerned is not capable of benefiting from a programme of training or employment support immediately then the relevant health board will make provision for a programme of continuing education and personal development in a setting appropriate to the age and needs of the person concerned for as long as the health board considers necessary to assist the person to make the best use of his or her capacities or until the person concerned can move to training or employment. Provision for a person in this situation must include a qualified teacher in the multi-disciplinary team which will be required to provide the necessary services. The section acknowledges that many people with special educational needs will move to higher, further and continuing education and states that nothing in this section restricts the right of a person to receive and benefit from such education in the same way and to the same extent as a person who does not have a disability.

*Section 17* sets out conditions for appeal against the educational provision made by health boards for adults with disabilities under section 16. The person concerned or his or her parents may appeal to the Appeals Board against a decision on the grounds that it is to a significant extent deficient. Following hearing of an appeal, the Appeals Board may direct the relevant authorities to make appropriate provision or it may dismiss the appeal.

*Section 18* provides for the establishment of the National Council for Special Education.

*Section 19* sets out the functions of the National Council for Special Education. Effectively the Council will be the body charged with ensuring that the Bill as enacted will be given full effect. Its specific duties include the compilation and maintenance of the Register, the co-ordination of special education in conjunction with schools and other educational institutions and the regular review of provision made by such institutions. It shall have responsibility to conduct research in the area of special education and provide relevant advice and information to the Minister. It shall be involved in the implementation of policies relating to special education and at

all times it shall provide advice in respect of special education mindful of the practical implications of available resources.

*Section 20* provides for the membership and appointment of the Council.

*Section 21* provides for the appointment and remuneration of a body to be known as the consultative forum. The purpose of the forum will be to advise the Council in the performance of its functions. The education partners will be consulted as regards the membership of the forum.

*Section 22* provides for the appointment, by the Council with the consent of the Minister, of a chief executive.

*Section 23* provides for the appointment and remuneration of employees of the Council subject to the consent of the Minister and the Minister for Finance.

*Section 24* provides for the appointment of special educational needs organisers. The board of management and staff of each school are to co-operate with the special educational needs organiser attached to their individual school.

*Section 25* provides that the National Council for Curriculum and Assessment shall consult with the Council in advance of advising the Minister with regard to curriculum and syllabuses for students with special educational needs.

*Section 26* provides for the removal of the Council from office should it be deemed by the Minister that it has failed to carry out the duties assigned to it under this act. In this regard, the Minister may appoint a person to conduct an inquiry into the reasons giving rise to such a belief. In the event that the Council should be removed, the Minister shall not later than 12 months after this removal, appoint new members to the Council.

*Section 27* provides that the Council shall maintain all proper accounts of all moneys received and expended by it, to be audited at the discretion of the Comptroller and Auditor General. A copy of any or all such audits shall be submitted to the Minister.

*Section 28* provides that the Director of the Council shall be accountable to the Public Accounts Committee — in effect he or she will be the accounting officer for the Council.

*Section 29* provides for acceptance of gifts.

*Section 30* provides for the establishment of committees, comprising of people, other than members of the Council, with expertise in the area of special educational needs which may take on some of the functions to be performed by the Council in order to make the service more efficient.

*Section 31* sets out that the Council shall compile and publish an annual report of its functions and actions under this Act.

*Section 32* provides that where a dispute between the parents of a child and the agencies responsible for his or her education arises, the Council shall put procedures in place so that the matter may be resolved through mediation. Mediation will be voluntary and any party may withdraw at any time. The mediation shall be facilitated by an independent person, appointed with the agreement of all parties

concerned, who shall be familiar with the educational needs of children with disabilities and any relevant legislation. Any agreement made through this process of mediation shall be set down in writing and signed by all relevant parties.

*Section 33* provides that the Minister will appoint an establishment day for the purposes of the setting up of the Special Education Appeals Board.

*Section 34* sets out that on the establishment day the Special Education Appeals Board shall be established. It shall be independent in the exercise of its functions. It will hear all appeals made to the Board. The Appeals Board shall comprise of a chairperson who shall be a practising solicitor or barrister of at least seven years standing and other members determined by the Minister. The section provides for the appointment and remuneration of employees of the Appeals Board as may be deemed necessary to enable the Board to function efficiently, subject to the consent of the Minister and the Minister for Finance.

*Section 35* provides that the Appeals Board shall compile and submit reports of its activities as the Minister requests. The reports will be published to the Dail and Senate.

*Section 36* sets out the duty of health boards as regards special education. It provides that the Council may from time to time request a health board to take specified actions where it considers this to be necessary to the delivery of an adequate education plan or necessary, more generally, to assist the Council in carrying out its functions. Prior consultation with a health board is required before a request is made to it. A health board must comply with a request unless, in its view, the assistance requested is not necessary, taking the action would not be consistent with its functions or it would not be reasonable to comply having regard to its resources. If the health board decides that it cannot comply with a request of the Council then it must state its reasons and the Council may appeal the refusal to comply. On hearing an appeal, the Appeals Board may direct the health board to comply with the request or it may dismiss the appeal.

*Section 37* provides for the making of regulations by the Minister to give effect to the Act.

*Section 38* provides for the funding of the Council and Appeals Board.

*Section 39* provides for services of notices.

*Section 40* provides for the expenses incurred by the Minister in the administration of the Act.

*Section 41* provides that the short title of the Act will be the Education for Persons with Disabilities Act, 2002.

## SCHEDULES

*Schedule 1* provides for the membership, including chairperson and meetings of the Council. It provides that the Council shall retain in its possession a seal. It sets out that at any time a member may resign or be removed from office. The maximum term of office for members of the Council shall not exceed 4 years. Casual vacancies may be filled as the need arises. The schedule allows for the appointment of a deputy chairperson. This schedule sets out that the Council

shall hold at least 6 meetings in a year and the quorum for such meetings shall be 4. Minutes of all such meetings shall be documented and retained. All questions arising at such meetings shall be determined by a majority vote. The Council may make such standing orders as it deems necessary for its functioning and equally may revoke any such standing order.

*Schedule 2* sets out the duties of the Director of the National Council for Special Education under this Act. It provides that the Director shall be responsible for the effective and efficient management of the Council and shall be at all times answerable to the Council. While the Director may delegate any of his or her functions he or she shall remain responsible for the standard of performance with regard to this function. The Director shall not hold any other office or position without the consent of the Council. Remuneration and allowances in relation to this office shall be regulated by the Minister and the Minister for Finance. The Director shall not be a member of the Council but may attend and speak at any meetings held by the Council.

*Márta*, 2002.