



**AN BILLE UM OIDEACHAS DO DHAOINE FAOI
MHÍCHUMAS 2003
EDUCATION FOR PERSONS WITH DISABILITIES BILL
2003**

*Mar a tionscnaíodh
As initiated*

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**AN BILLE UM OIDEACHAS DO DHAOINE FAOI
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BILL

entitled

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AN ACT TO PROVIDE, HAVING REGARD TO THE COMMON GOOD, FOR EACH OF THE FOLLOWING, NAMELY, TO MAKE FURTHER PROVISION FOR THE EDUCATION OF PEOPLE WITH DISABILITIES, TO PROVIDE THAT PEOPLE WITH DISABILITIES SHALL HAVE THE SAME RIGHT TO AVAIL OF, AND BENEFIT FROM, APPROPRIATE EDUCATION AS DO THEIR PEERS WHO DO NOT HAVE DISABILITIES, TO ASSIST CHILDREN WITH DISABILITIES TO LEAVE SCHOOL WITH THE SKILLS NECESSARY TO PARTICIPATE, TO THE LEVEL OF THEIR CAPACITY, IN AN INCLUSIVE WAY IN THE SOCIAL AND ECONOMIC ACTIVITIES OF SOCIETY AND TO LIVE INDEPENDENT AND FULFILLED LIVES, TO PROVIDE FOR CONSULTATION WITH PARENTS OF CHILDREN WITH DISABILITIES IN RELATION TO THE EDUCATION OF THOSE CHILDREN, FOR THOSE PURPOSES TO ESTABLISH A BODY TO BE KNOWN AS THE NATIONAL COUNCIL FOR SPECIAL EDUCATION AND TO DEFINE ITS FUNCTIONS, TO CONFER CERTAIN FUNCTIONS ON HEALTH BOARDS IN RELATION TO THE EDUCATION OF PEOPLE WITH DISABILITIES, TO ENABLE CERTAIN DECISIONS MADE IN RELATION TO THE EDUCATION OF PEOPLE WITH DISABILITIES TO BE THE SUBJECT OF AN APPEAL TO AN APPEALS BOARD AND TO PROVIDE FOR RELATED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—(1) In this Act, unless the context otherwise requires— Interpretation.

35 “Act of 1998” means the Education Act 1998;

“Appeals Board” shall be construed in accordance with *section 34*;

“child” means a person not more than 18 years of age;

40 “child with special educational needs” means a child who has an educational disability and cognate expressions shall be construed accordingly;

“Council” shall be construed in accordance with *section 17*;

“educational disability”, in relation to a child, means a restriction in the capacity of the child to participate in and benefit from education on account of an enduring physical, sensory, mental health or intellectual impairment; 5

“education plan” shall be construed in accordance with *section 3* or *7*, as appropriate;

“health board” means—

- (a) a health board established under section 4 of the Health Act 1970, 10
- (b) the Eastern Regional Health Authority, or
- (c) the Northern Area Health Board, the East Coast Area Health Board or the South-Western Area Health Board;

“Minister” means the Minister for Education and Science;

“national association of parents” has the same meaning as it has in the Act of 1998; 15

“parent” has the same meaning as it has in the Act of 1998;

“prescribed” means prescribed by regulations made by the Minister under this Act;

“recognised school” has the same meaning as it has in the Act of 1998; 20

“recognised school management organisations” has the same meaning as it has in the Act of 1998;

“recognised trade union or staff association” means a trade union or staff association recognised by the Council for the purposes of negotiations that are concerned with the remuneration, conditions of employment, or working conditions of employees; 25

“relevant health board” means the health board in whose functional area the child or person concerned resides;

“school” has the same meaning as it has in the Act of 1998; 30

“school year” has the same meaning as it has in the Act of 1998;

“special educational needs organiser” shall be construed in accordance with *section 24*;

“student” has the same meaning as it has in the Act of 1998;

“support services” has the same meaning as it has in the Act of 1998; 35

“team” shall be construed in accordance with *section 7, 8* or *10* as appropriate.

(2) In this Act—

- (a) a reference to a section is a reference to a section of this Act, unless it is indicated that reference to some other enactment is intended, 40

- 5 (b) a reference to a subsection, paragraph or subparagraph is a reference to a subsection, paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended,
- (c) a reference to any other enactment shall, unless the context otherwise requires, be construed as a reference to that enactment as amended, extended or adapted by or under any subsequent enactment.

10 **2.**—The provision of education to a child with special educational needs shall take place alongside the provision of education to children who do not have such needs unless that is inconsistent with— Integrated education.

- (a) the best interests of the child as determined in accordance with any assessment carried out under this Act, or
- 15 (b) the effective provision of education for children with whom the child is to be educated.

3.—(1) Where the principal of a school is of the opinion that a student in the school is not benefiting from the education programme provided in the school to children who do not have special educational needs to the extent that would be expected of the student, he or she shall take such measures as are practicable to meet the educational needs of the student. Preparation of education plan by school (including steps preliminary to such preparation).

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(2) Where the principal of a school, having taken the measures referred to in *subsection (1)*, is of the opinion that the student concerned is still not benefiting from the education programme provided in the school and that his or her difficulty in doing so may arise from an educational disability, the principal, after consultation with the parents of the student, shall arrange for an assessment of the student to be carried out.

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(3) Without prejudice to *section 5(4)*, an assessment referred to in *subsection (2)* shall be carried out—

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- (a) as soon as practicable, and in any case not later than 3 months, after the principal has reached the opinion referred to in that subsection, and
- 35 (b) in accordance with such guidelines relating to persons who are to carry out assessments under this section and the form that those assessments are to take as may be issued from time to time by the Council.

(4) Where an assessment carried out in accordance with *subsection (3)* establishes that the student concerned has an educational disability the principal shall, subject to *subsection (7)*, within 1 month from the receipt by him or her of the assessment, cause a plan to be prepared for the appropriate education of the student (in this Act referred to as an “education plan”).

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(5) In relation to the preparation of an education plan under *subsection (4)*, the principal shall ensure that—

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- (a) the parents of the child, the special educational needs organiser with responsibility for the school concerned and such

other persons as the principal considers appropriate are consulted, and

(b) guidelines for the time being in force under *section 8(3)* are complied with unless he or she decides, with the consent of that special educational needs organiser, that there are good and substantial reasons for their not being complied with. 5

(6) As soon as practicable after an educational plan has been prepared under *subsection (4)* the principal of the school shall furnish to the parents of the child concerned and the special educational needs organiser with responsibility for the school a notice in writing of that fact, together with a copy of the plan. 10

(7) Where, having regard to the nature and extent of a child's educational disability as established by an assessment under this section, the principal of a school is of the opinion that the preparation of an education plan under *subsection (4)* in accordance with the guidelines for the time being in force under *section 8(3)* will not meet the child's special educational needs the principal shall request the Council to prepare an education plan under *section 7* in respect of the child. 15 20

(8) If the Council accedes to a request under *subsection (7)*, then *subsections (2) to (4)* of *section 7* shall apply.

(9) If the Council refuses to accede to a request under *subsection (7)*, then the principal, or the parents of the child concerned, may appeal against that refusal to the Appeals Board. 25

(10) On the hearing of an appeal under *subsection (9)*, the Appeals Board may—

(a) allow the appeal and give a direction to the Council requiring it to cause to be prepared an education plan in respect of the child concerned under *section 7*, or 30

(b) dismiss the appeal.

(11) The Council shall comply with a direction given to it under *subsection (10)*.

Assessment of child by or on behalf of health board or Council.

4.—(1) Where the relevant health board is of the opinion that a child who is not a student has or may have an educational disability it shall cause an assessment under this section of that child to be carried out. 35

(2) Where the Council is of the opinion that a child who is a student has or may have an educational disability it shall cause an assessment under this section of that child to be carried out. 40

(3) Where the parents of a child are of the opinion that the child may have an educational disability they may request—

(a) the relevant health board, or

(b) in the case of a child who is a student, the Council,

to cause an assessment under this section of the child to be carried out. 45

(4) Subject to *subsection (5)*, within 3 months from the receipt of a request under *subsection (3)*, the health board or the Council shall cause the assessment to be commenced and thereafter to be completed without undue delay.

5 (5) A health board or the Council may refuse to accede to a request under *subsection (3)* if—

(a) it is of the opinion that there are insufficient grounds to support the requesters' opinion that the child has an educational disability, or

10 (b) an assessment under this Act has been carried out in respect of the child in the 12 months prior to the date of the request.

(6) An assessment for the purposes of this section shall include an evaluation and statement of the nature and extent of the child's disability (including in respect of matters that affect the child overall as an individual) and an evaluation and statement of the services which the child will need so as to be able to participate in and benefit from education and, generally, to develop his or her potential.

15 (7) If a health board or the Council refuses to accede to a request under *subsection (3)* the parents of the child concerned may appeal against that refusal to the Appeals Board.

20 (8) On the hearing of an appeal under *subsection (7)*, the Appeals Board may—

25 (a) allow the appeal and direct the health board or the Council, as the case may be, to cause to be carried out an assessment under this section of the child, or

(b) dismiss the appeal.

5.—(1) An assessment under *section 3* or *4* shall be carried out with the assistance of persons possessing such expertise as— Mode of assessment under *section 3* or *4*.

30 (a) the health board or the Council, or

(b) in the case of an assessment under *section 3*, the principal, having had regard to any guidelines referred to in *subsection (3)* of that section,

35 considers appropriate; those persons may, in the discretion of the board, Council or principal, include one or more of the following:

(i) a psychologist;

(ii) a medical practitioner;

(iii) the principal of the school which the child is attending or a teacher of that school nominated by the principal;

40 (iv) an appropriately qualified social worker; and

(v) a therapist who is suitably qualified to provide support services in respect of a child.

(2) Before causing an assessment under *section 4* (other than pursuant to a request under *subsection (3)* of that section) to be carried

out, the health board or the Council shall give notice in writing to the parents of the child of the intention to do so and the reasons therefor and, subject to *subsection (3)*, shall not cause the assessment to be carried out without the consent in writing of the parents.

(3) Where the parent of a child fails or refuses to give his or her consent, within such period as may be specified by the health board or the Council, to the carrying out of an assessment under *section 4* to which *subsection (2)* applies, the health board or the Council, as the case may be, may apply to the Circuit Court for an order dispensing with the requirement under *subsection (2)* for the parent's consent and the Circuit Court may, on the hearing of the application, make such an order if it considers it in the best interests of the child to do so.

(4) An assessment under *section 3* or *4* shall be carried out in a manner which conforms to such standards as may from time to time be determined by a prescribed body, that is to say, a body standing prescribed by regulations made by the Minister for Health and Children for the purposes of its determining the standards that assessments under those sections must conform to.

(5) In carrying out an assessment under *section 4*, the health board or the Council, as appropriate, shall have regard to any relevant assessment of the child concerned that is available to it at that time.

(6) A statement of the findings in relation to an assessment that has been carried out under *section 4* shall be made available immediately to the parents of the child concerned upon request being made by them therefor.

(7) The health board or the Council, as the case may be, shall make available all or part of that statement to such persons engaged in the education of the child as he, she or it considers appropriate, having regard to the need to ensure that such persons are informed of the child's educational needs.

(8) An application under *subsection (3)* to the Circuit Court shall be made to the judge of the Circuit Court for the circuit in which the child concerned resides.

Provision of services.

6.—(1) In the case of a child who is not a student, the relevant health board shall, subject to *subsection (2)*, provide to the child such of the services identified in the assessment carried out under *section 4* in relation to the child as are necessary to enable him or her to participate in and benefit from education.

(2) Where, in performing its functions under *subsection (1)*, a health board is of the opinion that particular services can most effectively be provided for by the Council, it shall inform the Council of that opinion by notice in writing and, upon being so informed, the Council shall, subject to *subsection (5)*, provide those services to the child concerned.

(3) In the case of a child who is a student, the Council shall, subject to *subsection (4)*, provide in respect of the child the services identified in the education plan prepared in relation to the child.

(4) Where, in performing its functions under *subsection (3)*, the Council is of the opinion that particular services can most effectively be provided for by the relevant health board, it shall inform the health board of that opinion by notice in writing and, upon being so

informed, the health board shall, subject to *subsection (5)*, provide those services in respect of the child concerned.

5 (5) If a dispute arises between the Council and a health board as to which of them can more effectively provide particular services identified as being required in respect of a child by an assessment or an education plan, as appropriate, the dispute shall, within 3 months from the dispute arising, be referred by either or both of them to the Appeals Board for its determination and, on the hearing of the reference, the Appeal Board may determine which of them shall provide those services and give a direction to the Council or the health board, as the case may be, to that effect accordingly.

(6) The Council or the relevant health board shall comply with a direction given to it under *subsection (5)*.

15 7.—(1) The Council upon being informed by a health board or the principal of a relevant school that a child has special educational needs, shall, unless an education plan has been or is being prepared under *section 3* in respect of the child, direct the relevant special educational needs organiser to cause to be prepared a plan for the appropriate education of the child (in this Act also referred to as an “education plan”).

Preparation of education plan at direction of Council.

25 (2) The relevant special educational needs organiser may convene a group of persons (in this Act referred to as a “team”) to provide advice to him or her in relation to the preparation of the plan concerned and a team may provide such advice to that organiser accordingly.

(3) A team shall include, subject to *subsection (5)*, the parents of the child concerned and may include one or more of the following—

30 (a) the child where this is considered appropriate by the special educational needs organiser having regard to the age of the child and the nature and extent of the child’s educational disability,

(b) the principal of the relevant school, or a teacher nominated by the principal of the relevant school to be a member of the team,

35 (c) a psychologist employed by the Minister or the National Educational Psychological Service, or a person determined by the special educational needs organiser to have sufficient expertise in psychology and nominated, as the case may be, by the Minister, the said service or the organiser to be a member of the team, and

40 (d) any other persons whom the parents or the special educational needs organiser consider have special expertise regarding the child’s abilities and disability and are nominated, with the consent of the organiser, by the parents or, as appropriate, the organiser to be members of the team.

45 (4) In preparing an education plan the team shall have regard to any needs, other than educational needs, of the child concerned which are specified in the assessment under *section 4* and shall ensure that the education plan is consistent with the provision for such needs.

(5) A parent of the child concerned shall not be a member of a team unless he or she consents to being such a member.

(6) In this section—

“relevant school” means the school which the child concerned is attending or which it is proposed the child will attend; 5

“relevant special educational needs organiser” means the special educational needs organiser with responsibility for the area in which the relevant school is situated or, as the case may be, for the particular category of school designated pursuant to *section 24(5)* into which the relevant school falls. 10

Content of
education plan.

8.—(1) An education plan under *section 3* or *7* shall be in such form as the Council may determine from time to time and specify in a notice published, in such manner as it thinks fit, for the purposes of this subsection.

(2) The matters to be specified in an education plan under *section 3* or *7* shall include— 15

- (a) the nature and degree of the child’s abilities, skills and talents;
- (b) the nature and degree of the child’s educational disability and how that disability affects his or her educational progress, or, in the case of a child who is not yet attending school, (in this section referred to as a “pre-school child”) how the disability affects his or her development; 20
- (c) except in the case of a pre-school child, the present level of educational performance of the child; 25
- (d) the special educational needs of the child;
- (e) the special education and related support services to be provided to the child to enable the child to benefit from education and to participate in the life of the school;
- (f) where appropriate, the special education and related support services to be provided to the child to enable the child to effectively make the transition from primary school education to post-primary school education, and 30
- (g) the goals which the child is to achieve over a period not exceeding 12 months. 35

(3) The Council may prepare guidelines with respect to the matters to be provided in an education plan prepared under *section 3* by reference to the category of special educational need or educational disability (being a category of such need or disability specified in the guidelines for the purpose) that is relevant to the child concerned and, in particular, by reference to that category, with respect to the matters specified in *paragraphs (e), (f) and (g) of subsection (2)*. 40

(4) The Council, in preparing guidelines under *subsection (3)*, shall have regard to the policy for the time being of the Minister in relation to the education of children with special educational needs. 45

(5) The Council may amend guidelines for the time being in force under *subsection (3)*.

(6) The Council shall publish, in such manner as it thinks fit, guidelines prepared by it under *subsection (3)*.

5 (7) The principal of the school concerned shall implement an education plan and, for the purpose of preparing and implementing that plan, that school shall be provided with the necessary moneys and support services in accordance with *section 12*.

10 (8) Where the transfer from one school to another school of a child in respect of whom an education plan has been prepared is proposed, the principal of the first-mentioned school shall consult, before such transfer takes place, with the principal of the second-mentioned school for the purpose of—

(a) ensuring that the principal of the second-mentioned school is informed of the content of the education plan,

15 (b) ensuring that the second-mentioned school is capable of implementing that plan, and

20 (c) assisting the principal of the second-mentioned school in amending the plan, where such amendment is considered necessary by that principal having regard to the special educational needs of the child and the operation of that school (which amendment that principal is authorised by this subsection to make).

25 (9) Where a child's education plan is amended pursuant to *subsection (8)(c)*, his or her parents may request that the principal of the school to which the child is to be transferred consult with the relevant special educational needs organiser and that principal shall comply with that request.

30 (10) Where a special educational needs organiser is consulted pursuant to *subsection (9)*, he or she may decide to reconvene the relevant team, or, as the organiser thinks fit, engage the assistance of one or more of the members of that team, or in the case of an education plan prepared under *section 3*, convene a group of persons (in this Act also referred to as a "team"), for the purpose of reviewing the content and implementation of the plan and may, as a consequence of that review, amend the plan.

35 **9.—(1)** The Council may designate the school which a child with special educational needs is to attend for the time being and that school shall admit the child as a student upon being directed by the Council to do so. Designation of school.

40 (2) In making a designation under *subsection (1)*, the Council shall have regard to the needs of the child concerned, the wishes of the child's parents and the capacity of the school to accommodate the child and to meet his or her needs, including that capacity when the school has such additional resources made available to it as the Council recommends to the Minister (which recommendation the Council may, by virtue of this subsection, make).

45 (3) Where a school is designated under *subsection (1)* in respect of a particular child, the board of management of that school may, within 4 weeks from the date that the school is informed of the designation, appeal to the Appeals Board against—

50 (a) that designation, or

(b) a recommendation of the Council, communicated to the school as part of that designation, in respect of the additional resources referred to in *subsection (2)* to be given to the school.

(4) On the hearing of an appeal under *subsection (3)*, the Appeals Board may— 5

(a) allow the appeal and, in the case of a designation, cancel the designation and, in the case of a recommendation, cancel, or, as it thinks appropriate, vary the recommendation, or

(b) dismiss the appeal. 10

(5) On the hearing of an appeal under *subsection (3)*, the burden of proving that a school does not have adequate resources to enable it to meet the needs of the child concerned shall be on the board of management of that school.

(6) In this section “school” includes a centre for education (within the meaning of the Education Act 1998). 15

Review of education plan.

10.—(1) Without prejudice to *subsection (4)*, the principal of the relevant school shall review or cause to be reviewed at regular intervals, but in any case not less than once a year, the operation of each education plan for children who are attending the school— 20

(a) for the purpose of establishing whether or not the child concerned is achieving the goals specified in the education plan, and

(b) with a view to making recommendations in a report under *subsection (2)* for the amendment of the plan. 25

(2) The principal shall make a report to the parents of the child concerned and the relevant special educational needs organiser of the outcome of a review under *subsection (1)*.

(3) Where, as a result of his or her consideration of that report, the special educational needs organiser is of the opinion that the child concerned is significantly failing to achieve the goals specified in the education plan the organiser may reconvene the relevant team, or, as the organiser thinks fit, engage the assistance of one or more of the members of that team, or, in the case of an education plan prepared under *section 3*, convene a group of persons (in this Act also referred to as a “team”), for the purpose of reviewing the content and implementation of the plan and may, as a consequence of that review, amend the plan. 30 35

(4) Where parents have reason to believe that their child is not achieving the goals specified in the education plan and a review of the plan has not occurred in the previous 6 months, they may request the principal of the relevant school to arrange for such a review and where the principal considers it appropriate to accede to their request he or she shall carry out or cause to be carried out that review as if it were a review under *subsection (1)*, and *subsection (2)* shall apply accordingly. 40 45

(5) If the principal decides that it is not appropriate to accede to a request under *subsection (4)* he or she shall give notice in writing of the decision and the reasons therefor to the parents within 1 week from the making of the decision. 50

(6) The parents may, within 1 month from the receipt by them of the notice referred to in *subsection (5)*, appeal to the Council against a refusal by the principal to accede to a request under *subsection (4)*.

5 (7) The Council shall consider and determine an appeal made under *subsection (6)* within 1 month from the making thereof and such a determination may be one either to—

10 (a) allow the appeal and give a direction to the principal requiring him or her to review or cause to be reviewed the education plan (and such a review shall be regarded as a review under *subsection (1)*, and *subsection (2)* shall apply accordingly), or

(b) dismiss the appeal.

(8) The principal of a relevant school to whom a direction is given under *subsection (7)* shall comply with it.

15 (9) In this section “relevant school” and “relevant special educational needs organiser” have the same meaning as they have in *section 7*.

11.—(1) Parents may, in respect of their child, appeal to the Appeals Board against— Appeals in relation to education plans.

20 (a) (i) any statement or description of their child’s special educational needs as set out in an education plan, or

(ii) any other statement or description appearing in the education plan as initially prepared or as it stands amended for the time being in consequence of a review,

25 on the ground that the statement or description is incorrect or inadequate to meet the child’s special educational needs, or

(b) the discharge by a school or a health board of its duties with respect to an education plan on the ground that there has been a failure by it to implement any part of the plan.

30 (2) The Appeals Board shall hear and determine an appeal under this section within 2 months after the making thereof and such a determination may be one either to—

35 (a) allow the appeal and, as appropriate, give a direction to the principal of the relevant school or the Council requiring the principal or the Council to amend the plan in such manner as the Appeals Board considers appropriate and specifies in its direction or give such other direction to the principal, the relevant health board or the Council relating to the child’s education as the Board considers appropriate, or

40 (b) dismiss the appeal.

(3) The principal of the relevant school, a health board or the Council shall comply with a direction given to him or her or it under *subsection (2)*.

45 (4) In this section “relevant school” has the same meaning as it has in *section 7*.

Duty of Minister and Minister for Health and Children to make resources available.

12.—(1) The Minister and the Minister for Health and Children shall each, with the consent of the Minister for Finance, out of moneys provided by the Oireachtas, provide to or in respect of schools and their employees such moneys and other resources as are determined by him or her for the purposes of the implementation of education plans prepared in respect of children with special educational needs. 5

(2) Each of the following—

- (a) a determination by the Minister or the Minister for Health and Children in respect of the matters referred to in *subsection (1)*, and 10
- (b) an exercise by the Minister for Finance of the power of consent under that subsection,

shall be in accordance with the policies from time to time formulated by the Minister, the Minister for Health and Children or the Minister for Finance, as the case may be, in relation to the performance of each of his or her functions as a Minister of the Government. 15

(3) In formulating any such policy, the Minister of the Government concerned shall have regard to, and take due account of, the following principles— 20

- (a) that the provision of resources by the State in fulfilment of its duties under Article 42 of the Constitution (being the resources available to the State and allocated by it in a manner consistent with common good) shall be such as to ensure the equitable treatment of every child in the State, 25
- (b) that the objective of the educational provision made by this Act is to ensure that children with special educational needs have the same right to avail of, and benefit from, appropriate education as do their peers who do not have such needs. 30

Duty of schools.

13.—(1) The board of management of a school shall—

- (a) ensure that *section 2* is complied with as respects that school,
- (b) ensure that parents of a student with special educational needs are— 35
 - (i) informed of their child's needs and how those needs are being met, and
 - (ii) consulted with regard to, and invited to participate in, the making of all decisions of a significant nature concerning their child's education, 40
- (c) co-operate to the greatest extent practicable with the Council and its employees,
- (d) ensure that all relevant teachers and other relevant employees of the school are aware of the special educational needs of students; 45

(e) ensure that teachers and other relevant employees of the school are aware of the importance of identifying children who have special educational needs,

and

5 (f) inculcate in students of the school an awareness of the needs of persons with disabilities.

(2) *Subsection (1)* is in addition to, and not in substitution for, any other enactment imposing duties on boards of management of schools.

10 **14.**—(1) In preparing or reviewing an education plan, the principal of the relevant school or relevant special educational needs organiser shall, from the child's attaining such age as the principal or organiser considers appropriate, have regard to the provision which will need to be made to assist the child to continue his or her education or
15 training on becoming an adult.

Planning for future education needs.

(2) In performing the functions under *subsection (1)*, the principal or the special educational needs organiser shall—

(a) ascertain the wishes of the child concerned and of his or her parents, and

20 (b) take such steps as are necessary as will enable the child to progress as a young adult to the level of education or training that meets his or her wishes or those of his or her parents and that are appropriate to his or her ability.

25 (3) In preparing or carrying out a review of an education plan in respect of the child who has special educational needs and who within the following 12 months will reach the age of 18 years, the Council shall cause an assessment to be made of—

30 (a) the extent, if any, to which goals set out in any previous such plan or the plan, as the case may be, for the child were achieved, and

(b) the reasons for any failure to meet those goals and the effect any such failure has had on the development of the child,

and the plan shall include, where appropriate, measures to address any such effect.

35 **15.**—A health board, in the performance of its functions under this Act, shall implement the policies relating to education generally and the education of children with special educational needs and to the provision of support services which are formulated, from time to time, by the Minister or the Minister for Health and Children.

Implementation of relevant education policy by health boards.

40 **16.**—The Council and each health board shall designate one or more of its officers, not below such rank as the Council after consultation with the chief executive officer of the health board shall determine, to perform the following functions, namely to ensure, so far as practicable, that—

Liaison officers.

- (a) the activities of the Council and those of the health board, in so far as they relate to their respective functions under this Act, are co-ordinated, and
- (b) that the policies of the Council and those of the health board, in so far as they relate to their respective functions under this Act, are consistent, 5

and each officer so designated shall be known as a “liaison officer”.

National Council
for Special
Education.

17.—(1) There shall stand established on the establishment day a body to be known as the National Council for Special Education, and which in this Act is referred to as the “Council”, to perform the functions conferred on it by or under this Act. 10

(2) The Council shall be a body corporate with perpetual succession and a seal and power to sue and be sued in its corporate name and, with the consent of the Minister (given with the approval of the Minister for Finance), to acquire, hold and dispose of land or an interest in land and to acquire, hold and dispose of any other property. 15

(3) *Schedule 1* to this Act shall apply to the Council.

Functions of
Council.

18.—(1) The Council shall have the following functions:

- (a) to disseminate to schools and to parents information relating to best practice, nationally and internationally, concerning the education of children with special educational needs; 20
- (b) in consultation with schools and health boards to plan and co-ordinate the provision of education and support services to children with special educational needs; 25
- (c) in consultation with schools to plan for the integration of education for students with special educational needs with education for students generally;
- (d) to make available to the parents of children with special educational needs information in relation to the entitlements of their children; 30
- (e) to ensure that the progress of students with special educational needs is monitored and that it is reviewed at regular intervals; 35
- (f) to assess and review the resources required in relation to educational provision for children with special educational needs;
- (g) to ensure that a continuum of special educational provision is available as required in relation to each type of disability; 40
- (h) to review generally the provision made for adults with disabilities to avail of higher education and adult and continuing education and to publish reports on the results of such reviews (which reviews may include recommendations as to the manner in which such provision could be improved); 45

(i) to advise all educational institutions concerning best practice in respect of the education of adults who have disabilities;

(j) to advise the Minister in relation to any matter relating to the education of children and others with disabilities,

5 and

(k) to conduct and commission research on matters relevant to the functions of the Council and, as it considers appropriate, to publish in such form and manner as the Council thinks fit the findings arising out of such research.

10 (2) The Council shall have the power to do all things necessary for or incidental to the performance of its functions.

(3) The Council, in the performance of its functions, shall—

15 (a) implement the policies relating to education generally and the education of children with special educational needs which are formulated, from time to time, by the Minister (including the policy referred to in *section 12*), and

20 (b) in giving advice to the Minister, have regard to the implications of that advice for the resources, including financial resources, available to the State in respect of the provision of education and to the practical implementation of that advice.

(4) The Minister may by order—

25 (a) confer on the Council such additional functions relating to the provision by the Council of support services to children with educational disabilities as he or she considers appropriate,

30 (b) make such provision as he or she considers necessary or expedient in relation to matters ancillary to or arising out of the conferral on the Council of functions under this subsection or the performance by the Council of functions so conferred.

19.—(1) The Council shall consist of a chairperson and 12 ordinary members. Membership of Council.

35 (2) The chairperson and ordinary members of the Council shall be appointed by the Minister from among persons who have a special interest in or knowledge relating to the education of children with disabilities.

(3) Before making appointments to the Council under this section, the Minister shall consult with—

40 (a) national associations of parents,

(b) recognised trade unions and staff associations representing teachers and principals of schools, and

(c) recognised school management organisations,

45 with a view, where the Minister considers it appropriate to do so, to appointing as members of the Council persons nominated for such

appointment by those associations, trade unions and organisations, but the number of nominees of those associations, trade unions and organisations (taken as a whole) that may be so appointed shall not exceed 4.

(4) The Minister shall appoint to the Council— 5

(a) 2 members from among persons nominated for such appointment by the National Disability Authority (and equal numbers of men and women shall be nominated by that Authority for that purpose),

(b) 2 members from among persons nominated for such 10 appointment by the Minister for Health and Children (and equal numbers of men and women shall be nominated by that Minister of the Government for that purpose).

(5) The Minister shall have regard to the desirability of such gender 15 balance in the membership of the Council as he or she considers appropriate and determines from time to time, when making appointments to the Council under this section.

(6) The members of the Council (including the chairperson and 20 deputy chairperson) may be paid such allowances for expenses as the Minister, with the consent of the Minister for Finance, may determine.

Consultative forum.

20.—(1) There shall be, for the purpose mentioned in *subsection* 25 (2), a consultative forum, that is to say, a group of persons who shall be appointed in accordance with *subsections* (3) and (5) and who, as a collective body, are referred to subsequently in this section and in *section 21* as the “consultative forum”.

(2) The purpose referred to in *subsection (1)* is the purpose of 30 the Council’s consulting the consultative forum with respect to the performance by the Council of one or more functions, or elements of one or more functions, determined by the Council, from time to time, to be functions or elements of functions appropriate for such consultation to take place in relation to them.

(3) Such number of persons (not exceeding 17) as the Council 35 considers appropriate shall be appointed by the Council to be members of the consultative forum.

(4) Before appointing persons to be members of the consultative forum the Council shall consult with—

(a) the Minister,

(b) national associations of parents, 40

(c) recognised school management organisations,

(d) recognised trade unions and staff associations representing teachers and principals of schools,

(e) the National Disability Authority,

and

(f) such other persons having a special interest in or knowledge relating to the education of children with disabilities as the Council considers appropriate.

(5) Such number of persons (not exceeding 3) as the Minister considers appropriate shall be appointed by the Minister to be members of the consultative forum.

(6) The term of office of each member of the consultative forum shall be determined by the Council with the consent of the Minister.

(7) The members of the consultative forum may be paid such allowances (if any) for expenses incurred by them in the discharge of their functions as may be determined by the Minister with the consent of the Minister for Finance.

21.—(1) The Council, after consultation with the consultative forum and the Minister shall, within 12 months from the establishment day, make a report (in this section referred to as the “implementation report”) to the Minister outlining the steps that must be taken in order that the provisions of this Act will be fully implemented within the period specified in the report.

Implementation Report.

(2) The period so specified shall not be more than 5 years from the establishment day.

(3) The implementation report shall—

(a) specify a date for the commencement of each of the provisions of this Act (other than *sections 17 to 19*), and

(b) provide an estimate of the resources that will be necessary for the taking of each step in the implementation of this Act.

(4) In preparing the implementation report, the Council shall also consider how the educational needs of children with special educational needs can, to the greatest extent practicable, be met pending the full implementation of this Act; the Council shall include in the report recommendations in that regard.

22.—(1) There shall be a chief executive of the Council who shall be appointed by the Council (and such officer shall be known, and is in this Act referred to, as “the Chief Executive Officer”).

Chief Executive Officer.

(2) The Chief Executive Officer shall be appointed in a whole-time capacity and for a term of 7 years.

(3) The Chief Executive Officer shall be appointed in accordance with procedures determined by the Council with the consent of the Minister.

(4) The Chief Executive Officer shall manage and control generally the staff, administration and business of the Council, and shall perform such other functions as may be conferred on him or her by the Council.

(5) *Schedule 2* to this Act shall apply to the Chief Executive Officer.

Employees.

23.—(1) Subject to the consent of the Minister and the Minister for Finance, the Council may, from time to time, appoint such and so many persons to be employees of the Council as the Council may determine. 5

(2) Subject to such conditions as it thinks fit, the Council may delegate to the Chief Executive Officer any of the functions of the Council in relation to the appointment of employees and the determination of selection procedures. 10

(3) Except as otherwise provided by this Act, the Chief Executive Officer and each other employee of the Council shall be employed on such terms and conditions as the Council, with the consent of the Minister and the Minister for Finance, may from time to time determine. 15

(4) Except as otherwise provided by this Act, the Council shall pay to its employees (including the Chief Executive Officer) such remuneration, fees and allowances for expenses as the Council, with the consent of the Minister and the Minister for Finance, may from time to time determine. 20

(5) The Civil Service Commissioners Act 1956 and the Civil Service Regulation Acts 1956 to 1996 shall apply to the Chief Executive Officer and to employees of the Council.

Special educational needs organisers.

24.—(1) The Council may appoint such and so many persons as it determines to perform the functions expressed by this Act to be performable by special educational needs organisers and each person who is so appointed shall be known, and in this Act is referred to, as a “special educational needs organiser”. 25

(2) A special educational needs organiser shall carry out his or her duties under this Act under the direction and control of the Council. 30

(3) A special educational needs organiser shall have such qualifications, expertise and experience relevant to the education of children with special educational needs as the Council considers appropriate.

(4) A special educational needs organiser shall, in addition to the functions conferred on him or her under this Act, perform such additional functions as may be assigned to him or her by the Council. 35

(5) A special educational needs officer shall perform his or her functions in respect of particular areas in the State or particular categories of school in the State as the Council may from time to time designate as being that officer’s responsibility. 40

(6) The board of management, principal, teachers and other members of staff of a recognised school shall give all such assistance as may reasonably be required by the special educational needs organiser in the performance by him or her of his or her functions. 45

Curriculum.

25.—The National Council for Curriculum and Assessment shall consult with the Council prior to advising the Minister under section 41(2)(f) of the Education Act 1998.

26.—(1) Where the Minister is of the opinion that the Council has failed, neglected or refused to perform a function assigned to it under this Act or has failed to effectively perform any such function or otherwise has contravened this Act, the Minister may, after first advising the Council of his or her opinion and considering any explanation given in response, appoint a person to inquire into any matter giving rise to that opinion.

(2) A person appointed under *subsection (1)* shall—

(a) inquire into the matters giving rise to the Minister's opinion and any related matter and report to the Minister on the findings of the inquiry,

(b) for the purposes of this section, be entitled at all reasonable times to enter the premises of the Council to inquire into the affairs of the Council or to conduct an inspection of the premises, equipment and records where the inspection is, in his or her opinion, relevant to the inquiry,

(c) be afforded all reasonable co-operation and assistance by the Council and its employees, including access to such premises, equipment and records as the person may require, to enable the person to perform his or her functions under this section.

(3) Where the Minister, after considering the report referred to in *subsection (2)(a)*, remains of the opinion that the Council has failed, neglected or refused to perform a function assigned to it under this Act or has failed to effectively perform any such function or otherwise has contravened this Act, the Minister shall, by notice in writing, inform the Chief Executive Officer and the chairperson of the Council, and shall give a copy of the report to the Chief Executive Officer and the chairperson.

(4) The Council may make representations to the Minister in respect of the report within 14 days after the date of receipt of the report.

(5) After the end of the period referred to in *subsection (4)* and after considering the representations, if any, of the Council in respect of the report, the Minister may by order remove the members of the Council and terminate their membership if—

(a) the Minister remains of the opinion that the Council has failed, neglected or refused to perform a function assigned to it under this Act or has failed to effectively perform any such function or otherwise has contravened this Act, and

(b) the Minister is of the opinion that the Council should be removed.

(6) Where an order is made under *subsection (5)*, the Minister shall appoint such person or body of persons as he or she thinks fit to perform the functions of the Council and that person or body shall perform those functions until the commencement of the first meeting of the Council after the appointment of its members under *subsection (8)*.

(7) Where an order is proposed to be made under *subsection (5)*, a draft of the order shall be laid before each House of the Oireachtas

and the order shall not be made until a resolution approving of the draft has been passed by each such House.

(8) The Minister shall, within 12 months of the removal of the members of the Council, appoint, in replacement of those members, members of the Council in accordance with *section 19*. 5

(9) The remuneration, if any, of a person appointed under *subsection (1)* or of a person or member of a body appointed under *subsection (6)* shall be determined by the Minister with the consent of the Minister for Finance and be paid out of moneys provided by the Oireachtas. 10

Accounts and audits.

27.—(1) The Council shall keep, in such form as may be approved of by the Minister, all proper and usual accounts and records of all moneys received or expended by it.

(2) Accounts kept in accordance with *subsection (1)* shall, to the extent directed by the Comptroller and Auditor General, be submitted by the Council for audit to the Comptroller and Auditor General, at such intervals and by such date as the Comptroller and Auditor General may from time to time determine and, immediately after the audit, a copy of the accounts, together with a copy of the report of the Comptroller and Auditor General on the accounts, shall be submitted by the Council to the Minister. 15 20

(3) The Council shall cause copies of the accounts submitted under this section to the Minister, together with copies of the report of the Comptroller and Auditor General on those accounts, to be laid before each House of the Oireachtas. 25

Accountability of Chief Executive Officer to Committee of Public Accounts .

28.—(1) The Chief Executive Officer shall, whenever required to do so by the Committee of Dáil Éireann established under the Standing Orders of Dáil Éireann to examine and report to Dáil Éireann on the appropriation accounts and reports of the Comptroller and Auditor General, give evidence to that Committee on— 30

(a) the regularity and propriety of the transactions recorded or required to be recorded in any book or other record of account subject to audit by the Comptroller and Auditor General which the Council is required by this Act to prepare, 35

(b) the economy and efficiency of the Council in the use of its resources,

(c) the systems, procedures and practices employed by the Council for the purpose of evaluating the effectiveness of its operations, 40

and

(d) any matter affecting the Council referred to in a special report of the Comptroller and Auditor General under section 11(2) of the Comptroller and Auditor General (Amendment) Act 1993 or in any other report of the Comptroller and Auditor General (in so far as it relates to a matter specified in *paragraph (a), (b) or (c)*) that is laid before Dáil Éireann. 45

(2) In the performance of his or her duties under this section, the Chief Executive Officer shall not question or express an opinion on the merits of any policy of the Government or a Minister of the Government or on the merits of the objectives of such a policy.

5 **29.**—(1) The Chief Executive Officer shall, whenever required to do so by a Committee (or a subcommittee of such a committee) appointed by either House of the Oireachtas or jointly by both Houses of the Oireachtas (other than the Committee on Members' Interests of Dáil Éireann or the Committee on Members' Interests of Seanad Éireann) to examine matters relating to the Department of Education and Science, or to disabilities, give evidence to that Committee on the performance, by him or her, or by the employees of the Council, of his or her or their duties in relation to the Council's functions under this Act.

Accountability of
Chief Executive
Officer to other
Oireachtas
Committees.

15 (2) In the performance of his or her duties under this section, the Chief Executive Officer shall not question or express an opinion on the merits of any policy of the Government or a Minister of the Government or on the merits of the objectives of such a policy.

20 **30.**—(1) The Council may accept gifts of money, land or other property upon such trusts and conditions, if any, as may be specified by the donor.

Gifts.

(2) The Council shall not accept a gift if the trusts or conditions attached to it would be inconsistent with its functions.

25 **31.**—(1) The Council may establish committees to assist and advise it in relation to the performance of any of its functions.

Committees.

(2) The Council may delegate to a committee any of its functions which, in its opinion, can be better or more conveniently performed by a committee.

30 (3) A committee established under this section may include or consist of persons who are not members of the Council but who have particular expertise in relation to the field of special educational needs.

(4) Members of a committee—

(a) shall be appointed subject to such terms and conditions, and

35 (b) may be paid by the Council such allowances (if any) for expenses incurred by them in the discharge of their functions,

as the Council may determine, subject to the consent of the Minister.

40 (5) The Council may, subject to this Act, determine the terms of reference and regulate, by standing orders or otherwise, the procedures and business of a committee including the filling of casual vacancies, but, subject to any such regulation, a committee may regulate its own procedures.

45 (6) A committee shall appoint, from time to time, a chairperson from among its members.

(7) The Chief Executive Officer may—

(a) opt to be a member of a committee, or

(b) in lieu of his or her opting to be such a member, may nominate, with that other's consent, another to be such a member,

and where the Chief Executive Officer so opts or nominates another, the Chief Executive Officer or the other person, as the case may be, shall be deemed to stand appointed as a member of the committee but shall not be entitled to cast a vote in respect of any matter falling to be decided by the committee. 5

(8) A member of a committee may be removed by the Council at any time for stated reasons. 10

(9) The Council may at any time dissolve a committee established by it.

(10) The Council shall have regard to the desirability of such gender balance in the membership of a committee under this section as the Minister considers appropriate and determines, from time to time, when making appointments to a committee. 15

(11) A committee shall provide the Council with such information as the Council may from time to time require, in respect of the committee's activities and operation, for the purposes of the performance by the Council of its functions. 20

Annual report and information.

32.—(1) Subject to *subsection (2)*, the Council shall prepare and publish, in such form and manner as it considers appropriate, a report of its activities and proceedings under this Act.

(2) A report under *subsection (1)* shall be prepared— 25

(a) in the case of the first such report, at the end of 1 year after the establishment day, and relate to the Council's activities and proceedings under this Act during that year, and

(b) thereafter, at the end of 1 year following the preparation of the preceding report, and relate to the Council's activities and proceedings under this Act during the preceding 12 months. 30

(3) The Council shall provide the Minister with a copy of the report under *subsection (1)* and the Minister shall cause the report to be laid before each House of the Oireachtas. 35

(4) The Council shall provide the Minister with such information as the Minister may from time to time require.

Establishment day.

33.—The Minister shall by order appoint a day to be the establishment day for the purposes of this Act. 40

Special Education Appeals Board.

34.—(1) On the establishment day there shall stand established the Special Education Appeals Board (in this Act referred to as the "Appeals Board") to hear and determine appeals made pursuant to this Act.

(2) The Appeals Board may sit in divisions of itself to hear appeals.

5 (3) In hearing and determining an appeal under this Act, the Appeals Board shall act in accordance with such procedures as may be determined from time to time by it, with the consent of the Minister, and such procedures shall ensure that—

10 (a) the parties to the appeal are assisted, through mediation, to reach agreement on the matters the subject of the appeal where the Appeals Board is of the opinion that reaching such agreement is practicable in the circumstances,

(b) hearings are conducted with the minimum of formality consistent with giving each of the parties a fair hearing,

and

15 (c) an appeal is heard within a period of 30 days from the date of the receipt of the appeal by the Appeals Board.

(4) The Appeals Board shall be independent in the performance of its functions.

(5) The Appeals Board shall consist of a chairperson and such number of ordinary members as may be determined, by the Minister.

20 (6) The chairperson and ordinary members of the Appeals Board shall be appointed by the Minister.

(7) The term of office of the chairperson and the ordinary members of the Appeals Board shall be for such period as shall be determined by the Minister.

25 (8) The chairperson or an ordinary member of the Appeals Board may resign by letter addressed to the Minister.

(9) The chairperson or an ordinary member of the Appeals Board may be removed from office by the Minister.

30 (10) The chairperson and ordinary members of the Appeals Board shall be paid such allowances for expenses as the Minister, with the consent of the Minister for Finance, may determine.

35 (11) The Appeals Board may, with the consent of the Minister given with the concurrence of the Minister for Finance, appoint such and so many persons to be employees of the Appeals Board as the Board considers necessary to assist the Board in the performance of its functions and each person so appointed shall hold office on such terms and receive such remuneration as the Appeals Board with the consent of the Minister for Finance determines.

40 **35.—**(1) The Appeals Board shall submit a report of its activities and particulars of its accounts to the Minister at such intervals as the Minister directs. Report of Appeals Board.

(2) The Minister shall cause copies of a report under *subsection (1)* to be laid before each House of the Oireachtas.

36.—(1) Where it appears to the Council that a health board could, by taking specified action, assist in the preparation or implementation of an education plan in respect of a particular child or assist more generally in the performance of the Council of its functions, then it may, by notice in writing, request the assistance of that board, specifying the action in question. 5

(2) Before making a request under *subsection (1)*, the Council shall consult with the board concerned.

(3) A board of which a request under *subsection (1)* is made shall comply with the request unless it considers that— 10

- (a) the assistance concerned is not required,
- (b) compliance with the request would not be compatible with its functions or duties or would unduly prejudice the performance of any of its functions, or
- (c) having regard to the resources available to the board it is not reasonable for it to comply with the request. 15

(4) Where a board decides not to comply with a request it shall give notice in writing to the Council of that decision and the reasons therefor.

(5) The Council may appeal against a decision of the board referred to in *subsection (4)* to the Appeals Board. 20

(6) On the hearing of an appeal under *subsection (5)*, the Appeals Board may—

- (a) allow the appeal and direct the board concerned to comply with the request, the subject of the appeal, or 25
- (b) dismiss the appeal.

(7) A health board shall comply with a direction given to it under *subsection (6)(a)*.

37.—Section 7 of the Education Act 1998 is amended by inserting the following subsections after subsection (4): 30

“(5) In carrying out his or her functions in respect of the provision, planning and co-ordination of support services, the Minister may, following consultation with the Minister for Health and Children, request the assistance of a relevant health board. 35

(6) A health board of which a request under subsection (5) is made shall comply with the request.”.

38.—(1) The Council shall keep and maintain records for the purpose of—

- (a) identifying children to whom special educational and support services are being provided, 40
- (b) identifying schools and other places where such services are provided to children with special educational needs, and

(c) planning the provision of special educational and support services.

5 (2) In performing its functions under *subsection (1)* the Council shall, to the greatest extent practicable, co-ordinate its system of record-keeping with the systems of record-keeping maintained by health boards and any other relevant public bodies.

10 **39.**—(1) The Minister may make regulations prescribing any matter which is referred to in this Act as prescribed or to be prescribed or in relation to any matter referred to in this Act as the subject of regulations or for the purposes of enabling any provision of this Act to have full effect. Regulations.

15 (2) Every regulation under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

20 **40.**—The Minister may, in each financial year of the Council and of the Appeals Board, pay to the Council and the Appeals Board, out of moneys provided by the Oireachtas, a grant of such amount as he or she, with the consent of the Minister for Finance, determines towards the expenses of the Council or the Appeals Board, as the case may be, in the performance of its functions. Grants to Council and Appeals Board.

25 **41.**—(1) A notice under this Act shall, subject to *subsection (2)*, be addressed to the person concerned by name, and may be served on or given to the person in one of the following ways: Service of notices.

(a) by delivering it to the person;

30 (b) by leaving it at the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, at that address;

35 (c) by sending it by post in a prepaid registered letter to the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, to that address.

40 (2) Where a notice under this Act is to be served on or given to a person who is the owner or occupier of land and the name of the person cannot be ascertained by reasonable inquiry, it may be addressed to the person by using the words the owner or, as the case may require, the occupier.

45 (3) For the purposes of this section, a company within the meaning of the Companies Acts 1963 to 2001, shall be deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body shall be deemed to be ordinarily resident at its principal office or place of business.

42.—Every plan, report and assessment prepared or made under this Act shall, for the purposes of the law of defamation, enjoy qualified privilege. Plans, reports, etc. under Act privileged.

Expenses. **43.**—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

Short title and commencement. **44.**—(1) This Act may be cited as the Education for Persons with Disabilities Act 2003.

5

(2) This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

MEMBERSHIP AND MEETINGS OF COUNCIL

1. In this Schedule, unless the context otherwise requires, “member” means a member of the Council, including the chairperson.

5 2. (1) Upon its establishment the Council shall provide itself with and retain in its possession a seal.

(2) The seal of the Council shall be authenticated by the signature of—

10 (a) the chairperson of the Council or other member of the Council authorised by the Council to act in that behalf, and

(b) an employee of the Council authorised by the Council to act in that behalf.

15 (3) Judicial notice shall be taken of the seal of the Council and every document purporting to be an instrument made by the Council and to be sealed with the seal of the Council (purporting to be authenticated in accordance with *subparagraph (2)*) shall be received in evidence and be deemed to be such instrument without further proof unless the contrary is shown.

20 3. (1) The Minister may at any time, for stated reasons, remove from office a member of the Council.

(2) The Council may at any time, with the consent of the Minister, for stated reasons, remove a member from office, other than the chairperson.

25 (3) A member (other than the chairperson) may at any time resign from office as a member by notice in writing to the chairperson and the resignation shall take effect on the date of the meeting of the Council next held after receipt by the Council of the notice.

30 (4) The chairperson may at any time resign from office as a member by notice in writing to the Chief Executive Officer and the resignation shall take effect on the date of the meeting of the Council next held after receipt by the Chief Executive Officer of the notice.

35 (5) A member who is absent from all meetings of the Council for 6 consecutive months, unless the absence was due to illness or was approved of by the Council, shall cease to be a member at the expiration of that period.

(6) The Minister, when appointing a member, shall specify the term of office of the member which shall not exceed 4 years.

40 (7) A member shall not serve more than 2 terms of office that are consecutive terms of office.

(8) Where a casual vacancy occurs among the members the Council shall notify the Minister who shall appoint a person to fill such a casual vacancy and a person so appointed shall, subject to this Schedule, hold office for the remainder of the term of office of the member whose death, resignation, removal from office or ceasing for any other reason to hold office occasioned the casual vacancy.

4. (1) The Council shall, from time to time, elect from among its members a deputy chairperson.

(2) The deputy chairperson shall hold office for such term as may be specified by the Council at the time of his or her appointment, unless—

- (a) he or she resigns the office of deputy chairperson, or
- (b) the Council by a resolution, of which not less than 7 days notice of the intention to propose is given to each member and for which not less than two thirds of the members vote, removes the deputy chairperson. 5

(3) The deputy chairperson may at any time resign from office by notice in writing to the Council and the resignation shall take effect on the date of the meeting of the Council next held after the receipt by the Council of the notice. 10

(4) Where, at an election of the deputy chairperson, 2 or more persons receive an equal number of votes, it shall be determined by lot which of those persons shall be deputy chairperson. 15

5. (1) The Minister shall fix the date, time and place of the first meeting of the Council.

(2) The Council shall hold at least 6 meetings in each year and such and so many other meetings and at such times as the chairperson may determine. 20

(3) The quorum for a meeting of the Council shall be 4.

(4) At least 3 days before a meeting of the Council notice of the time and place of the meeting shall be sent to each member of the Council signed—

- (a) by the Chief Executive Officer or chairperson, or 25
- (b) if the meeting is convened by members, by those members.

(5) If the meeting is convened by members, the notice convening the meeting shall specify the business to be transacted at that meeting.

(6) At a meeting of the Council— 30

- (a) the chairperson shall, if present, be the chairperson of the meeting, or
- (b) if and so long as the chairperson is not present, or if the office of chairperson is vacant, the deputy chairperson shall, if present, be the chairperson of the meeting, or 35
- (c) if and so long as the chairperson is not present or the office of chairperson is vacant, and the deputy chairperson is not present or the office of deputy chairperson is vacant, the members who are present shall choose one of their number to preside at that meeting. 40

6. (1) Minutes of the proceedings of all meetings of the Council shall be drawn up and entered in a book kept for that purpose and such minutes shall be signed by the chairperson of the next subsequent meeting.

(2) The names of all members present at a meeting of the Council shall be recorded in the minutes of the proceedings of the meeting. 45

5 (3) At a meeting of the Council every act of the Council and every question coming before the Council shall be determined by a majority of the votes of members (including the chairperson) present and voting in relation to the act or question and, in the case of an equal division of votes on any act or question arising at a meeting of the Council (other than the election of the chairperson or deputy chairperson), the chairperson or other person presiding at that meeting shall have a second or casting vote.

10 7. Subject to *paragraph 5(3)*, the Council may act notwithstanding one or more than one vacancy among its members or any deficiency in the appointment of a member which may subsequently be discovered.

15 8. Save as is otherwise provided by any enactment, including this Act, the Council may make, from time to time, such standing orders as it thinks fit for the regulation of its proceedings and may amend or revoke such standing orders.

SCHEDULE 2

Section 22.

THE CHIEF EXECUTIVE OFFICER

20 1. The Chief Executive Officer shall perform his or her functions subject to such policies as may be determined from time to time by the Council and shall be answerable to the Council for the efficient and effective management of the Council and for the due performance of his or her functions.

25 2. (1) The Chief Executive Officer may delegate any of his or her functions to an employee of the Council, unless they are functions delegated to the Chief Executive Officer by the Council and they have been so delegated subject to the condition that they shall not be sub-delegated, and the employee concerned shall be accountable to the Chief Executive Officer for the performance of the functions so delegated.

(2) Notwithstanding any such delegation, the Chief Executive Officer shall at all times remain accountable to the Council for the performance of the functions so delegated.

35 3. The Chief Executive Officer shall not hold any other office or position without the consent of the Council.

40 4. The Chief Executive Officer shall hold office subject to such terms and conditions (including terms and conditions relating to remuneration, fees and allowances for expenses) as the Council, with the consent of the Minister and the Minister for Finance, may from time to time determine.

5. The Chief Executive Officer shall not be a member of the Council, but he or she may, in accordance with procedures established by the Council, attend meetings of the Council and shall be entitled to speak to and advise such meetings.



**AN BILLE UM OIDEACHAS DO DHAOINE FAOI
MHÍCHUMAS 2003
EDUCATION FOR PERSONS WITH DISABILITIES BILL 2003**

EXPLANATORY MEMORANDUM

Introduction

The purpose of the Bill is to make detailed provision through which the education of children who have special educational needs because of disabilities can be guaranteed as a right enforceable in law. The Bill is complementary to the provisions of the Constitution, which already provide that each child is entitled to free primary education, that the State has a duty to provide for that and a duty to ensure that each child receives at least a minimum education. In order to provide a structure within which the Bill's provisions can be effectively implemented, the Bill establishes the National Council for Special Education. The functions of the Council are detailed at *section 18*.

A key element in the education of any child is the close involvement of his or her parents. One of the objectives of this Bill is to ensure that parents have a central role in all important decisions concerning the education of their children. 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 appeals, including mediation, where needs are not met. This system of appeal is intended as giving parents in particular a quicker, cheaper and more effective route to having deficiencies in their child's education attended to. However, having this system in place does not prevent parents seeking and getting the protection of the courts, where necessary, to have the provisions of the legislation implemented for their child.

The Long Title to the Bill gives an overview of the Bill's aims. It sets those aims in the context of the common good; points to the objective of equity in education services between children who have educational disabilities and those who do not; states that the aim is to help children with disabilities, as far as their capabilities permit, to leave school with the skills necessary to live independent and fulfilled lives, and it refers to the central role of parents in education.

Section 1

This sets out the definitions used in the Act. The definition of "Child" is a key one. A child is defined as a person not more than 18 years of age. In effect therefore the provisions of this legislation, once enacted, will apply to children who are 18 years or younger. That said, *section 14* makes provision for the planning of a person's education, while that person is still a child, after the age of 18 and for the continuation of education beyond 18 in some circumstances.

“Child with special educational needs” is defined as a child who has an educational disability. This latter term is defined as a restriction in the capacity of the child to participate in, and benefit from, education on account of an enduring physical, sensory, mental health or intellectual impairment.

The importance of these definitions lies in the fact that the Bill gives rights to services which a child with educational disabilities needs to avail of education.

Section 2

This provides for integrated education for children with special educational needs and those who do not have such needs. An integrated, or inclusive, approach to the education of children with disabilities has long been official policy. This is seen as in the best interests of all children, whether they have disabilities or not, and is key to helping children with disabilities to live full and independent lives.

It is the case that not all children with disabilities can cope with the ordinary school environment, or cannot do so for all of the time. In those cases they can be taught in special classes for some subjects and join the other students at other times. In particular cases a child with disabilities may be educated in a special school. In any case, the best interests of the child concerned must be of primary concern.

There may be situations, however, where educating a child with special educational needs arising from a disability is not possible without impacting negatively on classmates who do not have a disability. Where this impact is great it can, in practice, affect those children’s education. It has to be borne in mind that they too have a constitutional right to education. For that reason this section provides that decisions on an integrated approach must balance the best interests of the child with special education needs and those of the children with whom he or she is to be educated.

Section 3

While the Bill in general establishes an elaborate structure to meet the education needs of children with disabilities, not all children who have difficulties learning are children with special educational needs arising from a disability. There is a risk that legislation like this Bill could lead to over-identification of children with learning difficulty as children with educational disabilities. This is not in the interests of the children concerned or the education system. This section seeks to ensure that that does not occur while still ensuring that genuine needs are met.

The section provides first that a school must make all practicable efforts to assist a child who is not benefiting from the regular education programme, and to do so outside the special education programme of the school. This applies in the case of a child who does not have an obvious disability and is intended as ensuring that teachers will deploy the full range of their professional pedagogical skills, prior to concluding that a child has special educational needs arising from a disability. Where all reasonable efforts have been made and the child is still failing to achieve potential, the principal may arrange for an assessment to be carried out if he or she believes that the failure is caused by an educational disability. This assessment has to be carried out within 3 months. As to this time limit it should be noted that throughout the Bill, in circumstances where actions are to be taken which have a significant impact on a child’s education, then those actions have to be taken within specified time limits.

To assist a school in making assessments, the National Council for Special Education (the Council) will set down guidelines. Where an assessment establishes that the child does have an educational disability, the school must, within 1 month of the assessment, have an education plan prepared. Parents must be consulted in this planning process and must be given a copy of the plan as soon as it is made. Again, the Council will set down guidelines for planning by schools. In general, the situations covered by these guidelines will be situations where a disability is relatively easily addressed. The guidelines will not, in general, deal with complex disabilities, involving multi-disciplinary intervention.

The section recognises that there will be circumstances where, given the nature and extent of a child's disability, it will not be practicable for the school to develop the plan. In that case the school will request the Council to prepare it. Mindful of the possibility that some schools might not carry out their responsibilities to the full and try to pass them on to the Council and mindful too of the need to avoid the over-use of the more formal and complex process of planning under the Council, the Council may refuse a request from a school to take over the planning process. In that case however, either the school or the parents concerned can appeal to the Appeals Board, whose decision must be complied with.

Section 4

This section relates to the assessment of children. This is a key first step in ensuring that a child's needs are identified, as well as the services he or she needs to benefit from education.

Where a health board is of the opinion that a child either has or is likely to have an educational disability it must have an assessment carried out. This is most likely to arise for a health board in the case of a pre-school child. In the case of a child who is attending school, the primary responsibility to have an assessment carried out will fall to the Council. In addition, if parents believe that their child may have an educational disability, they can ask for an assessment by the health board or, if their child is in school, by the Council (unless *section 3* applies and the school causes the assessment to be made). If the request is acceded to then the assessment must begin within 3 months of the request. If the request is refused then the parents may appeal to the Appeals Board.

A concern of many parents is that, since assessments are often carried out by the agency which will provide the services needed, assessments will lack independence. In order to overcome this concern and to ensure quality of assessments the Bill provides that they have to comply with standards set down by the Minister for Health and Children or a body appointed by the Minister.

Assessments are to be holistic and take a whole-child approach. This means that an assessment must include an evaluation and statement of the nature and extent of a child's educational disability and any other disability which restricts his or her development more generally. It must also set out what services, education related and other, which a child will need having regard to his or her disability.

Section 5

The procedures for the assessment of a child with an educational disability are provided for in this section. 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 other relevant assessment available to the assessment

team. A statement of findings on the assessment is to be made available, immediately 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.

The section also provides for a situation where a parent refuses to have an assessment carried out. While parents have rights as the primary and natural educators of their child, the child has a right to education and his or her interests are primary. If there is a dispute as to what is in the child's best interests then this will be decided by the Circuit Court.

Section 6

This section deals with the follow-on from the assessment of a child — the provision of identified services. Assessments will arise for children who are not yet at school and those who are in school. The section breaks down responsibility for the delivery of services between the Council and a health board, depending on whether the child is at school or not. Whether it is the Council or a board which has primary responsibility, the section provides that each can call on the other to make appropriate in-put and this must be provided.

In the case of a school-going child, the Council, (and in the case of a child who is not school-going, the health board) must provide the child with the services identified in an education plan or assessment which are necessary to enable the child to participate in, and benefit from, education. If the Council or health board considers that the other body can provide some of the services needed more effectively, it must inform the other body of this and that body must then ensure that provision. Any dispute between the Council and a health board will be resolved by the Appeals Board. In practice it is intended that this section will operate so that health boards will provide health related services, such as speech and language therapy, while the Council will ensure provision of education related services, such as home tuition for a pre-school child. It is also intended that the section will ensure that one agency or the other will adopt the lead role in providing for the child, while the other must co-operate, thus circumventing jurisdictional disputes.

Section 7

A key stage in delivering the services a child needs is planning. This section 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 the 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. The team must always include the child's parents, unless they opt out. It may also include the child, depending on his or her capacity to participate in the process. The other members of the team will be determined by the range of needs of the child as identified in the assessment. While the education plan will focus on educational needs, it must have regard to any other needs identified in the child's assessment and must be consistent with those needs.

Section 8

This section sets out the matters to be dealt with in an education plan. The intention is that plans will be detailed and goals driven. They will set out the nature and degree of the child's abilities, skills

and talents; the nature and degree of his or her educational disability; the present level of educational performance where this is relevant; the child's special educational needs; 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 is recognised as a particularly important milestone and the plan is specifically required to address this. Where a child who has an education plan is transferring between schools, consultation between the schools must take place. This is designed to ensure that the placement will be appropriate and that, if necessary, the plan is tailored so that it is capable of implementation in the new school. Any amendment to the plan may involve a special educational needs organiser.

The section also provides that the Council may prepare guidelines on 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.

Schools are obliged to implement an education plan and will be provided with the resources to do this.

Section 9

The Council will have the power to designate a school or centre for education which a child with special educational needs is to attend and the school or centre will be obliged to enroll the child. This section is aimed at overcoming a practice engaged in by some schools of seeking to avoid admission of children with educational disabilities. Such a situation presents serious difficulties for the children, their parents and other schools. A child is entitled to attend the school which is most suited to his or her overall needs. That said, schools must be supported if they are to effectively provide for the education of children with special education needs arising from a disability. In designating a school, the Council must take account of the child's needs and the capacity of the school or centre to accommodate the child. The school may appeal the Council's designation to the Appeals Board.

Section 10

Education plans, if they are to be effective and respond to a child's changing needs, must be reviewed at regular intervals. Schools must carry out this review in the first instance and report on it to the parents and the special educational needs organiser. Where the latter is of the opinion that the child concerned is significantly failing to achieve the goals set out in the plan, he or she may reconvene the team which drew up the plan to review it and where necessary amend it. Parents, of course, have an intimate knowledge of their child's progress so this section also provides that they may request that the plan be reviewed, if they believe that their child is not achieving the specified goals and a review of the plan has not happened in the previous six months. If their request is denied they may appeal this decision to the Council.

Section 11

The creation of an accessible and efficient appeals system is one of the key objectives of the Bill. This system will be availed of primarily by parents who are concerned about decisions affecting their child's education or are dissatisfied with services provided. This section 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 education plan which they consider incorrect or inadequate to meet the child's special educational needs. Parents may also appeal against the discharge by a school or health board of their duties to implement the plan. On hearing the appeal, the Appeals Board may give directions to the Council, health board or school, which it must implement, or it may dismiss the appeal.

Section 12

The provision of appropriate education to any child is significantly dependant on the resources provided. This is especially so in the case of a child with disabilities where special provision, over and above that provided to other children, is often needed. This section imposes a statutory duty on the Minister for Education and Science and the Minister for Health and Children to make resources available to schools for the provision of adequate and appropriate education to children with special educational needs.

In carrying out their functions as above the Ministers must have the consent of the Minister for Finance. This provision does no more than reflect the normal procedures governing public finances and expenditure by Government Departments.

Making resources available, whether it is to special education or any other publicly funded service, has to take place in the overall context of policy on public spending and revenue. These are matters for decision by Ministers and the Government. This section provides, however, that in making policy determinations regarding the resources to be made available to implement education plans, the Ministers (including the Minister for Finance) must have regard to, and take account, of key principles. The constitutional rights of all children, including those with special needs, to education are an important consideration as is the wider public interest as it relates to public spending. There must be equitable treatment of all children in resource allocation decisions. It is not acceptable or permissible to focus resources unreasonably on any particular category of child. Ministers also have to take account of the fact that it is the objective of the Bill that it will lead to the creation of an education system which gives to children with disabilities the same opportunity for development through education as is given to children who do not have disabilities.

Section 13

This section 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 other Acts, notably the Education Act 1998. The section requires that the board of management of a school must ensure that parents are informed of their child's needs and how those needs are being met, and are consulted and have an opportunity to participate in decisions affecting their child's education. Schools must apply the policy of integrated education as far as possible, co-operate with the Council and contribute to awareness among staff and students of the needs of children with special educational needs.

Section 14

This Bill provides primarily for the implementation of the constitutionally mandated right to education of children (i.e. people aged 18 or younger). However, the Bill recognizes the fact that there are issues relevant to the education of a person as an adult which must be addressed when the person is still a child.

This section provides that in preparing or reviewing an education plan, the school or special educational needs organiser must take account of the provision which will be required for the child on his or her becoming an adult and take steps to enable the child to progress to further education and training. This will be done in consultation with the child and his or her parents.

It is also the case that some children will make educational progress at a slower pace than others. The section therefore provides that where the Council is preparing or reviewing the education plan of a child who, within the following year will turn 18, an assessment will be made of how the child has achieved his or her goals. If there has been a failure to meet the goals, the effect of this on the child's development also has to be assessed. Where appropriate, measures will be included in the plan to address those effects.

Section 15 provides that a health board must implement policies of the Minister for Education and Science and Minister for Health and Children when carrying out its functions.

Section 16

Co-ordination of activities between various agencies is a key success factor in delivering an appropriate education to children with educational disabilities. The two main agencies under this Bill are health boards and the Council. This section provides for the appointment by the Council and the health boards of Liaison Officers. Liaison Officers will be required to ensure that, as far as possible, the policies and operations of the Council and health boards are coordinated and consistent.

Section 17 provides for the establishment of the National Council for Special Education.

Section 18 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 dissemination of information on best practice for the education of children with special educational needs, their entitlements, and the planning and co-ordination of the provision of special education and integration in conjunction with schools and health boards. The Council must ensure that there is regular monitoring of students' progress and the resources necessary for special education. The Council will be required to review provision for adults with disabilities and advise educational institutions on best practice on the education of adults with disabilities. It will have responsibility to conduct research in the area of special education and provide advice and information to the Minister. In performing its functions, the Council will implement Ministerial policy and, in providing advice, it must be mindful of the implications of that advice on available resources.

Section 19 provides for the membership and appointment of the Council. 13 members will be drawn from a wide range of interests with one thing in common, a special interest in or knowledge of the education of children with disabilities. The education partners will be consulted and may nominate up to 4 members. The National Disability Authority and the Minister for Health and Children may nominate two each.

Section 20 provides for the appointment by the Council 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 prior to the appointment of the forum.

Section 21

Implementation of the Bill when enacted will provide many challenges. These arise not merely because of limitations on financial resources, but also because of limitations in the number of trained personnel which is insufficient to accommodate the full range of services which the Bill will require when fully implemented.

Conscious of the limitations involved, this section requires the Council, having consulted with the Consultative Forum and the Minister, to report to the Minister within 12 months of the Council's establishment on the steps to be taken in order to ensure that Act is fully implemented. This implementation must occur within a period of time set down in the report and in any case cannot be longer than 5 years.

While the Bill is being implemented, it is a reality that children will be growing older without full access to the range of provision made in the Bill. Therefore the Council has to consider, and include recommendations in its report on, how the educational needs of children with special educational needs can, as far as possible, be met pending the full implementation of the Act.

Section 22 provides for the appointment, by the Council with the consent of the Minister, of a Chief Executive Officer. The CEO will be responsible for the general management and control of the Council.

Section 23 provides for the appointment, terms and conditions of employees of the Council subject to the consent of the Minister and the Minister for Finance.

Section 24 provides for the appointment, terms and conditions of special educational needs organisers. The board of management and staff of each school must give all reasonable assistance to the special educational needs organiser attached to their school.

Section 25 requires the National Council for Curriculum and Assessment to consult with the Council in advance of advising the Minister with regard to curriculum and syllabuses for students with an educational disability.

Section 26 provides that where the Minister considers that the Council is not carrying out its duties or has contravened the Act, he may appoint a person to make inquiries into this matter. On receiving a report of the inquiry, if the Minister still considers that the Council has failed in its duties or has breached the Act he may, following consideration of any representations made by the Council, remove the Council members. If they are removed, the Minister must appoint a person or body of persons to perform the Council's functions pending the appointment of new members. The new members must be appointed within 12 months of the previous members' removal.

Section 27 provides that the Council shall maintain proper accounts of income and expenditure. They will be subject to audit at the discretion of the Comptroller and Auditor General. A copy of the accounts and audit report will be submitted to the Minister and laid before the Houses of the Oireachtas.

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

Section 29 provides that the CEO will be accountable to other Oireachtas Committees and will give evidence to them on the performance by himself or herself, or by the Council's employees, of their duties whenever required to do so.

Section 30 provides for acceptance of gifts, a standard provision for a corporate body.

Section 31 provides for the establishment of committees which may include people who are not members of the Council but who have particular expertise in the area of special educational needs. The Council may delegate any of its functions to a committee. The CEO may choose to be a member of a committee or nominate another person to be a member.

Section 32 sets out that the Council shall prepare and publish an annual report on its activities and proceedings under the Act. The report must be sent to the Minister and the Minister must have the report laid before the Houses of the Oireachtas.

Section 33 provides that the Minister must appoint a day to be the establishment day for the purposes of the Act.

Section 34 provides for the establishment of the Special Education Appeals Board. This body will be an important guarantee that the rights set out in this Bill will be delivered on. The Appeals Board must comply with procedures agreed between it and the Minister which will ensure that the parties are assisted, through mediation, to reach agreement; that hearings are conducted informally; and that an appeal is heard within 30 days. The membership, appointment, terms and conditions are provided for. The Appeals Board is also given power to appoint its own staff.

Section 35 obliges the Appeals Board to submit a report on its activities and accounts to the Minister who must ensure that the report is laid before the Houses of the Oireachtas.

Section 36

In addition to the Council, health boards have a key role to play in the delivery of education and related support services to children with disabilities. This section acknowledges that role by setting out the duty of health boards as regards special education. It provides that, following consultation with a health board, the Council may request it to take certain action where it considers this would assist in the preparation or implementation of an education plan or assist the functions of the Council generally. A health board must comply with this request unless it considers that the assistance is not required, taking the action would be inconsistent with, or prejudicial to, its functions, or it would not be reasonable to comply having regard to its resources. The Council may appeal the refusal to comply to the Appeals Board.

The aim of the section is to ensure clarity in the respective roles of the agencies involved and ensure too that the boards will provide to the special education system the services which the children it serves rely on. Combined with other provisions of the Bill, including the appointment of liaison officers in section 16, this section is aimed at ensuring better co-ordination and delivery of services to children who need them.

Section 37 amends section 7 of the Education Act 1998 by ensuring that there is no doubt but that the Minister, in carrying out his or her functions regarding the provision, planning and coordination of support services, may request the assistance of a relevant health board. Before doing this, the Minister must consult with the Minister for Health and Children.

Section 38 imposes record-keeping obligations on the Council in order to identify children requiring special education, to identify where support services are provided and to plan the provision of special educational and support services.

Section 39 provides for the making of regulations by the Minister to give effect to the Act.

Section 40 provides for the funding of the Council and Appeals Board.

Section 41 provides for service of notices.

Section 42 provides that reports, plans and assessments under this Bill, when enacted, will have the benefit of qualified privilege for the purposes of the law of defamation. Qualified privilege arises where a person who makes such a report, plan or assessment has a duty to do so (e.g. under this Bill) and the person to whom it is made (e.g. parents or school authorities) have a duty to receive it.

Section 43 provides for the expenses incurred by the Minister in the administration of the Act.

Section 44 provides that the short title of the Act will be the Education for Persons with Disabilities Act 2003. 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.

SCHEDULES

Schedule 1 concerns the membership and meetings of the Council. It provides for the seal of the Council, removal of members, office of deputy chairperson, meetings of the Council, minutes of meetings, effect of vacancies and regulation of Council proceedings.

Schedule 2 concerns the Chief Executive Officer of the National Council for Special Education. It provides for the accountability of the CEO, his or her power to delegate, the holding of other offices, terms and conditions, and membership of the Council.

An Roinn Oideachais agus Eolaíochta.
July 2003.