



**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.