



# Bill Digest

## Education (Student and Parent Charter) Bill 2019

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The [\*Education \(Student and Parent Charter\) Bill 2019\*](#) seeks to legislate that school boards of management must prepare, publish and implement student and parent charters in their schools, and that this be done in consultation with students, their parents, staff, the school patron and principal and others.

This Digest presents the background to and an analysis of the provisions of the Bill. It presents stakeholder commentary related to the Bill and looks at the Bill's financial implications.

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## Summary

The [Education \(Student and Parent Charter\) Bill 2019](#) (the Bill) seeks to legislate that school boards of management must prepare, publish and implement student and parent charters in their schools, and that this be done in consultation with students, their parents, staff, the school patron and principal and others.

Such charters would have to be prepared in line with guidelines issued by the Minister for Education and Skills (the Minister). Prior to preparing these guidelines, the Minister would have to consult widely with groups representative of parents, patrons, students, teachers and so on. The Bill also sets out matters which the Minister must have regard to when drafting the guidelines.

The Bill provides that the Minister may give direction to school boards if they fail or are failing with regard to obligations under this legislation. A direction to the board would be in writing and set out what remedial action must be taken. Directions would be published on the Department's website. Once the Minister is satisfied that a direction has been complied with the Minister would notify the board of this and ensure the Department's website has a notice to this effect.

With regard to the objective of the legislation, the Department of Education and Skills (the Department) has stated:

“The main aim of the legislation is to improve how schools engage with students and their parents. The overall approach is to shift away from concentrating on reacting to problems in schools after they have given rise to grievances to an approach which aims to improve the day-to-day experience students and their parents can expect from schools. This will be done by setting out in law a framework that schools will apply in their engagement with students and parents.”<sup>1</sup>

The Department has stated that the focus on culture change in schools as provided for in the Bill, will:

“...ultimately diminish the need for students and parents to avail of grievance procedures.”<sup>2</sup>

To achieve its goals, the Bill seeks to amend a number of existing Acts – the [Education Act 1998](#), the [Teaching Council Act 2001](#) and the [Ombudsman for Children Act 2002](#).

The Bill will be commenced by order of the Minister, and different sections of the Bill may be commenced at different times.

### Stakeholder views (of the General Scheme)

Most stakeholder contributing to the pre-legislative scrutiny of the Bill by the Joint Committee on Education and Skills, were in favour of introducing the student and parent charters, among them were: the National Parents' Councils – both primary and post-primary, the Irish Primary Principals' Network, the Teaching Council, the Association of Secondary Teachers in Ireland, Education and

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<sup>1</sup> Department of Education and Skills webpage: <https://www.education.ie/en/Parents/Information/student-and-parent-charter/student-and-parent-charter.html>. [accessed 23/09/2019]

<sup>2</sup> Department of Education and Skills (2019) [Education \(Student and Parent Charter\) Bill - Regulatory Impact Analysis](#).

Training Boards Ireland, An Foras Pátrúnachta, Educate Together, the Muslim Primary Education Board, the Department of Expenditure and Reform and the Office of the Ombudsman for Children.

Some stakeholders were in favour of the introduction of charters in principle but had reservations about particular parts or their implementation. Some had concerns about the language used, such as it being too corporate and/or implying wrongdoing by current school boards. The Teachers' Union of Ireland (TUI) considered that a charter ought to reflect a balance of the rights and responsibilities of all parties (including teachers). They also cautioned against a procedure that would impose an additional burden on already stretched school administration systems.

There was opposition to the introduction of a charter from the Irish National Teachers' Organisation (INTO), which considered that the push for charters was not coming from the 'ground up' and that many schools would not recognise the need for charters as there is no problem on the ground. The Joint Managerial Board (JMB) (representing voluntary secondary schools) considered the nature of the charter to be adversarial, and was concerned it could polarise schools and families, undermining the nature of the partnership between these parties that supports children's education at present.

Barnardos would prefer a single national standardised charter rather than one each developed for every school. The TUI also argued having each school draw up its own charter would be wasteful.

### **Differences between the General Scheme and the Bill**

Although largely similar, the Bill as published differs from the [General Scheme](#)<sup>3</sup> of the Bill in some ways including:

***Matters relating to the Ombudsman for Children's Office (OCO):*** The General Scheme provided that 'Schools must consider suggestions, guidance or recommendations made by the Ombudsman for Children' and, related to this, that the Minister may give a direction to a school in this regard (and related matters re representations, compliance and so on) (Head 6).

The Department has stated that in drafting the Bill (as published), it was considered that the change from schools being encouraged to compelled was inconsistent with and would not fit with the general approach of the existing OCO legislation. The Bill would allow the Minister to give a direction to a school, but this is not explicitly linked to the role/powers of the OCO.

***Principles:*** The General Scheme set out principles on which the charters would be based. In contrast the Bill sets out 'key matters' that the Minister must have regard to when preparing charter guidelines.

### **Financial implications**

The [Explanatory and Financial Memorandum on the Bill](#) states there "will be no significant costs to the Exchequer arising from this Bill" and that any minor administration costs arising will be met from within the Department's existing funding allocation.<sup>4</sup>

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<sup>3</sup> General Scheme of the *Education (Parent and Student Charter) Bill*.

<https://www.education.ie/en/Parents/Information/student-and-parent-charter/General-Scheme-of-an-Education-Parent-and-Student-Charter-Bill-2016.pdf>

<sup>4</sup> [Explanatory and Financial Memorandum - Education \(Student and Parent Charter\) Bill 2019](#)

However, some stakeholders have argued that there would be resource implications at school level. Education and Training Boards Ireland (ETBI) stated that work around charters would involve extensive additional administrative work. The Teachers Union of Ireland (TUI) the Catholic Primary Schools Management Association (CPSMA) both considered that there would be cost implications arising from the legislation e.g. for training and mediation.

### Further resources

The Library & Research Service published a ***Note on School Complaints: Current Procedures and Proposed Changes*** in January 2019. Available here:

[https://data.oireachtas.ie/ie/oireachtas/libraryResearch/2019/2019-01-29\\_lrs-note-school-complaints-current-procedures-and-proposed-changes\\_en.pdf](https://data.oireachtas.ie/ie/oireachtas/libraryResearch/2019/2019-01-29_lrs-note-school-complaints-current-procedures-and-proposed-changes_en.pdf)

This Note gives greater detail on how school complaints are handled. It may be read as a companion piece to this Digest.

## Table of provisions of the Bill

**Table 1: Summary of provisions of the *Education (Student and Parent Charter) Bill 2019***

Section	Title	Effect
1	Definition	Provides that the “Act of 1998” is the <i>Education Act 1998</i>
2	Student and Parent Charter	<p>Seeks to amend the Act of 1998 to provide that school boards of management must prepare, publish and implement student and parent charters. This must be done in consultation with a range of stakeholders, including the school patron and principal, students, parents and staff.</p> <p>Provides for the Minister for Education and Skills to make guidelines in accordance with which charters must be prepared.</p> <p>Before making the guidelines, the Minister must consult with a range of stakeholders, including with organisations representing school patrons, national parents’ associations, national bodies representing student councils, school management organisations, trade unions / staff associations representing teachers, the Ombudsman and Ombudsman for Children.</p> <p>Provides that the content of charters may relate to:</p> <ul style="list-style-type: none"> <li>• procedures for consulting students and parents on matters relating to the school;</li> <li>• information on school plans and policies (other than admissions);</li> <li>• procedures for informing students and parents about the operation and performance of the school and its activities;</li> <li>• information to be provided in relation to income (including voluntary contributions) and expenditure of the school;</li> <li>• procedures for dealing with students’ and parents’ grievances.</li> </ul> <p>The Minister must, in preparing guidelines, have regard for a number of matters (including the selection below) in relation to the need for a school to:</p>

		<ul style="list-style-type: none"> <li>• Seek the best educational and personal development outcomes for students (as far as practicable and subject to resources);</li> <li>• Foster and promote the relationship and spirit of partnership between the school and students and their parents.</li> <li>• Foster and promote equality of access to and participation in education by seeking to reduce costs to parents/students (as far as practicable).</li> <li>• Address and resolve concerns of students / parents at an early stage.</li> </ul> <p>Provides that, in developing guidelines, the Minister must have regard for a number of matters, including:</p> <ul style="list-style-type: none"> <li>• Fostering and promoting the relationship and spirit of partnership between schools, students and parents.</li> <li>• Fostering and promoting mutual respect in communications between these parties.</li> <li>• Fostering and promoting equality of access for students to and participation in education by seeking (as far as practicable) to reduce costs of participation to parents and students.</li> <li>• Addressing and resolving concerns of students and parents at an early stage (as far as possible).</li> </ul> <p>Provides for the giving of a direction to a school board in this regard and the publication of these directions (including online). A school board <u>must</u> comply with a direction – taking whatever remedial action it sets out.</p>
3	Amendments of s.2 of the Act of 1998	Seeks to make related amendments to s.2 of the Act of 1998, regarding the definition of ‘student and parent charter’ and ‘charter guidelines’.
4	Amendment of s.9 of the Act of 1998 (Functions of a school)	Seeks to amend s.9 of the Act of 1998 (Functions of a School) to include involving students and their parents in the provision of education to students; and ensure implementation of charters.

5	Amendment of s.20 of the Act of 1998 (Report and information)	Seeks to amend s.20 of the Act of 1998 (Report and information) to provide that the information must be provided, in accordance with charter guidelines, to students and their parents (at present the Act specifies parents only).
6	Amendment of s.21 of the Act of 1998 (The school plan)	Seeks to amend s.21 of the Act of 1998 (The school plan) by providing school plans are prepared in accordance with any applicable charter guidelines.
7	Amendment of s.27 of the Act of 1998 (Information to students and student council)	Seeks to amend s.27 of the Act of 1998 (Information to students and student council) by: <ul style="list-style-type: none"> <li>• providing that parents also be provided with information under this section;</li> <li>• providing that the charter guidelines would apply to the establishment and maintenance of procedures to provide information on the activities of the school;</li> <li>• providing that the student council must promote the interests of the students (rather than the school, as at present).</li> </ul>
8	Amendment of s.27 of the Act of 1998 (Grievances and other procedures)	Seeks to replace s.27 of the Act 'Grievances and other procedures' with a new s.27 entitled 'Grievances' – which sets out the minimum areas that must be covered by grievance procedures published in accordance with Ministerial guidelines on charters.
9	Amendment of s.42 of <a href="#">Teaching Council Act 2001</a>	Seeks to change s.42 of the <i>Teaching Council Act 2001</i> to provide that an Investigating Committee will refuse to consider an appeal of a decision of the Director of the Teaching Council on the grounds that procedures for dealing with grievances set out in the school's charter have not been exhausted, save where there are good and sufficient reasons for considering the application or appeal notwithstanding.
10	Amendment of s.9 of <i>Ombudsman for Children Act 2002</i>	Seeks to change s.9 of the <i>Ombudsman for Children Act 2002</i> to allow that the Ombudsman for Children may investigate an action taken by or on behalf of a school in relation the performance of its functions (under s.9 of the 1998 Act) only where the procedures for dealing with



		grievances set out in a charter have been resorted to and exhausted in relation to the action.
11	Short title and commencement	<p>This section provides that the Act may be cited as the <i>Education (Student and Parent Charter) Act 2019</i>.</p> <p>Different sections may be commenced on different days as appointed by the Minister.</p> <p>The Act, apart from sections 9 and 10, may be cited collectively, with other education legislation, as the <i>Education Acts 1878 to 2019</i>.</p>

## Background and outline

The current programme for government – [Programme for a Partnership Government](#) – makes a number of commitments in relation to education including:

“We will introduce a stronger complaints procedure and charter for parents, and commence the Fitness to Teach provisions of the Teaching Council Act (10 years after its enactment).”<sup>5</sup>

The Programme for Government also commits to considering the possibility of establishing an Ombudsman for Education (and states that this should be pursued by the relevant Oireachtas Committee). This was considered in the scrutiny process relating to the General Scheme of this Bill and is discussed further below.

The broader policy context for the Bill includes [Better Outcomes, Brighter Futures](#)<sup>6</sup>, the national children’s policy framework, which states, in relation to schools in particular:

“Strengthening relationships between schools, parents and communities enhances student engagement, behaviour and achievement, as well as building social capital in communities.”

Stakeholder views of the proposed legislation are used throughout this Digest, as there has been little commentary on the Bill as published, they are drawn from the stakeholder contributions to the pre-legislative scrutiny process (which considered the General Scheme of the Bill).

This Bill Digest:

- Provides an overview of the current school complaints procedures
- Looks at the impact of the pre-legislative scrutiny recommendations of the Joint Committee on Education and Skills.<sup>7</sup>
- Examines the provisions of the Bill in detail – including selected stakeholder commentary from the pre-legislative scrutiny process.
- Presents details of the potential financial implications of the implementation of the Bill’s provisions.

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<sup>5</sup> [https://merrionstreet.ie/MerrionStreet/en/ImageLibrary/Programme\\_for\\_Partnership\\_Government.pdf](https://merrionstreet.ie/MerrionStreet/en/ImageLibrary/Programme_for_Partnership_Government.pdf)

<sup>6</sup> Department of Children and Youth Affairs (2014) *Better Outcomes, Brighter Futures. National Policy Framework for Children and Young People, 2014-2020*. <https://www.gov.ie/en/publication/775847-better-outcomes-brighter-futures/>

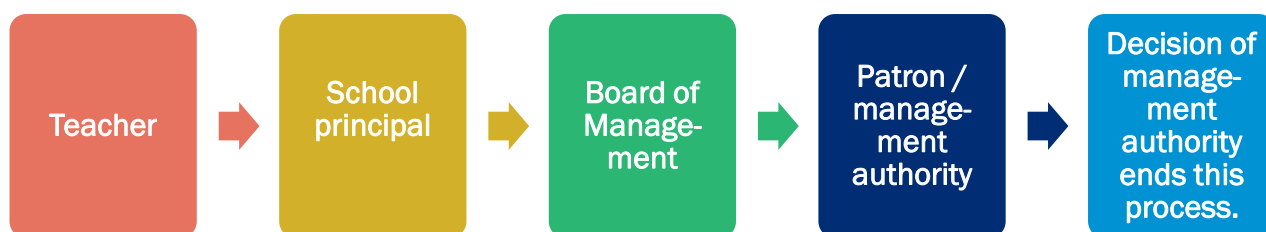
<sup>7</sup> The Committee considered the General Scheme of the current Bill alongside the *Education (Amendment) Bill 2015*. The Committee’s report can be found here: [https://data.oireachtas.ie/ie/oireachtas/caighdeanOifigiul/2017/2017-11-09\\_report-on-scrutiny-of-education-bills\\_en.pdf](https://data.oireachtas.ie/ie/oireachtas/caighdeanOifigiul/2017/2017-11-09_report-on-scrutiny-of-education-bills_en.pdf)

## Overview of existing complaints procedures

There are 920,000 children enrolled in almost 4,000 recognised schools in Ireland.<sup>8</sup> There is no centralised collection of data on school complaints, so there is little known about the overall number and nature of complaints to/about schools.

It is considered that most complaints about schools are dealt with at school level. In this regard, schools enjoy a great deal of autonomy. The typical procedure is hierarchical and would generally apply a system of escalation – i.e. a complaint not resolved satisfactorily by a class teacher could be escalated to the school principal and so on – see Figure 1 below. The decision of the Board of Management would be the final step in this process.

**Figure 1: Making and escalating complaints within schools\***



\*This is generalised information - individual school procedures may vary.

**Source:** Prepared by the L&RS based on information provided on the Department of Education and Skills website.<sup>9</sup>

At present, the Department of Education and Skills (the Department) does not have legal powers to instruct a school to follow any particular course of action, or investigate complaints.

The **exception** is where complaints concern **enrolments, expulsions and suspensions**. In these cases complainants may appeal a board of management decision to the Secretary General of the Department and a committee will be appointed to investigate.

Other than this, the Department's role in relation to complaints is limited to clarifying for parents how their grievances and complaints about schools can be progressed via other avenues. The Department **does not record any data** on the number or nature of complaints that are presented to it.

There are **unused powers** in current legislation – under [s.28 of the Education Act 1998](#) the Minister for Education and Skills, having consulted with stakeholders, could prescribe procedures for resolving grievances in schools. However, since this section of the Act was commenced in December 1999, no Minister has elected to prescribe procedures under this section.

<sup>8</sup> Department of Education and Skills (2018) [Key Statistics 2017-2018](#). (records total number of primary and second level schools at 3,960).

<sup>9</sup> <https://www.education.ie/en/Parents/Information/Complaints-Bullying-Child-Protection-Discrimination/Parental-Complaints.html>.

Other avenues for making complaints about schools include:

- **Office of the Ombudsman for Children (OCO)** – The OCO has a role in examining and investigating complaints about schools. It can do so when a school's complaints procedure has been exhausted and a child has, or may have been, negatively affected by the action of a school. While the OCO does not have legally binding powers to direct schools to implement recommendations arising from its investigations, it does engage with schools and complainants to work towards resolution of complaints. In 2018, **just under one in three of all complaints (530 of 1,622)** to the Office of the Ombudsman to Children related to schools.
- **Office of the Ombudsman** – As the OCO deals only with complaints relating to children, complaints from school pupils aged 18 years and over can be made to / are referred to the Ombudsman.
- **Teaching Council** – The Teaching Council has a role in investigating complaints relating to registered teachers. In 2017/2018, the Council received **50 Fitness to Teach complaints** (there were 98,474 registered teachers in September 2018).<sup>10</sup>

The Department of Education and Skills has stated that the:

“...current complaint procedures are unduly adversarial, require parents to effectively act as prosecutor and place a significant burden of proof on the parent.”<sup>11</sup>

Further issues identified in relation to current complaint practices by the Ombudsman for Children's Office (OCO) include a lack of clarity about where / how to make complaints as well as inconsistencies in procedures between schools. The OCO has also highlighted that, in some cases, schools can be unresponsive.<sup>12</sup>

However, the submissions to the Joint Oireachtas Committee scrutinising the *General Scheme of the Education (Parent and Student Charter) Bill* demonstrate another viewpoint that sees strengths in the current system. For instance, the Association of Community and Comprehensive Schools (ACCS) stated:

“We would remark that in our schools there are systems in place that work very effectively to ensure that students and parents have their grievances / complaints addressed promptly and fairly.”<sup>13</sup>

While the Catholic Primary Schools Management Authority (CPSMA) stated:

“It has been acknowledged...that the vast majority of issues that arise for parents are ultimately resolved to the satisfaction of all parties and that only a tiny percentage of issues are not resolved to the satisfaction of the parent(s). We must be careful in all discussions

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<sup>10</sup> Teaching Council, [Annual Report 2017-2018](#)

<sup>11</sup> Department of Education and Skills (2016) *Students, Parents and Schools – Developing a Parent and Student Charter for Schools*.

<sup>12</sup> Ombudsman for Children (2016) *Annual Report 2015*. Accessible here: [https://www.oco.ie/app/uploads/2016/09/OCO\\_annual\\_report\\_2015\\_web.pdf](https://www.oco.ie/app/uploads/2016/09/OCO_annual_report_2015_web.pdf).

<sup>13</sup> Association of Community and Comprehensive Schools (2017) *Submission on the General Scheme of an Education (Parent and Student Charter) Bill 2016*.

and documentation to ensure that we do not create the impression of a huge problem that simply does not exist.”<sup>14</sup>

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<sup>14</sup> Catholic Primary Schools Management Authority (2017) *Submission to the Joint Oireachtas Committee in respect of the Education (Amendment) Bill 2015 and the General Scheme of the Education (Parent and Student Charter) Bill.*





## Pre-Legislative scrutiny of the Bill

As noted above, in 2017 the Joint Oireachtas Committee on Education and Skills undertook scrutiny of the [General Scheme](#)<sup>15</sup> of the current Bill (formerly titled the Education (Parent and Student Charter) Bill). In the same process it also scrutinised the [Education \(Amendment\) Bill 2015](#) – a Private Member’s Bill<sup>16</sup> – which proposed the establishment of an Ombudsman for Education.

Following engagement with various stakeholders at Committee hearings and the consideration of submissions, the Committee issued a report which indicated that it found the objectives of the two bills to be mutually exclusive. Though the Committee recognised the useful provisions in the *Education (Amendment) Bill 2015*, it concluded that *the Education (Parent and Student Charter) Bill* was its preferred option. It made some recommendations in relation to the General Scheme (see below). The Committee’s scrutiny report can be found [here](#).<sup>17</sup>

Table 2 below sets out the recommendations of the Committee in relation to the General Scheme, and the responses from the Department of Education and Skills in relation to their impact on the drafting of the Bill as published. It also includes as ‘traffic light’ assessment on the level of impact of the Committee’s recommendations.


**Table 2: Overview of the impact of the Oireachtas Committee PLS recommendations and response provided by the Department of Education and Skills (September 2019). The traffic light assessment represents the analysis of the L&RS.**

No.	Recommendation as per Joint Committee on Education and Skills (November 2017)	L&RS ‘traffic light’	Response from Department of Education and Skills on whether addressed (either in whole or in part) in the Bill or elsewhere
<p> <b>Key issue has had an impact on the drafting of the Bill.</b></p> <p> <b>The Bill may be described as adopting an approach consistent with the key issue <u>or</u> the impact of the key issue on the drafting of the Bill is unclear.</b></p> <p> <b>Key issue has not had an impact on the drafting of the Bill.</b></p>			
1	<p><b>“The Committee recommends that the Education (Parent and Student Charter) Bill 2016 should include provision requiring that the operation of the proposed Parent and Student Charter is subject to ongoing review to ensure that it has the desired effect.”</b></p>		<p>The Bill provides that the national charter guidelines published by the Minister will require that each school’s Student and Parent Charter must be reviewed at intervals specified by the Minister and that the board of management must review and amend its Student and Parent Charter as required by the charter guidelines.</p>

<sup>15</sup> General Scheme of the *Education (Parent and Student Charter) Bill* (as before)

<sup>16</sup> Introduced by Jim Daly, TD, on 21<sup>st</sup> June 2016.

<sup>17</sup> [https://data.oireachtas.ie/ie/oireachtas/caighdeanOifigiul/2017/2017-11-09\\_report-on-scrutiny-of-education-bills\\_en.pdf](https://data.oireachtas.ie/ie/oireachtas/caighdeanOifigiul/2017/2017-11-09_report-on-scrutiny-of-education-bills_en.pdf)

2	<p><b>“It is also recommended that where possible, the Minister should consider whether any provision contained in the <i>Education (Amendment) Bill 2015 [PMB]</i> may be taken on board to enhance the aim of the <i>Education (Parent and Student Charter) Bill 2016</i>.”</b></p>		<p>Some of the provisions contained in the <i>Education (Amendment) Bill 2015 (PMB)</i> can be re-examined in the context of developing national guidelines on the Student and Parent Charter, in particular in the context of the guidelines on new complaints and grievance procedures in schools. The Private Members Bill has a particular focus on how complaints are managed and handled at school level. The Bill contains provisions that provide for the procedures for dealing with grievances of students or their parents relating to the school to be set out in the Minister’s charter guidelines.</p>
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**Source:** L&RS is grateful to the Department of Education and Skills for providing an analysis of the impact of the Committee’s recommendations on the Bill.

As set out in the Table above, the first of the Committee’s recommendations proposes that the operation of the student and parent charter be kept under review to ensure it is having the desired effect. The Committee’s recommendation does not specify at what level this review should take place – whether review of the legislation at national level or review at school level. The Department’s comments about how this review process is to be implemented under the Bill locates it at school level.

## Differences between the General Scheme and the Bill

Also of relevance in considering the pre-legislative scrutiny of the General Scheme is that, although broadly similar, the Bill as published differs from the [General Scheme](#)<sup>18</sup> of the Bill in some ways. These include:

**The Role of Office of the Ombudsman for Children (OCO):** Head 6 of the General Scheme provided that ‘Schools must consider suggestions, guidance or recommendations made by the Ombudsman for Children’ and, related to this, that the Minister may give a direction to a school in this regard (and related matters re representations, compliance and so on).

Head 7 sought to amend the OCO’s powers to ensure it had the capacity to investigate in relation to functions included in the either the primary legislation or statutory guidelines.

The Department has made the following commentary on this change:

<sup>18</sup> General Scheme of the *Education (Parent and Student Charter) Bill* (as before).

**In relation to Head 6:** “During the formal drafting process, concerns arose in relation to how this provision had the effect of fundamentally changing how the Ombudsman for Children operates by compelling schools boards to consider any suggestions, guidance or recommendations rather than working to encourage schools to take actions to resolve a matter. It was considered that this approach was inconsistent with and would not fit with the general approach of the existing OCO legislation.

It should be noted that the Bill (new Section 27D to be inserted in the Education Act, 1998) provides for the Minister to issue a direction to a school board where the Minister is of the opinion that a board has failed, or is failing, in whole or in part, to prepare, publish or implement a charter in accordance with the legislation.

In addition, the existing Ombudsman for Children Act, 2002 already provides for the Ombudsman to issue a statement to the Minister for Education and Skills after conducting a formal investigation of a complaint about a school.”<sup>19</sup>

**In relation to Head 7:** “The aim of the provisions in Head 7 of the General Scheme have been retained in the Bill.

The Ombudsman for Children can investigate complaints in relation to the functions of a school. The functions of a school are set out in Section 9 of the Education Act, 1998.

The General Scheme proposed to amend the Ombudsman for Children Act 2002 to ensure that the scope of the Ombudsman for Children’s capacity to investigate included the new additional functions being placed on schools through the revised primary legislation and the statutory guidelines that will be published by the Minister in relation to a Student and Charter.

However, under the Bill an alternative drafting approach has been taken. Section 4 of the Bill provides for the amendment of Section 9 of the Education Act, 1998 by including two new functions of a school. One of these functions is to ensure the implementation of its charter. Under the Ombudsman for Children’s own legislation, it can investigate complaints in relation to the functions of a school.”<sup>20</sup>

### **Principles vs matters the Minister must regard**

The General Scheme set out principles on which the charters would be based. In contrast the Bill sets out ‘matters’ that the Minister must have regard to when preparing charter guidelines.

Some principles are largely reflecting in the drafting of the ‘matters’ e.g. in relation to and consulting and encouraging participation of students and parents. Some principles do not appear to be reflected explicitly in the ‘matters’ provided for in the Bill, e.g. the principles of “providing a safe environment” and “operating quality assurance.”

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<sup>19</sup> The Department of Education and Skills in correspondence with the Oireachtas Library & Research Service, 30 September 2019.

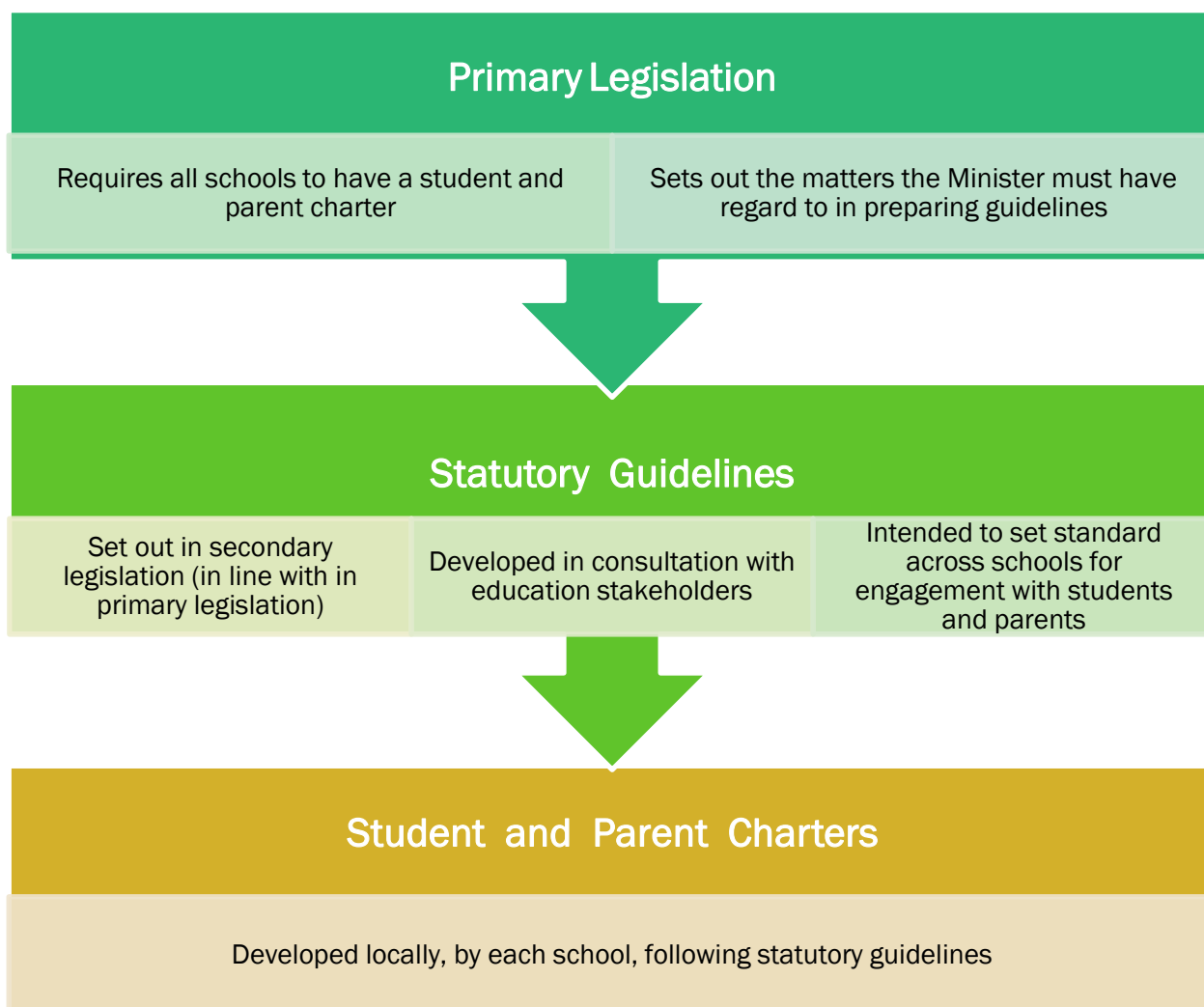
<sup>20</sup> The Department of Education and Skills in correspondence with the Oireachtas Library & Research Service, 30 September 2019.



## Principal provisions of the Bill

This section sets out in detail the principal provisions of the Bill. It commences with Figure 2, illustrating the proposed relationship between the primary legislation, the statutory guidelines and the student and parent charters.

**Figure 2: Proposed relationship and status of primary legislation, guidelines and student and parent charters**



**Source:** Prepared by L&RS based on the provisions of the Bill and statements by the Minister/Department.

### Section 1 – Definition

This section sets states that “Act of 1998” means the [Education Act 1998](#)

## Section 2 – Student and Parent Charter

The Bill proposes inserting new sections following section 27 of the Act of 1998.

### Section 27A – Student and parent charter

The proposed new Section 27A ‘Student and parent charter’ sets out that:

- A school board must (in accordance with charter guidelines published by the Minister), prepare, publish and implement a charter for students.

For the purposes of preparing the charter the **board must consult with a number of stakeholders** (see Figure 3 below).

The range of stakeholders identified in this section is reflective of the Minister for Education and Skills, Joe McHugh, TD’s comments that:

“The overall aim is to improve the level of engagement between schools and students and their parents by inviting feedback, common and observations from students and parents and by developing a listening culture in the school.”<sup>21</sup>

In addition, the inclusion of consultation with students in this and the next section (s.27B - which lists the groups the Minister must consult with prior to preparing guidelines) is in line with the overall children’s policy framework [Better Outcomes, Brighter Futures](#), which states that the Government recognises:<sup>22</sup>

- “ - Children and young people have a right to have a voice in decisions that affect them, both individually and collectively.
- The importance of children and young people having a voice in decisions made in their local communities, in their schools and in the wider formal and non-formal education system.”

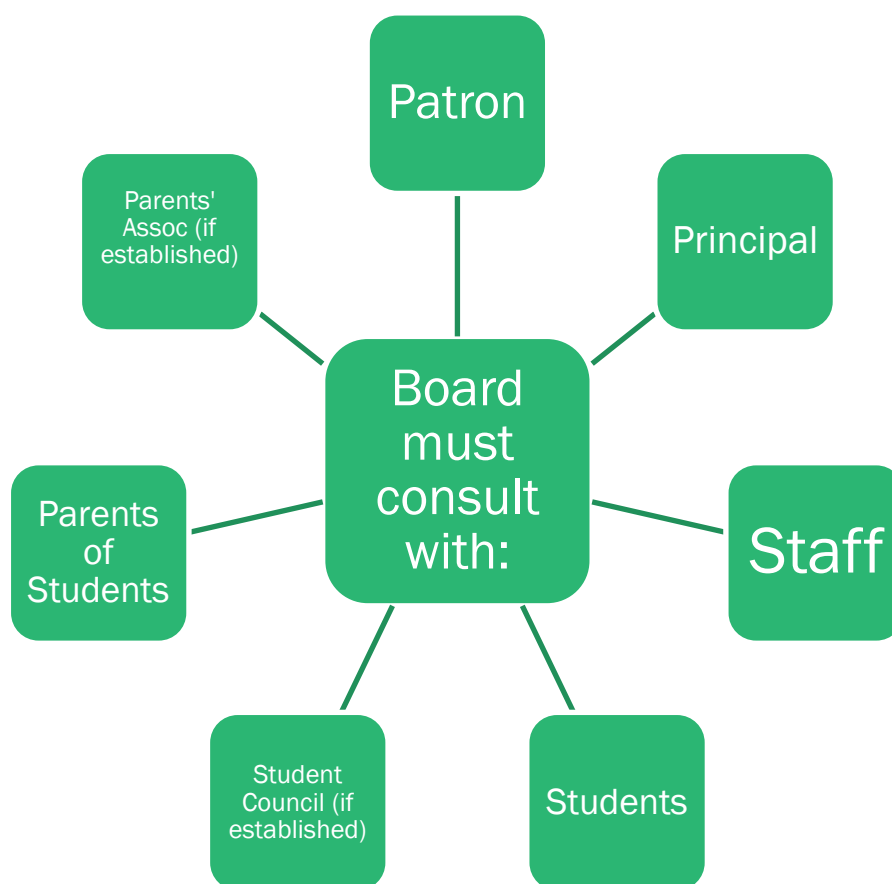
It also states that:

“True student participation, with real influence over strategic decision-making, has been shown to improve engagement and attainment, while also fostering important attributes such as social responsibility, cross-cultural sensitivity and emotional intelligence.”

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<sup>21</sup> Department of Education and Skills (2019) [Press release: Minister for Education and Skills publishes the Education \(Student and Parent Charter\) Bill 2019](#); 10 September 2019.

<sup>22</sup> Department of Children and Youth Affairs (2014) (as before).

**Figure 3: Persons the Board must consult with in preparing the charter**

- In addition to the above, any other persons as the Minister considers appropriate.
- Section 27A (3) provides that the charter must contain a statement by the board that the charter has been prepared in accordance with and complies with the charter guidelines.
- Content that is not in accordance with the guidelines will not be allowed.
- The board must review the charter and make any resulting necessary or appropriate revisions (in accordance with the charter guidelines).

The introduction of Student and Parent Charters has been welcomed by many stakeholders – among them the Teaching Council, Education and Training Boards Ireland, An Foras Pátrúnachta, the Muslim Primary Education Board, the Association of Secondary Teachers in Ireland, Educate Together and the Department of Expenditure and Reform. The Office of the Ombudsman for Children has stated:

“The implementation of Parent and Student Charters will see a cultural shift in how schools operate. The provisions...will see a move away from reacting to and dealing with grievances after they occur, schools will have to engage with parents and students in order to establish their views, to positively invite feedback to be open to concerns and negative comments.

The early identification of concerns will allow problems to be considered and dealt with by the school will minimize or avoid reliance on formal complaint procedures.”<sup>23</sup>

Some stakeholders were in favour of the introduction of charters in principle but had reservations about particular aspects or their implementation. For instance, the Catholic Primary Schools’ Management Association contended that the language used in the proposed legislation such as ‘power’, ‘to direct’ suggested that boards of management are currently doing something wrong.<sup>24</sup>

The Teachers’ Union of Ireland (TUI) thought the charter legislation worthy of consideration, however, noted that a charter ought to reflect a balance of the rights and responsibilities of all parties. Further to this, the TUI made the point that if the implementation imposed an additional administrative and/or legalistic burden on schools, the lack of capacity to discharge them would be counter-productive.<sup>25</sup>

In contrast, the Irish National Teachers’ Organisation was not in favour of the introduction of student and parent charters. They stated that there does not appear to be a “ground up” demand for charters and many schools will see the proposals as seeking to address “no known problem”.<sup>26</sup>

Barnardos offered another view – that there should be a single national standardised charter rather than one each developed for every school. It argued that:

“...it would be much stronger if this legislation established a National Parent and Student Charter, standardised across each school and holding each school to the same level of accountability, care and engagement. A standardised approach would ensure that each student in Ireland be entitled to equal representation and recourse...”<sup>27</sup>

The TUI also argued having each school draw up its own charter would be wasteful and would “...lead to inconsistency, contradiction and unfairness.”<sup>28</sup>

## Charter guidelines in the Bill

If the Bill is enacted, the student and parent charters will have to operate in accordance with national guidelines which will be published by the Minister.

### Section 27B – Charter guidelines

The proposed new section (s.27B) sets out that the Minister will make guidelines under the Act and provides for related matters.

- (1) Sets out that as soon as practicable after Section 2 comes into operation, the Minister must make guidelines (subject to the new Section 27C) in respect of:
  - a. The process by which a board must consult (with persons per Figure 3 above);
  - b. The title and content of the charter;
  - c. The form of the statement referred to in Section 27A(3);
  - d. The implementation of the charter;

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<sup>23</sup> See submission to Joint Committee on Education and Skills (2017) [as before](#).

<sup>24</sup> See submission to Joint Committee on Education and Skills (2017) [as before](#).

<sup>25</sup> See submission to Joint Committee on Education and Skills (2017) [as before](#).

<sup>26</sup> See submission to Joint Committee on Education and Skills (2017) [as before](#).

<sup>27</sup> See submission to Joint Committee on Education and Skills (2017) [as before](#).

<sup>28</sup> See submission to Joint Committee on Education and Skills (2017) [as before](#).

- e. The form and manner of the publication of a charter and any amendments following a review;
- f. The procedures (including consultation procedures already set out) for reviewing or amending a charter;
- g. And other matters considered necessary or appropriate by the Minister.

Section 27B (2) provides that before making the charter guidelines, the **Minister must consult** with a broad range of stakeholders (sometimes referred to as ‘education partners’<sup>29</sup>), see Figure 4 below.

**Figure 4: Parties the Minister must consult with prior to making charter guidelines**



- In addition to the above, the Minister must consult with ‘Other bodies’ including public bodies or other persons with knowledge of education and related matters, as the Minister considers appropriate. There is specific mention of persons with a “special interest” or

<sup>29</sup> See for example the *Regulatory Impact Analysis* of the Bill (as before).

experience of the education of students with special educational needs (proposed new Section 27B(2)(i))

The list of stakeholders the Minister must consult with includes “national bodies representative of student councils”. This group was not included in the General Scheme and its inclusion was called for by the Irish Second Level Students Union.<sup>30</sup>

The Teacher’s Council has stated that it expects to be consulted with under the category ‘any other body’, given “the crossover between section 28 of the Education Act and Section 42 of the Teaching Council Act” and said that because of this there was a “good case” for the Teaching Council being a named body in this part of the legislation.<sup>31</sup>

Section 27B (3) sets out that the guidelines in respect of the content of charters, may relate to:

- The procedures for schools consulting with students and their parents, including responding to comments and suggestions.
- Information on school plans and policies (other than admission policies) and activities of the school.
- Procedures for the preparation, review and updating of school plans and policies (not including admissions policy) and the development, review and updating of the activities of the school (27B(3)(c)(i) and (ii)).
- The procedures for providing information to students and parents about the school’s operation and performance.
- The procedures for providing information to students and parents about the school’s activities.
- Information on management systems and structures.
- Information on monies received by the school (including voluntary contributions made by the parents) and their expenditure (to include the manner in which that information is to be provided) (27B (3)(g)).
- Provision of information to students/parents on the school calendar, closures, timetables and the form and manner that information is to be provided.
- The procedures for dealing with grievances of students and their parents relating to the school.
- Information about the number and type of grievances dealt with by a school and related outcomes (based on aggregated data, that is anonymised – so that no individuals can be identified) (27B(3)(j)).
- Such other information as the Minister considers necessary or appropriate (27B(3)(k)).

Subsection 4 sets out that the guidelines may include **model charters**, and that these may differ for different categories of school. The purpose of such models would be to ensure consistency in the content of charters. It is possible that this may go some way towards alleviating concerns (raised by Barnardos, see above) to have a standardised approach.

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<sup>30</sup> See Joint Committee on Education and Skills (2017) [as before](#). (see stakeholder submissions)

<sup>31</sup> See Teaching Council’s submission to the Joint Committee on Education and Skills (2017) [as before](#)

Subsections 5, 6 and 7 state that the guidelines may contain different provisions for different categories of school or students, must be published in a manner the Minister considered appropriate (including on the internet) and may be reviewed and amended from time to time.

Subsections 8 and 9 provide for related technical matters and definitions.

### **Section 27C – Matters to which the Minister must have regard when preparing charter guidelines**

This section sets out that in making the guidelines the Minister will have regard to the need for a school to:

- a) Achieve, as far as practicable, within the available resources, the best possible educational and personal development outcomes for students.
- b) Foster and promote the relationship and spirit of partnership between the school and students and their parents.
- c) Foster and promote mutual respect in communications between the school and students and their parents.
- d) Ensure confidentiality in communications between the school and students/their parents (as appropriate).
- e) Promote the role of participation of parents in the education and personal development of students;
- f) Consult with and encourage participation and engagement of students (as appropriate to their age and experience) and their parents. And to respond to comments / suggestions made by students/parents in respect of developments of school plans and policies (but not admission policy) and school activities.
- g) Monitor and review the provision of education by the school to students. This includes consulting with and responding to comments/suggestions by students/parents for the purpose of assessing and improving provision.
- h) Foster and promote equality of access for students to, and participation in, education by seeking to reduce the costs of education to students / parents (as far as practicable).
- i) Address and resolve concerns of students/parents about the school at an early stage (as far as possible).
- j) Ensure that student/parent grievances are handled efficiently, effectively and fairly and, in an informal manner (as far as possible, and in keeping with principles of fair procedure).

### **Section 27D - Directions to board by Minister in relation to charters**

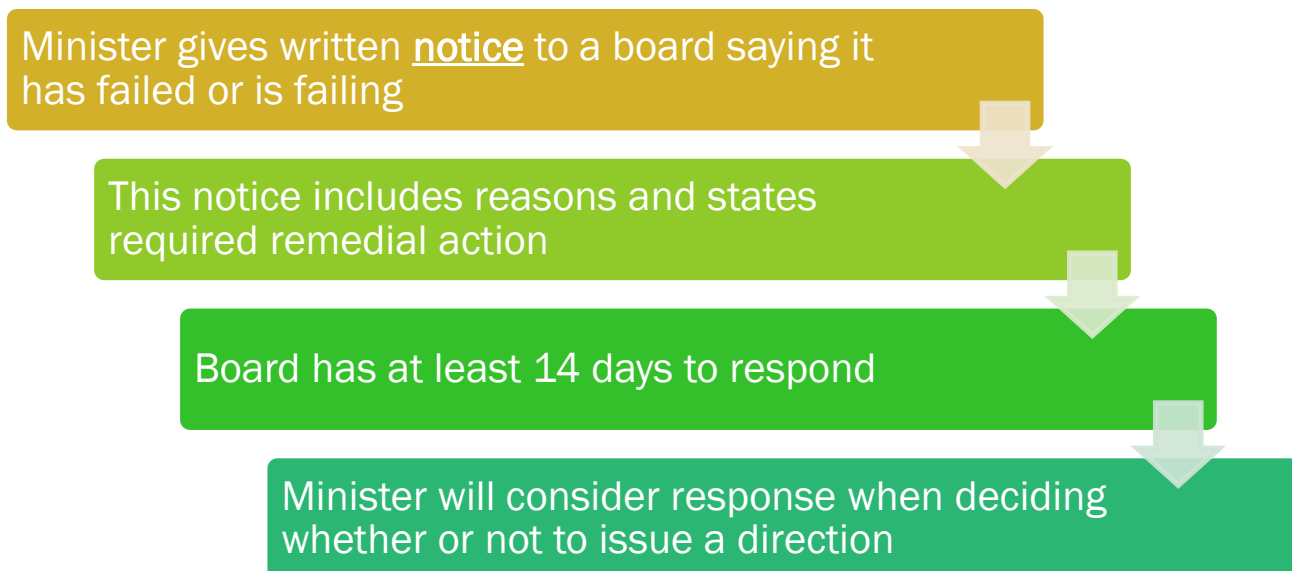
New s.27D subsection 1 proposes that subject to this section, the Minister may give a direction to a board, where the Minister:

- a) is of the opinion that the board has failed or is failing in whole or in part to comply with section 27A (i.e. compelling the board to put in place a charter and related matters).
- b) is satisfied that, given all the circumstances, other available procedures to resolve the failure have been exhausted and the order is needed or it is necessary or appropriate to give a direction.

Subsection 2 states that the Minister must inform the board and patron in writing before giving a direction.

Subsections 3 and 4 provide more information about what the notice will say and next steps (See Figure 5 below).

**Figure 5: Steps in relation to giving notice to a school board that the Minister proposes to give it a direction**



**Source:** Compiled by L&RS using text from s.2 *Education (Student and Parent Charter) Bill 2019*.

Subsection 5 sets out **details in relation to a direction** to the board. It provides that:

- A direction has to be given in writing and be addressed to the board concerned.
- The direction must state why the direction is being given and the remedial action required by the board.
- It must state the period within which the remedial action has to be taken (and any other matter the Minister considers necessary or appropriate).

A copy of the direction would have to be provided to the patron (after it is given and before it is published).

Subsection 6 provides that **a board must comply with a direction** given to it under this section.

The period for remedial action may be extended by the Minister (including if the patron or board ask, in writing, for an extension) (ss.8).

The following section provides that the Minister must **publish** a direction, including the name of the school, on the Department of Education and Skills website. This will happen within 14 days of the direction being given (ss.9).

The board has to confirm in writing that the direction has been complied with, as soon as is practicable after it has done so. Once the Minister is satisfied that a direction has been complied with, he or she will notify the board of this (in writing) and ensure the Department's website has a notice to this effect.

Both directions and notices are absolutely privileged and immune from legal proceedings under defamation law. This means that school boards / other parties can not take legal action for defamation against the Minister for issuing a notice or an order.



Stakeholder commentary on the giving of direction was mixed. The Joint Managerial Board<sup>32</sup> raised concerns about powers to give a direction, including the scope of the powers and their timing / interaction with existing complaints procedures (whether they would have to be exhausted).

However, the National Parents Council Primary, called the power to give a direction “vital”. It is also supported by the Special Needs Parents’ Association. This organisation also wanted some clarification on the detail of how the direction power would operate, stating that the relevant sections of the General Scheme were:

“...unclear as to who informs the Minister of failure on the part of the school? Is this through a formal notification by a parent or pupil or via school inspections?”

Further to this, some stakeholders raised the issue of sanctions for non-compliance with the legislation. The issuing and publishing of a direction is the only outcome for non-compliance. Barnardos stated that it does not believe this to be a sufficient penalty. While the Special Needs Parents’ Association, stated:

“The head [of the General Scheme] provides that the school complies with the directions of the Minister but does not set out sanctions for non-compliance with Ministerial directives.”

The National Association of Boards of Management of Special Education Schools asked if resources would be made available to schools to comply with a direction from the Minister.

### Section 3 – Amendment of section 2 of the Act of 1998

Section 3 seeks to make related amendments to s.2 of the Act of 1998, regarding the definition of the student and parent charter and charter guidelines.

### Section 4 - Amendment of s.9 of the Act of 1998 (Functions of a school)

This section to amend s.9 of the Act of 1998 (Functions of a School) to include involving students and their parents in the provision of education to students; and ensure implementation of charters.

### Section 5 - Amendment of s.20 of the Act of 1998 (Report and information)

Section 5 provides for a change to s.20 of the Act of 1998 (Report and information) to provide that the information must be provided, in accordance with charter guidelines, to **students and their parents** (at present the Act specifies parents only).

### Section 6 - Amendment of s.21 of the Act of 1998 (The school plan)

This section seeks to amend s.21 of the Act of 1998 (the school plan) by providing school plans are prepared in accordance with any applicable charter guidelines.

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<sup>32</sup> The Joint Managerial Body (JMB) is a decision-making and negotiating body for the management authorities of almost 380 Catholic and Protestant voluntary secondary schools.

## Section 7 - Amendment of s.27 of the Act of 1998 (Information to students/student council)

This section seeks to change [s.27](#) of the Act of 1998 (Information to students and student council) by:

- providing that parents also be provided with information under this section;
- providing that the charter guidelines would apply to the establishment and maintenance of procedures to provide information on the activities of the school;
- providing that a student council<sup>33</sup> must promote **the interests of the students** (rather than the interests of the school, as at present <sup>34</sup>).

In the pre-legislative scrutiny of the Bill, a number of stakeholders expressed their support for this proposed change in relation to the role of the student council to promote the interests of the students rather than the school itself. For instance, the Barnardos submission stated that: <sup>35</sup>

“Barnardos welcomes the sections of this Bill that places students’ interests at the very core of school life. In particular we welcome that the school must promote student involvement, and student councils will now be required to promote the interests of the students of a school rather than promoting the interests of the school itself. This is a positive amendment. It also recognises that at times the interests of students can and do differ from the interests of the school.

The needs and voices of students must be valued and they must be listened to. Ensuring schools are open to hearing their views and be open to feedback about their concerns will reduce complaints and create a more participatory and inclusive culture in the school which will benefit all.”

The National Parents’ Council (Primary) and the Irish Second Level Students’ Union also welcomed this provision, with the latter stating: <sup>36</sup>

“The interest of the students will be better served if the student council is supported to promote the interests of students”

However, the Irish Second Level Students’ Union also expressed concern that student councils can be dissolved by school boards of management, making the case that: <sup>37</sup>

“Unfortunately, in too many Irish second-level schools student councils are subject to the approval of the board of management, who are currently given the liberty of dissolving the student council in the Education Act.”

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<sup>34</sup> <http://www.irishstatutebook.ie/eli/1998/act/51/section/27/enacted/en/html#sec27>

<sup>35</sup> See Joint Committee on Education and Skills (2017) [as before](#). (see stakeholder submissions)

<sup>36</sup> See Joint Committee on Education and Skills (2017) [as before](#). (see stakeholder submissions)

<sup>37</sup> See Joint Committee on Education and Skills (2017) [as before](#). (see stakeholder submissions)

## Section 8 - Amendment of s.28 of the Act of 1998 (Grievances and other procedures)

As noted above, [s.28 of the Education Act 1998](#) provides that the Minister for Education and Skills, having consulted with stakeholders, could prescribe procedures for resolving grievances in schools. However, since this section of the Act was commenced in December 1999, no Minister has elected to prescribe procedures under this section.

Section 8 of the Bill seeks to replace s.28 of the Act 'Grievances and other procedures' with a new s.27 entitled 'Grievances' – which sets out the minimum areas that must be covered by grievance procedures published in accordance with Ministerial guidelines on charters.

Subsection 1 provides that grievance procedures will cover at least the following:

- a) The requirements that the school, and the student or parent concerned must comply with.
- b) The investigation of grievances – this being in keeping with the nature of the grievance, and can be informal (including mediation) or formal investigation, or by a combination of methods.
- c) The resolution of methods, again by informal or formal means.
- d) The giving of reasons for decisions in relation to grievances.
- e) The implementation of such decisions, including taking any remedial action required.

Subsection 2 allows that schools do not have to deal with grievances that it considers to be vexatious or frivolous.

Subsection 3 provides that the procedures referred to in the charter guidelines for dealing with grievances of students/parents will not apply to grievances about a board decision that has been appealed to the Secretary General of the Department (under [s.29 of the Act of 1998](#)). Such grievances may be in relation to a decision to exclude, suspend or refuse to enrol a student (or such other decision as the Minister may determine). In stakeholder commentary relevant to this section, the Teaching Council welcomed the possible use of a third party (in mediation) as a "useful step forward".<sup>38</sup> Some stakeholders (e.g. the National Association of Boards of Management in Special Education) raised questions about who would pay for mediation.<sup>39</sup>

## Section 9 - Amendment of s.42 of Teaching Council Act 2001

Section 9 seeks to change s.42 of the [Teaching Council Act 2001](#) to provide that an Investigating Committee will refuse to consider an appeal of a decision of the Director of the Teaching Council on the grounds that procedures for dealing with grievances set out in the school's charter have not been exhausted, save where there are good and sufficient reasons for considering the application or appeal notwithstanding.

The Explanatory Memorandum to the Bill states that this is a necessary and consequential amendment arising as the Teaching Council act references s.28 of the Act of 1998 which is this Bill seeks to amend.

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<sup>38</sup> See Joint Committee on Education and Skills (2017) [as before](#). (see stakeholder submissions)

<sup>39</sup> See Joint Committee on Education and Skills (2017) [as before](#). (see stakeholder submissions)

## Section 10 - Amendment of s.9 of *Ombudsman for Children Act 2002*

Section 10 seeks to change s.9 of the [Ombudsman for Children Act 2002](#) to allow that the Ombudsman for Children may investigate an action taken by or on behalf of a school in relation the performance of its functions (under s.9 of the 1998 Act) only where the procedures for dealing with grievances set out in a charter have been resorted to and exhausted in relation to the action.

## Section 11 - Short title and commencement

The final section of the Bill provides that the Act may be cited as the *Education (Student and Parent Charter) Act 2019*.

Different sections may be commenced on different days as appointed by the Minister.

The Act, apart from sections 9 and 10, may be cited collectively, with other education legislation, as the *Education Acts 1878 to 2019*.

## Financial and other implications

The [Explanatory and Financial Memorandum on the Bill](#) does not identify a major impact on the Exchequer to meet the costs of implementing the provisions of the Bill. It states:

“There will be no significant costs to the Exchequer arising from this Bill. Any relatively minor costs in relation to developing and publishing national guidelines on a Student and Parent Charter and any minor administration costs where the Minister may issue a direction to a School board will be met from within the Department of Education and Skill’s existing funding allocation.”<sup>40</sup>

However, stakeholders making submission as part of the pre-legislative scrutiny process argued that there would be resource implications for schools.

The Association of Secondary Teachers in Ireland (ASTI) highlighted their concerns around the capacity in schools to implement the proposed legislation. Likewise, the Teachers Union of Ireland (TUI) stressed that the functioning of schools was already: “...being suffocated by burgeoning administrative demands.”<sup>41</sup>

The TUI criticised the proposed legislation for allowing schools to draw up individual student and parent charters, stating that there is no need to: “reinvent the wheel.” and that this would be “...enormously wasteful of very scarce resources.”<sup>42</sup> The TUI representative told the Committee that:

“...the introduction of a new and expanded governance requirement under the charter means that significant additional funding will be required to provide training to school staff and boards of management.”<sup>43</sup>

In their submission to the Joint Committee on Education and Skills, the Catholic Primary Schools Management Association (CPSMA) stated:

“The preparation, operation and management of a Parent and Student Charter by a school will require supports, resources and training and CPSMA seeks confirmation from the DES that such supports, resources and training will be made available to Boards of Management and school staffs.”<sup>44</sup>

Education and Training Boards Ireland also expressed concern about the introduction of charters without resources to assist in implementation, stating:

“It is ETBI’s firm view that it would not be appropriate for yet another policy / set of standards to be given to schools for implementation without any additional resources/supports to ensure that policy/set of standards can be adhered to/met by the school and school personnel...We cannot continue to overburden school management to the point where scarce resources are diverted from the core work of the school (teaching,

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<sup>40</sup> [Explanatory and Financial Memorandum - Education \(Student and Parent Charter\) Bill 2019](#)

<sup>41</sup> Ms Joanne Irwin, TUI, in evidence before the Joint Committee on Education and Skills, 21 May 2017. [https://www.oireachtas.ie/en/debates/debate/joint\\_committee\\_on\\_education\\_and\\_skills/2017-03-21/2/](https://www.oireachtas.ie/en/debates/debate/joint_committee_on_education_and_skills/2017-03-21/2/)

<sup>42</sup> Ms Joanne Irwin appearing before the Joint Committee on Education and Skills (as before).

<sup>43</sup> Ms Joanne Irwin appearing before the Joint Committee on Education and Skills (as before).

<sup>44</sup> Catholic Primary Schools Management Association (CPSMA) (2017) Submission to the Joint Committee on Education and Skills

learning, and student welfare) to policy development and the detailed documenting of compliance.”<sup>45</sup>

More specifically, Section 8 of the Bill refers to grievance resolution that may include mediation. The CPSMA has asked the Department to confirm that resources for mediation would be provided, as “... Boards of Management do not have the resources to pay for such mediation facilities.”<sup>46</sup>

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<sup>45</sup> See ETBI submission to the Joint Committee on Education and Skills (2017) [as before](#). (see stakeholder submissions)

<sup>46</sup> Catholic Primary Schools Management Association (CPSMA) (2017) as before.





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