



Number 30 of 2004

EDUCATION FOR PERSONS WITH SPECIAL EDUCATIONAL NEEDS ACT 2004

REVISED

Updated to 2 October 2017

This Revised Act is an administrative consolidation of the *Education for Persons with Special Educational Needs Act 2004*. It is prepared by the Law Reform Commission in accordance with its function under the *Law Reform Commission Act 1975 (3/1975)* to keep the law under review and to undertake revision and consolidation of statute law.

All Acts up to and including *Mediation Act 2017 (27/2017)*, enacted 2 October 2017, and all statutory instruments up to and including *Appointment of Special Adviser (Taoiseach) Order 2017 (S.I. No. 434 of 2017)*, made 3 October 2017, were considered in the preparation of this Revised Act.

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Introduction

This Revised Act presents the text of the Act as it has been amended since enactment, and preserves the format in which it was passed.

Related legislation

None.

Annotations

This Revised Act is annotated and includes textual and non-textual amendments, statutory instruments made pursuant to the Act and previous affecting provisions.

An explanation of how to read annotations is available at www.lawreform.ie/annotations.

Material not updated in this revision

Where other legislation is amended by this Act, those amendments may have been superseded by other amendments in other legislation, or the amended legislation may have been repealed or revoked. This information is not represented in this revision but will be reflected in a revision of the amended legislation if one is available.

Where legislation or a fragment of legislation is referred to in annotations, changes to this legislation or fragment may not be reflected in this revision but will be reflected in a revision of the legislation referred to if one is available.

A list of legislative changes to any Act, and to statutory instruments from 1993, may be found linked from the page of the Act or statutory instrument at www.irishstatutebook.ie.

Acts which affect or previously affected this revision

- *Education (Miscellaneous Provisions) Act 2007 (9/2007)*
- *Health Act 2004 (42/2004)*

All Acts up to and including *Mediation Act 2017* (27/2017), enacted 2 October 2017, were considered in the preparation of this revision.

Statutory instruments which affect or previously affected this revision

- *Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 418 of 2011)
- *Education for Persons with Special Educational Needs Act 2004 (Commencement) (No. 2) Order 2005* (S.I. No. 636 of 2005)
- *Education for Persons with Special Educational Needs Act 2004 (Establishment Day) (Section 36) Order 2005* (S.I. No. 509 of 2005)
- *Education for Persons with Special Educational Needs Act 2004 (Establishment Day) (Section 19) Order 2005* (S.I. No. 508 of 2005)
- *Education for Persons with Special Educational Needs Act 2004 (Commencement) Order 2005* (S.I. No. 507 of 2005)

All statutory instruments up to and including *Appointment of Special Adviser (Taoiseach) Order 2017* (S.I. No. 434 of 2017), made 3 October 2017, were considered in the preparation of this revision.



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SCHEDULE 1

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SCHEDULE 2

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Comhairle Act 2000	2000, No. 1
Companies Acts 1963 to 2001	

[No. 30.] *Education for Persons with Special Educational Needs Act 2004* [2004.]

Comptroller and Auditor General (Amendment) Act 1993	1993, No. 8
Education Act 1998	1998, No. 51
Health Act 1970	1970, No. 7



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AN ACT TO MAKE FURTHER PROVISION, HAVING REGARD TO THE COMMON GOOD AND IN A MANNER THAT IS INFORMED BY BEST INTERNATIONAL PRACTICE, FOR THE EDUCATION OF PEOPLE WITH SPECIAL EDUCATIONAL NEEDS, TO PROVIDE THAT THE EDUCATION OF PEOPLE WITH SUCH NEEDS SHALL, WHEREVER POSSIBLE, TAKE PLACE IN AN INCLUSIVE ENVIRONMENT WITH THOSE WHO DO NOT HAVE SUCH NEEDS, TO PROVIDE THAT PEOPLE WITH SPECIAL EDUCATIONAL NEEDS SHALL HAVE THE SAME RIGHT TO AVAIL OF, AND BENEFIT FROM, APPROPRIATE EDUCATION AS DO THEIR PEERS WHO DO NOT HAVE SUCH NEEDS, TO ASSIST CHILDREN WITH SPECIAL EDUCATIONAL NEEDS TO LEAVE SCHOOL WITH THE SKILLS NECESSARY TO PARTICIPATE, TO THE LEVEL OF THEIR CAPACITY, IN AN INCLUSIVE WAY IN THE SOCIAL AND ECONOMIC ACTIVITIES OF SOCIETY AND TO LIVE INDEPENDENT AND FULFILLED LIVES, TO PROVIDE FOR THE GREATER INVOLVEMENT OF PARENTS OF CHILDREN WITH SPECIAL EDUCATIONAL NEEDS IN THE EDUCATION OF THEIR CHILDREN, FOR THOSE PURPOSES TO ESTABLISH A BODY TO BE KNOWN AS THE NATIONAL COUNCIL FOR SPECIAL EDUCATION AND TO DEFINE ITS FUNCTIONS, TO CONFER CERTAIN FUNCTIONS ON HEALTH BOARDS IN RELATION TO THE EDUCATION OF PEOPLE WITH SPECIAL EDUCATIONAL NEEDS, TO ENABLE CERTAIN DECISIONS MADE IN RELATION TO THE EDUCATION OF PEOPLE WITH SUCH NEEDS TO BE THE SUBJECT OF AN APPEAL TO AN APPEALS BOARD AND TO PROVIDE FOR RELATED MATTERS. [19th July 2004]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Annotations

Modifications (not altering text):

- C1** Functions transferred and references to “Department of Finance” and “Minister for Finance” construed (29.07.2011) by *Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 418 of 2011), arts. 2, 3, 5 and sch. 1 part 2, in effect as per art. 1(2), subject to transitional provisions in arts. 6-9.
2. (1) The administration and business in connection with the performance of any functions transferred by this Order are transferred to the Department of Public Expenditure and Reform.
- (2) References to the Department of Finance contained in any Act or instrument made thereunder and relating to the administration and business transferred by paragraph (1) shall, on and after the commencement of this Order, be construed as references to the Department of Public Expenditure and Reform.
3. The functions conferred on the Minister for Finance by or under the provisions of —
- (a) the enactments specified in Schedule 1, and

(b) the statutory instruments specified in Schedule 2,
are transferred to the Minister for Public Expenditure and Reform.

...

5. References to the Minister for Finance contained in any Act or instrument under an Act and relating to any functions transferred by this Order shall, from the commencement of this Order, be construed as references to the Minister for Public Expenditure and Reform.

...

Schedule 1
Enactments

...

Part 2
1922 to 2011 Enactments

Number and Year (1)	Short Title (2)	Provision (3)
...
No. 30 of 2004	Education for Persons with Special Educational Needs Act 2004	Sections 13, 19(2), 22(8), 28(9), 36(10) and (11) and 43
...

C2 Functions transferred and functional areas dissolved (1.01.2005) by *Health Act 2004* (42/2004), ss. 59, 67, and sch. 3 item 31, S.I. No. 887 of 2004.

Transfer of functions of specified bodies to Executive.

59.—(1) The functions that, immediately before the establishment day, were the functions of a specified body under or in connection with the enactments referred to in *Schedule 3* are, by this Act, transferred to the Executive on that day.

(2) If a provision of an enactment referred to in *Schedule 3*, or a provision of an instrument made under such enactment, does not come into effect until on or after the establishment day, a function that on the passing of that enactment or the making of that instrument was assigned under or in connection with that provision to a specified body is, by this Act, transferred to the Executive on the commencement of that provision.

(3) The functions transferred by this Act to the Executive include the functions specified in any enactment referred to in *Schedule 3* as a function of the following:

- (a) the chief executive officer of a health board;
- (b) the Regional Chief Executive of the Eastern Regional Health Authority;
- (c) the area chief executive of an Area Health Board.

(4) This section does not apply in relation to the functions of the Hospital Bodies Administrative Bureau.

...

Functional areas of dissolved health boards.

67.—(1) An area that before the establishment day was a functional area of—

- (a) a health board,
- (b) the Eastern Regional Health Authority, or
- (c) an Area Health Board,

becomes on that day a functional area of the Executive with the same geographical boundaries as it had before that day.

(2) References (however expressed) in any enactment referred to in *Schedule 3* to a functional area of a health board, the Eastern Regional Health Authority or an Area Health Board are on and after the establishment day to be read as references to—

(a) the corresponding functional area of the Executive or that area as redefined in accordance with this section, or

(b) if the context so requires, the area comprising all of the corresponding functional areas of the Executive or comprising all of those areas as redefined in accordance with this section.

(3) Subject to *subsection (4)* and section 15(2)(a) of the Civil Registration Act 2004, the Executive may, by notice published in *Iris Oifigiúil*, redefine for any purpose specified by it in the notice the geographical boundaries of a functional area of the Executive.

(4) If the Executive proposes to redefine the geographical boundaries of a functional area for the purpose of any function that is the subject of an agreement under *section 8* with a public authority, the Executive shall consult that public authority before redefining those boundaries.

...

SCHEDULE 3

TRANSFER OF FUNCTIONS AND REFERENCES TO FUNCTIONAL AREAS

Section 59 and *67*.

...

31. Education for Persons with Special Educational Needs Act 2004

...

Interpretation.

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

“Act of 1998” means the Education Act 1998;

“Appeals Board” shall be construed in accordance with *section 36*;

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

“Council” shall be construed in accordance with *section 19*;

“education plan” shall be construed in accordance with *section 3* or *8*, as appropriate;

F1[...]

“Minister” means the Minister for Education and Science;

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

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

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

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

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

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

“school” means a recognised school (within the meaning of the Act of 1998);

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

“special educational needs” means, in relation to a person, a restriction in the capacity of the person to participate in and benefit from education on account of an enduring physical, sensory, mental health or learning disability, or any other condition which results in a person learning differently from a person without that condition and cognate words shall be construed accordingly;

“special educational needs organiser” shall be construed in accordance with *section 26*;

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

“team” shall be construed in accordance with *section 8, 9 or 11* as appropriate;

“voluntary body” has the same meaning as it has in the Comhairle Act 2000.

(2) In this Act—

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

Annotations

Amendments:

- F1** Deleted (1.01.2005) by *Health Act 2004 (42/2004)*, s. 75 and sch. 7, part 14, item 1, S.I. No. 887 of 2004.

Inclusive education.

2.—A child with special educational needs shall be educated in an inclusive environment with children who do not have such needs unless the nature or degree of those needs of the child is such that to do so would be inconsistent with—

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

Preparation of education plan by school (including steps preliminary to such preparation).

3.—(1) *Subsection (2)* applies where the principal of a school—

- (a) having been notified by the parents of a student in the school that they are of the opinion referred to in this paragraph and been requested by them to take the measures specified in *subsection (2)*, considers that opinion to be well founded, namely, an opinion that the student is not benefiting from the education programme provided in the school to children who do not have special educational needs to the extent that would be expected of the student, or
- (b) otherwise forms such an opinion in respect of a student in the school.

(2) Where this subsection applies, the principal of the school shall take such measures as are practicable to meet the educational needs of the student concerned.

(3) Where the principal of a school, having taken the measures referred to in *subsection (2)*, is of the opinion that the student concerned is still not benefiting from the education programme provided in the school and that his or her difficulty in doing so may arise from his or her having special educational needs, the principal, after consultation with the parents of the student, shall, subject to *subsection (6)*, arrange for an assessment of the student to be carried out.

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

- (a) commenced as soon as practicable, and in any case not later than 1 month, after the principal has reached the opinion referred to in that subsection,
- (b) completed as soon as practicable, and in any case not later than 3 months, after the principal has reached that opinion, and
- (c) carried out in accordance with such guidelines relating to persons who are to carry out assessments under this section and the form that those assessments are to take as may be issued from time to time by the Council,

and references in this section to the carrying out of such an assessment include references to the preparation of a statement of the findings in relation to the assessment.

(5) Where an assessment carried out in accordance with *subsection (4)* establishes that the student concerned has special educational needs the principal shall, subject to *subsection (11)*, within 1 month from the receipt by him or her of the assessment, cause a plan to be prepared for the appropriate education of the student (in this Act referred to as an “education plan”).

(6) Where the principal of a school is of the opinion, having regard to any guidelines that may be issued by the Council from time to time under *subsection (8)*, that the arrangement of an assessment under *subsection (3)* of a student is not practicable he or she shall request the Council to arrange for an assessment of the student under *section 4*.

(7) If the Council accedes to a request under *subsection (6)*, *section 4*, with the necessary modifications, and *section 5* shall apply accordingly.

(8) The Council may from time to time issue guidelines to principals of schools as to the matters they shall have regard to before forming an opinion of the kind referred to in *subsection (6)*.

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

- (a) the parents of the child, the special educational needs organiser with responsibility for the school concerned and such other persons as the principal considers appropriate are consulted and, in the case of the parents of the child, their involvement in the preparation is facilitated, and
- (b) guidelines for the time being in force under *section 9(3)* are complied with unless he or she decides, with the consent of that special educational needs organiser, that there are good and substantial reasons for their not being complied with.

(10) Immediately after an educational plan has been prepared under *subsection (5)* the principal of the school shall furnish to the parents of the child concerned and the special educational needs organiser with responsibility for the school a notice in writing of that fact, together with a copy of the plan.

(11) Where the principal of a school is of the opinion that—

- (a) having regard to the nature and extent of a child's special educational needs as established by an assessment under this section, the preparation of an education plan under *subsection (5)* in accordance with the guidelines for the time being in force under *section 9(3)* will not meet the child's special educational needs, or
- (b) whether the opinion is formed in consequence of a review under *section 11* or otherwise, an education plan prepared under *subsection (5)* in respect of a child is not meeting those needs of the child and the taking of any steps by a special educational needs organiser under *section 11* on foot of any report by the principal under *subsection (3)* of that section is unlikely to result in those needs being met,

the principal shall request the Council to prepare an education plan under *section 8* in respect of the child.

(12) If the Council accedes to a request under *subsection (11)*, then *subsections (3) to (5) of section 8* shall apply and, in the case of *paragraph (b) of subsection (11)*, the education plan prepared by the Council under *section 8* shall supersede the education plan referred to in that paragraph.

(13) If the Council refuses to accede to a request under *subsection (6) or (11)*, then the principal, or the parents of the child concerned, may appeal against that refusal to the Appeals Board.

(14) On the hearing of an appeal under *subsection (13)*, the Appeals Board may—

- (a) allow the appeal and give a direction to the Council requiring it, as appropriate, to—
 - (i) arrange for an assessment of the child concerned to be carried out under *section 4*, or
 - (ii) cause to be prepared an education plan in respect of the child concerned under *section 8*,

or

- (b) dismiss the appeal.

(15) The Council shall comply with a direction given to it under *subsection (14)*.

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

4.—(1) Where the F2[Health Service Executive] is of the opinion that a child who is not a student has or may have special educational needs it shall cause an assessment under this section of that child to be carried out.

(2) Where the Council is of the opinion that a child who is a student has or may have special educational needs it shall, unless an assessment under *section 3* of the child is being or has been carried out, cause an assessment under this section of that child to be carried out.

(3) Where the parents of a child are of the opinion that the child has or may have special educational needs they may request—

- (a) the relevant F2[Health Service Executive], or
- (b) in the case of a child who is a student, the Council,

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

(4) Subject to *subsection (5)*, within 1 month from the receipt of a request under *subsection (3)*, the F3[Health Service Executive] or the Council shall cause the assessment to be commenced and thereafter to be completed without undue delay.

(5) F4[**The Health Service Executive**] or the Council may refuse to accede to a request under *subsection (3)* if—

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

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

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

(7) If F5[**the Health Service Executive**] or the Council refuses to accede to a request under *subsection (3)* the parents of the child concerned may appeal against that refusal to the Appeals Board; such an appeal shall be determined by the Appeals Board within 6 weeks from the date that it receives the appeal.

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

(a) allow the appeal and direct the F6[**Health Service Executive**] or the Council, as the case may be, to cause to be carried out an assessment under this section of the child, or

(b) dismiss the appeal.

Annotations

Amendments:

F2 Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, part 14, item 2(a), S.I. No. 887 of 2004.

F3 Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, part 14, item 2(b), S.I. No. 887 of 2004.

F4 Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, part 14, item 2(c), S.I. No. 887 of 2004.

F5 Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, part 14, item 2(d), S.I. No. 887 of 2004.

F6 Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, part 14, item 2(e), S.I. No. 887 of 2004.

Mode of assessment under *section 3* or *4*.

5.—(1) An assessment under *section 4* shall be carried out with the assistance of persons possessing such expertise and qualifications as F7[**the Health Service Executive**] or the Council considers appropriate; those persons may, in the discretion of F7[**the Health Service Executive**] or the Council, include one or more of the following:

(a) a psychologist;

(b) a medical practitioner;

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

(d) an appropriately qualified social worker; and

(e) a therapist who is suitably qualified to provide support services in respect of the special educational needs of the child.

(2) F8[The Health Service Executive], the Council or a principal, as appropriate, shall facilitate, in a manner that is consistent with the assessment being carried out effectively, the participation by the parents of the child concerned in the carrying out of an assessment under *section 3* or *4*.

(3) Before causing an assessment under *section 4* (other than pursuant to a request under *subsection (3)* of that section) to be carried out, the F9[Health Service Executive] or the Council shall give notice in writing to the parents of the child of the intention to do so and the reasons therefor and, subject to *subsection (4)*, shall not cause the assessment to be carried out without the consent in writing of the parents.

(4) Where the parent of a child fails or refuses to give his or her consent, within such period as may be specified by the F9[Health Service Executive] or the Council, to the carrying out of an assessment under *section 4* to which *subsection (3)* applies, the F9[Health Service Executive] or the Council, as the case may be, may apply to the Circuit Court for an order dispensing with the requirement under *subsection (3)* for the parent's consent and the Circuit Court may, on the hearing of the application, make such an order if it considers it in the best interests of the child to do so.

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

(6) In carrying out an assessment under *section 4*, the F9[Health Service Executive] or the Council, as appropriate, shall have regard to any relevant assessment of the child concerned that is available to it at that time.

(7) A statement of the findings in relation to an assessment that has been carried out under *section 4* and any relevant documents relating to that assessment shall be made available immediately to the parents of the child concerned after that statement has been prepared.

(8) F10[The Health Service Executive] or the Council, as the case may be, shall make available all or part of that statement to such persons engaged in the education of the child as it considers appropriate, having regard to the need to ensure that such persons are informed of the child's educational needs; the parents of the child shall be informed by F10[the Health Service Executive] or the Council of the fact of its having so made available all or part of that statement, and of the identity of the person or persons to whom it has been made available, as soon as may be after it has done so.

(9) An application under *subsection (4)* to the Circuit Court shall be made to the judge of the Circuit Court for the circuit in which the child concerned resides.

Annotations

Amendments:

- F7** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, part 14, item 3(a), S.I. No. 887 of 2004.
- F8** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, part 14, item 3(b), S.I. No. 887 of 2004.
- F9** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, part 14, item 3(c), S.I. No. 887 of 2004.
- F10** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, part 14, item 3(d), S.I. No. 887 of 2004.

Appeals in relation to assessments.

6.—(1) Parents may, in respect of their child, appeal to the Appeals Board against an assessment made under *section 3* or *4* in relation to the child on the ground that it was not carried out in a manner which conforms with the standards determined under *section 5(5)*.

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

(a) allow the appeal and give such direction as it considers appropriate to the principal, the F11[Health Service Executive] or the Council, as appropriate, (which may include a direction requiring a fresh assessment under *section 3* or *4* to be carried out in relation to the child), or

(b) dismiss the appeal.

(3) A principal of a school, F12[the Health Service Executive] or the Council shall comply with a direction given to him or her or it under *subsection (2)*.

Annotations

Amendments:

F11 Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, part 14, item 4(a), S.I. No. 887 of 2004.

F12 Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, part 14, item 4(b), S.I. No. 887 of 2004.

Provision of services.

7.—(1) In the case of a child who is not a student, the F13[Health Service Executive] shall, subject to *subsection (2)*, provide to the child such of the services identified in the assessment carried out under *section 4* in relation to the child as are necessary to enable him or her to participate in and benefit from education.

(2) Where, in performing its functions under *subsection (1)*, F14[the Health Service Executive] is of the opinion that particular services can most effectively be provided for by the Council, it shall inform the Council of that opinion by notice in writing and, upon being so informed, the Council shall, subject to *subsection (5)*, provide those services to the child concerned.

(3) In the case of a child who is a student the Council shall, subject to *subsection (4)*, ensure that there are provided to him or her such of the services identified in the education plan prepared in relation to the child as are necessary to enable him or her to participate in and benefit from education.

(4) Where, in performing its functions under *subsection (3)*, the Council is of the opinion that particular services can most effectively be provided for by the F15[Health Service Executive], it shall inform the F15[Health Service Executive] of that opinion by notice in writing and, upon being so informed, the F15[Health Service Executive] shall, subject to *subsection (5)*, provide those services in respect of the child concerned.

(5) If a dispute arises between the Council and F16[the Health Service Executive] as to which of them can more effectively provide particular services identified as being required in respect of a child by an assessment or an education plan, as appropriate, the dispute shall, within 2 months from the dispute arising, be referred by either or both of them to the Appeals Board for its determination (and which determination shall be made within 2 months from its referral) and, on the hearing of the reference, the Appeals Board shall determine which of them shall provide those services and give a direction to the Council or F16[the Health Service Executive], as the case may be, to that effect accordingly.

(6) The Council or the F17[Health Service Executive] shall comply with a direction given to it under *subsection (5)*.

(7) The provision of services under *subsection (1) or (3)* by F18[the Health Service Executive] or the Council shall be made as soon as practicable after the completion of the assessment or, as the case may be, the preparation of the education plan in respect of the child concerned.

(8) The fact that—

(a) an appeal against an assessment under *section 6* or an appeal under *section 12* in relation to an education plan is made, or

(b) a dispute is referred under *subsection (5)*,

shall not, during the period pending its determination, absolve the Council or F18[the Health Service Executive] (or both) of the duty of providing such of the services to the child concerned as are, irrespective of the outcome of the determination of the appeal or dispute, required by this section to be provided to him or her.

Annotations

Amendments:

F13 Substituted (1.01.2005) by *Health Act 2004 (42/2004)*, s. 75 and sch. 7, part 14, item 5(a), S.I. No. 887 of 2004.

F14 Substituted (1.01.2005) by *Health Act 2004 (42/2004)*, s. 75 and sch. 7, part 14, item 5(b), S.I. No. 887 of 2004.

F15 Substituted (1.01.2005) by *Health Act 2004 (42/2004)*, s. 75 and sch. 7, part 14, item 5(c), S.I. No. 887 of 2004.

F16 Substituted (1.01.2005) by *Health Act 2004 (42/2004)*, s. 75 and sch. 7, part 14, item 5(d), S.I. No. 887 of 2004.

F17 Substituted (1.01.2005) by *Health Act 2004 (42/2004)*, s. 75 and sch. 7, part 14, item 5(e), S.I. No. 887 of 2004.

F18 Substituted (1.01.2005) by *Health Act 2004 (42/2004)*, s. 75 and sch. 7, part 14, item 5(f), S.I. No. 887 of 2004.

Preparation of education plan at direction of Council.

8.—(1) The Council upon being informed by F19[the Health Service Executive] or the principal of a relevant school that a child has special educational needs, shall, unless an education plan has been or is being prepared under *section 3* in respect of the child, direct the relevant special educational needs organiser to cause to be prepared a plan for the appropriate education of the child (in this Act also referred to as an “education plan”).

(2) The preparation of an education plan under this section shall commence not later than 1 month from the direction concerned referred to in *subsection (1)* being given and be completed without undue delay and, in any case, not later than 2 months from its being commenced.

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

(4) A team shall include, subject to *subsection (6)*, the parents of the child concerned and the principal of the relevant school, or a teacher of that school nominated by

that principal to be a member of the team, and may include one or more of the following—

- (a) the child where this is considered appropriate by the special educational needs organiser having regard to the age of the child and the nature and extent of the child's special educational needs.
- (b) a psychologist employed by the Minister or the National Educational Psychological Service, or a person determined by the special educational needs organiser to have sufficient expertise in psychology and nominated, as the case may be, by the Minister, the said service or the organiser to be a member of the team, and
- (c) any other person whom the parents or the special educational needs organiser consider appropriate and nominate to be a member of the team, being a person who holds a qualification granted or awarded by a professional body, which qualification—
 - (i) relates to the education of children with special educational needs, and
 - (ii) stands recognised for the purposes of this paragraph by the Council.

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

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

(7) In this section—

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

“relevant special educational needs organiser” means the special educational needs organiser with responsibility for the area in which the relevant school is situated or, as the case may be, for the particular category of school designated pursuant to *section 26(5)* into which the relevant school falls.

Annotations

Amendments:

- F19** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, part 14, item 6, S.I. No. 887 of 2004.

Content of
education plan.

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

(2) The matters to be specified in an education plan under *section 3* or *8* shall include—

- (a) the nature and degree of the child's abilities, skills and talents;
- (b) the nature and degree of the child's special educational needs and how those needs affect his or her educational development;
- (c) the present level of educational performance of the child;
- (d) the special educational needs of the child;

- (e) the special education and related support services to be provided to the child to enable the child to benefit from education and to participate in the life of the school;
- (f) where appropriate, the special education and related services to be provided to the child to enable the child to effectively make the transition from pre-school education to primary school education;
- (g) where appropriate, the special education and related support services to be provided to the child to enable the child to effectively make the transition from primary school education to post-primary school education, and
- (h) the goals which the child is to achieve over a period not exceeding 12 months.

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

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

(5) The Council, in preparing or amending guidelines under *subsection (3)*, shall do so in accordance with the policy for the time being of the Minister in relation to the education of children with special educational needs.

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

(7) The principal of the school concerned shall implement an education plan and, for the purpose of preparing and implementing that plan, that school shall be provided with the necessary moneys and support services in accordance with *section 13*.

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

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

(9) Where it is proposed to amend a child's education plan pursuant to *subsection (8)(b)*, the principal of the school to which the child is to be transferred shall inform the parents of the child of the proposed amendment and they may request that that principal consult with the relevant special educational needs organiser and that principal shall comply with that request.

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

Designation of school.

10.—(1) The Council may—

(a) of its own volition, or

(b) at the request of the parents of a child in respect of whom an education plan has been prepared under *section 8(1)*,

designate the school which a child with special educational needs or, in the case of request under *paragraph (b)*, the child referred to in that paragraph is to attend for the time being and that school shall admit the child as a student upon being directed by the Council to do so.

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

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

(a) that designation, or

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

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

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

(b) dismiss the appeal.

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

(6) If the Council fails or refuses to make a designation under *subsection (1)* at the request of parents under *paragraph (b)* of that subsection or fails or refuses to make such a designation of a particular school specified in their request (if such has been specified), the parents may appeal to the Appeals Board against that failure or refusal.

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

(a) allow the appeal and give a direction to the Council requiring it to designate under *subsection (1)* a school or, as the Appeals Board thinks appropriate, the particular school specified in the request, or

(b) dismiss the appeal.

(8) If the subject of an appeal under *subsection (6)* is whether a particular school specified in a request of parents should be designated, the Appeals Board shall cause the board of management of that school to be made a notice party to the appeal and that board shall have the right to make submissions to the Appeals Board in relation to the matter (and *subsection (5)* shall apply for this purpose as it applies for the purposes of an appeal under *subsection (3)*); for the purposes of such an appeal the Appeals Board shall require the Council to indicate whether it would, if it were to designate the particular school concerned, make a recommendation of the kind referred to in *subsection (2)* and if it indicates that it would make such a recommendation, to specify the nature of it.

(9) The Appeals Board shall hear and determine an appeal made under *subsection (3) or (6)* within 2 months from the making thereof.

(10) The Council shall comply with a direction given to it under this section.

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

Annotations

Modifications (not altering text):

- C3** Prospective affecting provision: application of section potentially restricted by *Education Act 1998* (51/1998), s. 29(14), as inserted by *Education (Miscellaneous Provisions) Act 2007* (9/2007), s. 4(d), not commenced as of date of revision.

Appeals to Secretary General.

29.—(1) ...

[(14) If, in the circumstances of the particular matter, an issue relating to the refusal of a particular school to enrol a student or the exclusion by a particular school of a student from it would (if this subsection had not been enacted) be capable of—

(a) being the subject of an appeal under this section, and

(b) being, in substance, contested in an appeal under section 10 of the Education for Persons with Special Educational Needs Act 2004,

then, in those circumstances, an appeal may be made by a person under one or other of those sections (being whichever of them the person proposing to appeal opts for) but not both of those sections.]

...

Review of education plan.

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

(a) for the purpose of establishing whether or not the child concerned has received the services required as contained in the education plan and is achieving the goals specified in the education plan, and

(b) with a view to making recommendations in a report under *subsection (2)*, being recommendations for the amendment of the plan and the purposes of which are to assist the child concerned in achieving any of those goals that he or she is not achieving.

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

(3) Where, as a result of his or her consideration of that report, the special educational needs organiser is of the opinion that the goals specified in the plan concerned have not been achieved the organiser shall reconvene the relevant team, or, as the organiser thinks fit, engage the assistance of one or more of the members of that team, or, in the case of an education plan prepared under *section 3*, convene a group of persons (in this Act also referred to as a “team”), for the purpose of reviewing the content and implementation of the plan and may, as a consequence of that review, amend the plan.

(4) Where parents have reason to believe that the goals specified in an education plan prepared in respect of their child are not being achieved and a review of the plan has not occurred in the previous 6 months, they may request the principal of

the relevant school to arrange for such a review and where the principal considers it appropriate to accede to their request he or she shall carry out or cause to be carried out that review as if it were a review under *subsection (1)*, and *subsection (2)* shall apply accordingly.

(5) If the principal decides that it is not appropriate to accede to a request under *subsection (4)* he or she shall give notice in writing of the decision and the reasons therefor to the parents within 2 weeks from receiving the request.

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

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

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

(b) dismiss the appeal.

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

(9) In this section “relevant school” and “relevant special educational needs organiser” have the same meaning as they have in *section 8*.

Appeals in relation to education plans.

12.—(1) Parents may, in respect of their child, appeal to the Appeals Board against—

(a) the discharge by the Council or a principal of a school of its or his or her duties in relation to—

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

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

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

(b) the discharge by a school or F20[the Health Service Executive] of its duties with respect to an education plan on the ground that there has been a failure by it to implement any part of the plan.

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

(a) allow the appeal and, as appropriate, give a direction to the principal of the relevant school or the Council requiring the principal or the Council to amend the plan in such manner as the Appeals Board considers appropriate and specifies in its direction or give such other direction to the principal, the F21[Health Service Executive] or the Council relating to the child's education as the Board considers appropriate, or

(b) dismiss the appeal.

(3) The principal of the relevant school, F22[the Health Service Executive] or the Council shall comply with a direction given to him or her or it under *subsection (2)*.

(4) In this section “relevant school” has the same meaning as it has in *section 8*.

Annotations

Amendments:

- F20** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, part 14, item 7(a), S.I. No. 887 of 2004.
- F21** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, part 14, item 7(b), S.I. No. 887 of 2004.
- F22** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, part 14, item 7(c), S.I. No. 887 of 2004.

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

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

(2) Each of the following—

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

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

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

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

Duty of schools.

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

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

Council may from time to time reasonably request for the performance by it of its functions,

- (d) ensure that all relevant teachers and other relevant employees of the school are aware of the special educational needs of students.
- (e) ensure that teachers and other relevant employees of the school are aware of the importance of identifying children and students who have special educational needs, and
- (f) inculcate in students of the school an awareness of the needs of persons with disabilities.

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

(3) Any person (other than a school) who or which provides education to persons with special educational needs, being a person funded in whole or in part from moneys provided by the Oireachtas, shall provide to the Council such information as the Council may from time to time reasonably request for the performance by it of its functions.

(4) A request under *subsection (1)(c)* or (3) shall be complied with within such period (not being a period longer than 1 month from the date of the request) as the Council specifies in the request.

Planning for future education needs.

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

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

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

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

- (a) the extent, if any, to which goals set out in any previous such plan or the plan, as the case may be, successfully met the special educational needs of the child or student, and
- (b) the reasons for any failure to meet those goals and the effect any such failure has had on the development of the child,

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

Implementation of relevant education policy by health boards.

16.—F23[The Health Service Executive], in the performance of its functions under this Act, shall implement the policies relating to education generally and the education of children with special educational needs and to the provision of support services which are formulated, from time to time, by the Minister or the Minister for Health and Children.

Annotations**Amendments:**

F23 Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, part 14, item 8, S.I. No. 887 of 2004.

F24[Liaison officers.]

F24[17.—(1) The Council and the Health Service Executive shall designate one or more of its employees or officers, not below such rank as the Council after consulting with the Health Service Executive shall determine, to perform the following functions, namely to ensure, so far as practicable that—

(a) the activities of the Council and those of the Health Service Executive, in so far as they relate to their respective functions under this Act, are coordinated, and

(b) the policies of the Council and those of the Health Service Executive, in so far as they relate to their respective functions under this Act, are consistent.

(2) Each employee or officer designated under *subsection (1)* shall be known as a liaison officer.]

Annotations**Amendments:**

F24 Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, part 14, item 9, S.I. No. 887 of 2004.

Delegation of functions of principals, etc.

18.—(1) The principal of a school may delegate the performance of any of the functions conferred on him or her by this Act to such teacher in the school as the principal considers appropriate and a function so delegated shall, accordingly, be performable by the teacher concerned.

(2) The relevant special educational needs organiser shall give all such advice and assistance as is reasonable to the principal and teachers of the school concerned in their performance of functions under this Act.

National Council for Special Education.

19.—(1) There shall stand established on the establishment day a body to be known as an Chomhairle Náisiúnta um Oideachas Speisialta or in the English language the National Council for Special Education, and which in this Act is referred to as the “Council”, to perform the functions conferred on it by or under this Act.

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

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

Functions of Council.

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

(a) to disseminate to schools, parents and such other persons as the Council considers appropriate information relating to best practice, nationally and internationally, concerning the education of children with special educational needs;

- (b) in consultation with schools, F25[the Health Service Executive] and such other persons as the Council considers appropriate to plan and co-ordinate the provision of education and support services to children with special educational needs;
 - (c) in consultation with schools and with such persons as the Council considers appropriate to plan for the integration of education for students with special educational needs with education for students generally;
 - (d) to make available to the parents of children with special educational needs information in relation to their entitlements and the entitlements of their children;
 - (e) to ensure that the progress of students with special educational needs is monitored and that it is reviewed at regular intervals;
 - (f) to assess and review the resources required in relation to educational provision for children with special educational needs;
 - (g) to ensure that a continuum of special educational provision is available as required in relation to each type of disability;
 - (h) to review generally the provision made for adults with disabilities to avail of higher education and adult and continuing education, rehabilitation and training and to publish reports on the results of such reviews (which reviews may include recommendations as to the manner in which such provision could be improved);
 - (i) to advise all educational institutions concerning best practice in respect of the education of adults who have disabilities;
 - (j) to advise the Minister in relation to any matter relating to the education of children and others with disabilities;
 - (k) to consult with such voluntary bodies as the Council considers appropriate, (being bodies whose objects relate to the promotion of the interests of, or the provision of support services to, persons with disabilities) for the purposes of ensuring that their knowledge and expertise can inform the development of policy by the Council and the planning and provision of support services, and
 - (l) to conduct and commission research on matters relevant to the functions of the Council and, as it considers appropriate, to publish in such form and manner as the Council thinks fit the findings arising out of such research.
- (2) The Council shall have the power to do all things necessary for or incidental to the performance of its functions.
- (3) The Council, in the performance of its functions, shall—
- (a) implement the policies relating to education generally and the education of children with special educational needs which are formulated, from time to time, by the Minister (including the policy referred to in *section 13*), and
 - (b) in giving advice to the Minister—
 - (i) provide an assessment of the implications of that advice for the resources, including financial resources, available to the State in respect of the provision of education, and
 - (ii) have regard to the practical implementation of that advice.
- (4) The Minister may by order—

- (a) confer on the Council such additional functions relating to the provision by the Council of support services to children with special educational needs as he or she considers appropriate,
- (b) make such provision as he or she considers necessary or expedient in relation to matters ancillary to or arising out of the conferral on the Council of functions under this subsection or the performance by the Council of functions so conferred.

Annotations**Amendments:**

F25 Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, part 14, item 10, S.I. No. 887 of 2004.

Membership of Council.

- 21.—**(1) The Council shall consist of a chairperson and 12 ordinary members.
- (2) The chairperson and ordinary members of the Council shall be appointed by the Minister from among persons who have a special interest in or knowledge relating to the education of children with special educational needs.
- (3) Before making appointments to the Council under this section, the Minister shall consult with—
- (a) national associations of parents,
 - (b) recognised trade unions and staff associations representing teachers and principals of schools, and
 - (c) recognised school management organisations,
- with a view, where the Minister considers it appropriate to do so, to appointing as members of the Council persons nominated for such appointment by those associations, trade unions and organisations, but the number of nominees of those associations, trade unions and organisations (taken as a whole) that may be so appointed shall not exceed 4.
- (4) The Minister shall appoint to the Council—
- (a) 2 members from among persons nominated for such appointment by the National Disability Authority (and equal numbers of men and women shall be nominated by that Authority for that purpose),
 - (b) 1 member from among persons nominated for such appointment by the Minister for Health and Children (and equal numbers of men and women shall be nominated by that Minister of the Government for that purpose).
- (5) The Minister shall ensure that at least 6 of the members of the Council are women and at least 6 of them are men.
- (6) The Minister shall have regard to the desirability of there being amongst those appointed under this section as members of the Council persons who themselves have special educational needs, their parents and representatives.
- (7) The members of the Council (including the chairperson and deputy chairperson) may be paid such allowances for expenses as the Minister, with the consent of the Minister for Finance, may determine.

Consultative forum.

- 22.—**(1) There shall be, for the purpose mentioned in *subsection (2)*, a consultative forum, that is to say, a group of persons who shall be appointed in accordance with

subsections (3) and (5) and who, as a collective body, are referred to subsequently in this section and in section 23 as the “consultative forum”.

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

(3) Such number of persons (not exceeding 17) as the Council considers appropriate shall be appointed by the Council to be members of the consultative forum and the Council shall ensure, as far as practicable, that at least 7 of the members so appointed are women and at least 7 of them are men.

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

- (a) the Minister,
- (b) national associations of parents,
- (c) voluntary bodies whose objects relate to the promotion of the interests of, or the provision of support services to, persons with disabilities,
- (d) recognised school management organisations,
- (e) recognised trade unions and staff associations representing teachers and principals of schools,
- (f) the National Disability Authority,
- (g) the Psychological Society of Ireland, and
- (h) such other persons having a special interest in or knowledge relating to the education of children with disabilities as the Council considers appropriate.

(5) Such number of persons (not exceeding 3) as the Minister considers appropriate shall be appointed by the Minister to be members of the consultative forum and, as far as practicable, at least one of the members so appointed shall be a woman and at least one of them shall be a man.

(6) The Council and the Minister shall have regard to the desirability of there being amongst those appointed under this section as members of the consultative forum persons who themselves have special educational needs, their parents and representatives.

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

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

Implementation report.

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

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

(3) The implementation report shall—

- (a) specify a date for the commencement of each of the provisions of this Act (other than *sections 19 to 21*),
- (b) provide an estimate of the resources that will be necessary for the taking of each step in the implementation of this Act, and
- (c) contain a review of any other relevant enactments or instruments under enactments that affect, or may affect, the performance of the Council's functions under this Act and make such recommendations to the Minister as the Council considers appropriate in relation to the amendment, repeal or revocation, as appropriate of those enactments or instruments.

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

Chief Executive Officer.

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

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

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

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

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

Employees.

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

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

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

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

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

Special educational needs organisers.

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

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

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

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

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

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

Curriculum.

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

Removal of Council from office.

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

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

- (a) inquire into the matters giving rise to the Minister's opinion and any related matter and report to the Minister on the findings of the inquiry,
- (b) for the purposes of this section, be entitled at all reasonable times to enter the premises of the Council to inquire into the affairs of the Council or to conduct an inspection of the premises, equipment and records where the inspection is, in his or her opinion, relevant to the inquiry,
- (c) be afforded all reasonable co-operation and assistance by the Council and its employees, including access to such premises, equipment and records as the person may require, to enable the person to perform his or her functions under this section.

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

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

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

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

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

(7) Where an order is proposed to be made under *subsection (5)*, a draft of the order shall be laid before each House of the Oireachtas and the order shall not be made until a resolution approving of the draft has been passed by each such House.

(8) The Minister shall, within 12 months of the removal of the members of the Council, appoint, in replacement of those members, members of the Council in accordance with *section 21*.

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

Accounts and audits.

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

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

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

Accountability of Chief Executive Officer to Committee of Public Accounts.

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

- (a) the regularity and propriety of the transactions recorded or required to be recorded in any book or other record of account subject to audit by the Comptroller and Auditor General which the Council is required by this Act to prepare,
- (b) the economy and efficiency of the Council in the use of its resources,
- (c) the systems, procedures and practices employed by the Council for the purpose of evaluating the effectiveness of its operations, and
- (d) any matter affecting the Council referred to in a special report of the Comptroller and Auditor General under section 11(2) of the Comptroller and Auditor General (Amendment) Act 1993 or in any other report of the Comptroller and Auditor General (in so far as it relates to a matter specified in *paragraph (a), (b) or (c)*) that is laid before Dáil Éireann.

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

Accountability of
Chief Executive
Officer to other
Oireachtas
Committees.

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

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

Gifts.

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

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

(3) The Council shall include in each report published by it under *section 34* details of all gifts accepted by it during the period to which the report relates.

Committees.

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

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

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

(4) Members of a committee—

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

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

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

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

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

(7) The Chief Executive Officer may—

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

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

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

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

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

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

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

Annual report and information.

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

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

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

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

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

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

Establishment day.

35.—The Minister shall within one year from the passing of this Act by order or orders appoint a day to be the establishment day for the purposes of *sections 19* and *36* and the day that is so appointed for the purposes of one of those sections may be different to that which is so appointed for the other of them.

Annotations

Editorial Notes:

- E1** Power pursuant to section exercised (3.04.2006) by *Education for Persons with Special Educational Needs Act 2004 (Establishment Day) (Section 36) Order 2005* (S.I. No. 509 of 2005).
- E2** Power pursuant to section exercised (1.10.2005) by *Education for Persons with Special Educational Needs Act 2004 (Establishment Day) (Section 19) Order 2005* (S.I. No. 508 of 2005).

Special Education Appeals Board.

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

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

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

- (a) the parties to the appeal are assisted, through mediation, to reach agreement on the matters the subject of the appeal where the Appeals Board is of the opinion that reaching such agreement is practicable in the circumstances,
 - (b) hearings are conducted with the minimum of formality consistent with giving each of the parties a fair hearing,
 - (c) the Appeals Board performs its functions in accordance with the policies referred to in *section 13(2)*.
- (4) The Appeals Board shall be independent in the performance of its functions.
- (5) The Appeals Board shall consist of a chairperson and such number of ordinary members as may be determined, by the Minister.
- (6) The chairperson and ordinary members of the Appeals Board shall be appointed by the Minister from among persons who have a special interest in or knowledge of education and in particular the education of persons with special educational needs.
- (7) The term of office of the chairperson and the ordinary members of the Appeals Board shall be for such period as shall be determined by the Minister.
- (8) The chairperson or an ordinary member of the Appeals Board may resign by letter addressed to the Minister.
- (9) The chairperson or an ordinary member of the Appeals Board may be removed from office by the Minister.
- (10) The chairperson and ordinary members of the Appeals Board shall be paid such allowances for expenses as the Minister, with the consent of the Minister for Finance, may determine.
- (11) The Appeals Board may, with the consent of the Minister given with the concurrence of the Minister for Finance, appoint such and so many persons to be employees of the Appeals Board as the Board considers necessary to assist the Board in the performance of its functions and each person so appointed shall hold office on such terms and receive such remuneration as the Appeals Board with the consent of the Minister for Finance determines.

Report of Appeals Board.

37.—(1) The Appeals Board shall submit a report of its activities and particulars of its accounts to the Minister at such intervals (not being less than once a year) and in such manner and format, as the Minister directs.

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

Provision for mediation in certain cases.

38.—(1) This section applies to cases in which a person with special educational needs or, if the person with such needs is a minor, a parent of the person—

- (a) makes a complaint to the Minister that the special educational needs of the person are not being met, or
- (b) proposes to bring, or has brought, proceedings in any court seeking redress in respect of an alleged failure by the Minister or the State to meet those needs of the person (whether the failure to be alleged or alleged in the proceedings is expressed as amounting to a breach of Article 42 of the Constitution, a failure to comply with this Act or howsoever otherwise).

(2) The Minister may make regulations (“the regulations”) as respects cases to which this section applies enabling—

- (a) a complaint mentioned in *subsection (1)(a)*, or

(b) an alleged failure by the Minister or the State mentioned in *subsection (1)(b)*, to be the subject of mediation.

(3) The reference in *subsection (2)* to a matter being the subject of mediation is a reference to the matter being referred, in accordance with procedures specified in the regulations, to an individual or body appointed in accordance with the regulations ("the mediator") for the purpose of mediation being conducted by the mediator in relation to it, that is to say, mediation conducted with a view to resolving the issue or issues the subject of the complaint or the proceedings or the proposed proceedings concerned.

(4) The regulations shall provide that, for the purpose of resolving that issue or those issues, the mediator shall—

- (a) inquire fully into each relevant aspect of the issue or issues,
- (b) provide to, and receive from, the parties to the mediation such information and generally make such suggestions to each of them as the mediator considers appropriate, and
- (c) on completion of any hearing (or the last of them where there is more than one hearing) conducted for that purpose, prepare and furnish to each of the parties a report in relation to the mediation,

and the regulations shall also contain the provisions referred to in *subsection (5)*.

(5) Those provisions are—

- (a) a provision prohibiting, subject to such exceptions as may be specified in the regulations, the disclosure of any statements made or information given by the parties to the mediation for the purpose of the mediation,
- (b) a provision prohibiting, subject to such exceptions as may be specified in the regulations, the disclosure of the report referred to in *subsection (4)(c)* to persons other than the parties to the mediation,
- (c) provisions specifying procedures with respect to the appointment of the mediator, and those provisions shall enable only—
 - (i) a body which is independent of the persons who will be parties to the mediation to make such an appointment (and such provision shall be in addition to any provision made by the regulations under *subsection (6)*),
 - (ii) an individual or body who or which is independent of those persons to be the subject of such an appointment,
- (d) a provision specifying that mediation shall not be conducted pending the hearing and determination of an appeal under this Act that lies in respect of the matter concerned, and
- (e) such provisions consequential on, or incidental to, the foregoing provisions or the provisions of *subsection (3)* or *(4)* as the Minister may consider necessary or expedient.

(6) The regulations may also provide that only a body falling within a class of bodies standing recognised for the time being by the Minister for the purposes of the provision referred to in *subsection (5)(c)(i)*, may, subject to that provision, make an appointment of the kind referred to in that provision.

(7) A court hearing proceedings such as are referred to in *subsection (1)(b)*, may, in making any decision as to the costs of those proceedings, have regard to, if such be the case—

(a) that the person bringing those proceedings refused to participate in a mediation provided for by the regulations in relation to the issue or issues the subject of those proceedings, or

(b) that that person did not participate in good faith in such a mediation, and, for the purpose of determining whether that person did not so participate in good faith, the court may have regard to the report referred to in *subsection (4)(c)* prepared in relation to the mediation.

(8) In this section “body” means a body corporate or an unincorporated body of persons.

Duty of health boards.

39.—(1) Where it appears to the Council that F26[the Health Service Executive] could, by taking specified action, assist in the preparation or implementation of an education plan in respect of a particular child or assist more generally in the performance of the Council of its functions, then it may, by notice in writing, request the assistance of that board, specifying the action in question.

(2) Before making a request under *subsection (1)*, the Council shall consult with F27[the Health Service Executive.]

(3) F28[The Health Service Executive] shall comply with the request unless it considers that—

(a) the assistance concerned is not required,

(b) compliance with the request would not be compatible with its functions or duties or would unduly prejudice the performance of any of its functions, or

(c) having regard to the resources available to the board it is not possible for it to comply with the request.

(4) Where F29[the Health Service Executive] decides not to comply with a request it shall give notice in writing to the Council of that decision and the reasons therefor.

(5) The Council may appeal against a decision of F30[the Health Service Executive] referred to in *subsection (4)* to the Appeals Board.

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

(a) allow the appeal and direct F31[the Health Service Executive] to comply with the request, the subject of the appeal, or

(b) dismiss the appeal.

(7) F32[The Health Service Executive] shall comply with a direction given to it under *subsection (6)(a)*.

Annotations

Amendments:

F26 Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, part 14, item 11(a), S.I. No. 887 of 2004.

F27 Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, part 14, item 11(b), S.I. No. 887 of 2004.

F28 Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, part 14, item 11(c), S.I. No. 887 of 2004.

- F29** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, part 14, item 11(d), S.I. No. 887 of 2004.
- F30** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, part 14, item 11(e), S.I. No. 887 of 2004.
- F31** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, part 14, item 11(f), S.I. No. 887 of 2004.
- F32** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, part 14, item 11(g), S.I. No. 887 of 2004.

Amendment of section 7 of Act of 1998.

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

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

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

Maintenance of records.

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

- (a) identifying persons to whom special educational and support services are being provided,
- (b) identifying schools and other places where such services are provided to persons with special educational needs, and
- (c) planning the provision of special educational and support services.

(2) In performing its functions under *subsection (1)* the Council shall, to the greatest extent practicable, co-ordinate its system of record-keeping with the systems of record-keeping maintained by F33[the Health Service Executive] and any other relevant public bodies.

Annotations

Amendments:

- F33** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 7, part 14, item 12, S.I. No. 887 of 2004.

Regulations.

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

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

Grants to Council and Appeals Board.

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

Service of notices.

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

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

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

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

Dissolution of body established under section 54 of Act of 1998.

45.—(1) The National Council for Special Education (referred to in subsequent sections of this Act as the “former Council”) established by order under section 54 of the Act of 1998 is dissolved.

(2) References to the National Council for Special Education in an enactment (other than this Act) or in an instrument made thereunder or in the memorandum of association or articles of association of any company (within the meaning of the Companies Acts 1963 to 2001) or any other legal document, shall be construed, on and after the commencement of this section, as references to the Council.

Legal proceedings pending against former Council.

46.—Where, immediately before the commencement of this section, any legal proceedings are pending in any court or tribunal to which the former Council is a party, the name of the Council shall be substituted in the proceedings for that of the former Council or, as the case may be, such trustee or agent thereof, or added in those proceedings as may be appropriate, and those proceedings shall not abate by reason of the substitution.

Transfer of property rights and liabilities of former Council.

47.—(1) The following shall be and are, by virtue of this section, transferred to the Council—

- (a) all property and rights relating to such property held or enjoyed immediately before the commencement of this section by the former Council or any trustee or agent thereof acting on its behalf,
- (b) all liabilities incurred before such commencement by the former Council or any trustee or agent thereof acting on its behalf that had not been discharged before such commencement,

and, accordingly, without any further conveyance, transfer or assignment—

- (i) the said property, real and personal, shall, on such commencement, vest in the Council for all the estate, term or interest for which, immediately before such commencement, it was vested in the former Council but subject to all trusts and equities affecting the property and capable of being performed,
- (ii) those rights shall, as and from such commencement, be enjoyed by the Council, and
- (iii) those liabilities shall, as and from such commencement, be liabilities of the Council.

(2) All moneys, stocks, shares and securities transferred to the Council by this section which, on the commencement of this section, are standing in the name of the former Council or any trustee or agent thereof shall, upon the request of the Council, be transferred into its name.

(3) Every right and liability transferred to the Council by this section may, on or after the commencement of this section, be sued on, recovered or enforced by or against the Council in its own name and it shall not be necessary for the Council to give notice to the person whose right or liability is transferred by this section of the transfer.

Bonds, guarantees, contracts, etc., of former Council.

48.—Every bond, guarantee or other security of a continuing nature made or given by or on behalf of the former Council to any person or given by any person to and accepted by or on behalf of the former Council and every contract or agreement made between the former Council or any trustee or agent thereof acting on its behalf, and any other person and in force but not fully executed and completed immediately before the commencement of this section shall continue in force on and after such commencement and shall be construed and have effect as if the name of the Council was substituted therein for that of the former Council or, as appropriate, any trustee or agent thereof acting on its behalf, and shall be enforceable by or against the Council.

Transfer of staff of former Council.

49.—Every person who, immediately before the commencement of this section, is an employee of the former Council shall, on such commencement, become and be an employee of the Council and the rights and entitlements in respect of tenure, remuneration, fees, allowances, expenses and superannuation enjoyed on the commencement of this section by that person shall not, by virtue of the operation of this Act, be any less beneficial than those rights and entitlements enjoyed by that person immediately before such commencement.

Plans, reports, etc., under Act privileged.

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

Expenses.

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

Amendment of Act of 1998.

52.—Section 2(1) of the Act of 1998 is amended by substituting the following definition for the definition of “disability”:

“ ‘disability’ means, in relation to a person, a restriction in the capacity of the person to participate in and benefit from education on account of an enduring physical, sensory, mental health or learning disability, or any other condition which results in a person learning differently from a person without that condition and cognate words shall be construed accordingly;”.

Short title and commencement.

53.—(1) This Act may be cited as the Education for Persons with Special Educational Needs Act 2004.

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

Annotations

Editorial Notes:

E3 Power pursuant to subs. (2) exercised (1.10.2005) by *Education for Persons with Special Educational Needs Act 2004 (Commencement) (No. 2) Order 2005* (S.I. No. 636 of 2005).

2. The 1st day of October 2005 is appointed as the day on which sections 45 to 49 of the Education for Persons with Special Educational Needs Act 2004 (No. 30 of 2004) come into operation.

E4 Power pursuant to subs. (2) exercised (14.07.2005) by *Education for Persons with Special Educational Needs Act 2004 (Commencement) Order 2005* (S.I. No. 507 of 2005).

2. The 14th day of July 2005 is appointed as the day on which sections 1, 2, 14(1)(a), 14(1)(c), 14(2) to 14(4), 19 to 37, 40 to 44, and 50 to 53 of the Education for Persons with Special Educational Needs Act 2004 (No. 30 of 2004) comes into operation.

Section 19.

SCHEDULE 1

MEMBERSHIP AND MEETINGS OF COUNCIL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) he or she resigns the office of deputy chairperson, or

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

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

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

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

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

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

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

(a) by the Chief Executive Officer or chairperson, or

(b) if the meeting is convened by members, by those members.

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

(6) At a meeting of the Council—

(a) the chairperson shall, if present, be the chairperson of the meeting, or

(b) if and so long as the chairperson is not present, or if the office of chairperson is vacant, the deputy chairperson shall, if present, be the chairperson of the meeting, or

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

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

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

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

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

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

Section 24.

SCHEDULE 2

THE CHIEF EXECUTIVE OFFICER

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

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

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

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

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

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