Houses of the Oireachtas

Joint Committee on Education and Social Protection

Report on the Draft General Scheme of an Education (Admission to Schools) Bill 2013

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Chair’s Foreword

Access to quality primary and post-primary education is an issue of importance for children and society generally. Outside of the home, the education that a child receives has probably the greatest bearing on his or her development and realisation of potential. It is essential that we afford children the best possible education system, and that effective policies and actions to this end are implemented.

The system of admission to schools must above all else be built on the principle of fairness to children and parents. Unfortunately, admission has been, in too many cases, characterized by practices that do not meet standards of equity or transparency that citizens have a right to expect from their public services. Variations in practice and complexity are evident in different areas, between different schools, and between different Patrons. The burden and frustration that this places on parents and their children is most unsatisfactory. In a more diverse and changing society, it is clear that admission to school must adapt to meet prevailing circumstances and expectations.

The proposed Education (Admission to Schools) Bill and the accompanying draft Regulations aim to address these difficulties by putting in place an equitable system of admission that will be better structured, more easily understood, and easier for prospective students to negotiate. They address a range of factors that cause frustration and obstacles at present. At the same time, they aim to allow schools as much autonomy as possible.
The importance of the proposals can be gauged by the extent of engagement by a broad range of stakeholders and the wider public in the course of the consideration that was given to the General Scheme of the Bill by the Joint Committee on Education and Social Protection (hereafter “the Committee”). The quality of the submissions and the presentations at the public hearings that followed reflects very well on the widespread commitment and dedication of schools, parents, individuals and organisations to the education system.

I hope that this Report and its Conclusions will be of assistance to the Minister for Education and Skills as he finalises the Bill. The Committee looks forward to giving further consideration to the Bill when it is presented to the Houses of the Oireachtas. I would like to record my appreciation to all of those who made submissions and presentations to the Committee in its consideration of the General Scheme. I would also like to express my appreciation to the Members of the Committee for their engagement on this challenging issue, to the Library & Research Service of the Houses of the Oireachtas for their very helpful and efficient support, and to the Committee Secretariat for their assistance to the Committee.

Joanna Tuffy, T.D.
Chair of the Joint Committee on Education and Social Protection
1. Overview

It should be noted at the outset that, unusually, the General Scheme of the Bill (see section 2) when published by the Minister was accompanied by associated draft Regulations.\(^1\) The submissions received by the Committee and the meetings held with stakeholders included discussion of both the draft Heads of the Bill and the detailed implementation of those Heads as set out in the draft Regulations. Equally, this Report in addressing the key themes examines all three documents published by the Minister for Education and Skills on the 2\(^{nd}\) of September 2013.

Under existing legislation schools are, generally, allowed to draw up their own admission policies. This enables schools to apply a range of enrolment criteria which may favour some applicants over others. For instance, in schools for which demand is greater than the number of places available, a child’s application may be prioritised on the basis of where they live (catchment area), whether their parent is a former pupil, or whether or not they have a sibling already attending the school. Some schools operate on a ‘first-come first-served’ basis and, depending on demand, may require parents to apply several years in advance, sometimes when the applicant is an infant. Other schools may require payment of an application fee.

In response to a Parliamentary Question posed on 15\(^{th}\) October 2013 the Minister for Education and Skills, Mr. Ruairí Quinn, T.D. said that:

“It is the responsibility of the managerial authorities of all schools to implement an enrolment policy in accordance with the Education Act, 1998. In this regard a Board of Management may find it necessary to restrict enrolment to children from a particular area or a particular age group or, occasionally, on the basis of some other criterion. The criteria to be applied by schools in such circumstances are a matter for the schools themselves. This selection process and the enrolment policy on which it is based must be non-discriminatory and must be applied fairly in respect of all applicants. Under section 15 (2) (d) of the Education Act 1998, each school is legally obliged to publish its enrolment policy.”

It has been suggested by some stakeholders that certain schools may use their admission policies to select applicants based on academic achievement, sporting prowess, socio-economic background etc. There have also been reports of schools informing parents of applicants with special needs that they would be better

accommodated in a school ‘down the road', with better facilities. These are referred to as ‘soft barriers’ and were highlighted in a recent National Council for Special Education (NCSE, 2013) report.

A Department of Education and Skills press release states that the aim of this General Scheme and the associated Regulations is to improve the admissions process to schools by promoting fairness and transparency. Another aim of the General Scheme and associated Regulations is to provide a new ‘parent-friendly’ appeals system should disputes arise. The current (‘Section 29’) system is said to place an administrative burden on schools.

In addition the General Scheme and associated draft Regulations make provision for the banning of some existing enrolment practices, for example:

- seeking deposits or payments to secure places;
- inappropriately selecting or ‘cherry-picking’ those students perceived to be the most academically gifted or with the greatest sporting prowess etc. through interviewing parents and students; and
- use of waiting lists – applications will not be accepted any earlier than October 1st in the year preceding the planned year of the student’s enrolment. However, schools will be given a number of years to phase out their current waiting lists.

It should be noted that a study published in 2009 found that 80% of surveyed schools enrolled all children who presented, while 20% used selection criteria. The corollary to this is that 20% of schools are over-subscribed.

Speaking to the Committee on 4th December 2013, a Department official stated that it is the Department’s intention that oversubscribed schools must state that they are oversubscribed in their admissions policy and set out what their selection criteria are in this scenario. Also, parents will be able to see which categories of applicants were successful in the previous year’s enrolment process.

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7 This is the percentage, on average. Certain categories of schools may experience higher or lower over-subscription rates. GaelscoláISTI, for example, are approximately 30% over-subscribed.
8 Department of Education and Skills (2013). Submission to the Committee.
In addition the Minister for Education and Skills will be given new powers to intervene where a school’s admission policy is not being operated in accordance with the legislation. In such cases the Minister may, ultimately, appoint someone independent of the school to operate an appropriate admission policy.

Under the new proposals, appeals against a school’s decision (as decided by the Principal in accordance with the published enrolment policy) to refuse admission to an applicant will be reviewed by the Board of Management of that school. This would replace the current Section 29 system, whereby appeals are made to the Secretary General of the Department of Education and Skills. However, Section 29 appeals would continue with regard to suspension or expulsion from school.

In cases where an applicant has been refused entry to a number of schools and is unable to secure a placement, the proposed legislation will give the National Educational Welfare Board (NEWB)\(^9\) and the National Council for Special Education (NCSE - in the case of applicants with special educational needs) the power to designate a school.

**Figure 1: School administration**

\(^9\) The [Child and Family Agency Act 2013](https://www.doir.gov.ie/) provides for the dissolution and the transfer of the functions of the NEWB to the Child and Family Agency
Presenting to the Committee on the 4\textsuperscript{th} of December 2013, a Department official set out the aims of the General Scheme as follows:

“The draft framework proposes a new more parent-friendly, equitable and consistent approach to how school enrolment policy should operate in primary and post-primary schools. Its purpose is to improve access to schools for all pupils and ensure there is consistency, fairness and transparency in the admission policies of all schools and the service they provide for parents.”

The Department also stated that:

“The draft framework seeks to strike an appropriate balance between school autonomy, on the one hand, and the interests of parents in the education system, on the other.”

The structure of this Report can be summarised as follows:

- Section 2 explains the status of the General Scheme of the Bill which has been referred by the Minister for Education and Skills to the Joint Committee for its views;
- Section 3 briefly examines the current legislative framework within which the enrolment process sits;
- Section 4 attempts to identify what the most pertinent provisions and themes addressed by the General Scheme and the draft Regulations are – this is informed by an examination of secondary sources in general and the submissions made by stakeholders to the Joint Committee in particular;
- Section 5 reviews the Irish-language submissions and themes relating to primary-secondary Irish-language schools;\textsuperscript{10}
- Section 6 sets-out the Conclusions of the Joint Committee in relation to the General Scheme.

\textsuperscript{10} This is treated separately as most of the themes involved are significantly different to the general themes addressed in section 4 (some of which may, of course, also relate to the Irish-language sector).
2. The General Scheme of the Bill

2.1 General points

In examining what has been published to date, it is important to draw the distinction between the General Scheme of the Bill and the Bill as will be presented at first stage in the parliamentary legislative process (which is known as ‘initiation’, i.e. publication).

Most Government departments have their legislation drafted by the Office of the Parliamentary Counsel (OPC) by supplying Heads of a Bill which broadly set out policy objectives.

Typically, a General Scheme can be considered to be in draft format and as such is still subject to the legal advice of the Office of the Attorney General. It may include an explanatory note to accompany each Head unless the Heads are self-explanatory (see Appendix 1 for further details on the preparation of legislation).

It is important to note that the General Scheme has no legal effect and the proposals it contains may well evolve over time as the legislative process progresses.

The publication of the General Scheme presents an important opportunity for interested stakeholders to comment on the general principles and themes at an early stage in the Bill’s development. In this case, the Joint Committee formally invited written submissions in relation to the Heads of the Bill and the associated draft Regulations.

The draft legislation which follows a General Scheme of a Bill can potentially vary, to a greater or lesser extent, from the General Scheme as issues are further refined during the drafting process.

Conscious that the General Scheme is at a very preliminary stage of the legislative process, this Report conducts a summary, as far as is possible, of some of the key themes which emerged during the consultation process with stakeholders.

11 The Office of Parliamentary Counsel (OPC) to the Government is one of three offices that make up the Office of the Attorney General. The OPC comprises the Parliamentary Counsel who draft legislation and have responsibilities in the area of statute law revision.
2.2 The Draft General Scheme of an Education (Admission to Schools) Bill 2013

2.2.1 Background to the Draft General Scheme of the Bill

In 2011 the Department of Education and Skills published a discussion paper on a regulatory framework for school enrolment. The paper set out the following objectives and contended that they would best be met through primary legislation:

- To regulate only those aspects of enrolment policies and practices where a common or national approach is desirable, and otherwise to provide the maximum discretion to schools;
- To build confidence among parents about the fairness of enrolment policies and processes operated by schools, by prescribing certain common requirements that would apply generally;
- To put in place a range of appropriate measures at local and national level to ensure compliance;
- To confine intervention by a party external to the Board (e.g. a person appointed by the Patron or the Minister) to particular circumstances such as where a Board is not complying with the requirements of the new statutory framework;
- To provide a mechanism that requires a school to provide a place for a child where no place is available to that child. This should be distinguished from any intervention where the school of choice is not accessible to the student.

2.2.2 Proposals as outlined in the Draft General Scheme of the Bill

The Draft General Scheme of an Education (Admission to Schools) Bill 2013 was published on 2\textsuperscript{nd} September 2013 and includes fourteen Heads. The Department of Education and Skills press release\textsuperscript{12} states that the aim of this Bill will be to improve the admissions process to schools to ensure fairness and transparency, while striking a balance with school autonomy.

The proposed legislation aims to address the ‘soft barriers’ which there is evidence to suggest may sometimes result in the exclusion of children from particular backgrounds (such as those from the travelling community) or with special needs.\textsuperscript{13}

Another aim of the Bill will be to simplify the process for parents appealing decisions regarding school enrolment. The Minister also published draft Regulations which will be put in place after the Bill is enacted.

The proposals set out in the General Scheme and/or the associated draft Regulations include the following:\textsuperscript{14}

- Schools will not be allowed to accept applications for admission before October 1st of the year preceding the year of enrolment with a longer period allowed for boarding schools;
- The Minister may regulate that no admission fees may be sought or charged as a condition of application for admission to a school, other than fee-paying schools;
- That schools would not (except in the case of boarding schools) be allowed to conduct interviews with parents and children as part of the admissions process (It emerged at a Committee meeting that a corollary to this restriction is that Gaelscoileanna / Gaelcholáístí would be allowed to administer a language test so long as an interview was not part of such a test);
- That schools that can establish that they have waiting lists in place may, under a derogation, be allowed to clear those lists over a period of up to five years;
- That schools will be allowed to prioritise places for an applicant who is a sibling of an existing or former student;
- That secondary schools will also be allowed to continue to nominate certain primary schools as feeder schools;
- Appeals will be dealt with at school level under simplified arrangements and will end the current system of appeals to the Department under Section 29 of the Education Act, 1998;
- The Minister may grant a derogation to some schools to include a ‘past pupil’ criterion where they are oversubscribed, i.e. priority will be given to the son or daughter of a former pupil. Only 25% of available places can be allocated under

this rule. There are several conditions attached to this derogation which are outlined in the draft ‘Content of Policy’ Regulations no.15.

The proposed legislation will, therefore, allow schools to continue the use of some criteria, which must be set out in their admission policy. It is intended that the legislation will apply to all schools in receipt of State funding.

The General Scheme of the Bill and published draft Regulations have been informed by the Audit of School Enrolment Policies, published by the Department of Education in 2008,\textsuperscript{15} the Economic and Social Research Institute (ESRI) report Adapting to Diversity: Irish Schools and Newcomer Students\textsuperscript{16} published in 2009 and the stakeholder feedback from the Department’s discussion paper on A Regulatory Framework for School Enrolment published in June 2011.\textsuperscript{17}

\textbf{2.2.3 Referral of the General Scheme to the Joint Committee and initial stakeholder reaction}

The Minister referred the General Scheme of the Bill and the draft Regulations to the Joint Committee, with a view to seeking input from the Committee and other sectoral stakeholders. The Joint Committee then sent an invitation for submissions, with a deadline of Thursday 31\textsuperscript{st} of October 2013.

Commenting on the publication of the General Scheme, Don Myers, president of the National Parents Council Post Primary said that he welcomed some aspects of the proposed legislation, such as the ending of booking deposits. However, he also said that the proposed legislation would not put an end to the undersupply of school places in some areas.\textsuperscript{18} Áine Lynch of the National Parents Council Primary also mentioned the issue of booking deposits, which she said is a new and growing problem in primary schools.\textsuperscript{19}

\begin{itemize}
\item \textsuperscript{15} http://www.education.ie/en/Parents/Information/School-Enrolment/des_enrolment_audit_report.pdf
\item \textsuperscript{16} http://www.esri.ie/UserFiles/publications/20090529124035/RS008.pdf
\item \textsuperscript{17} http://www.education.ie/en/Parents/Information/School-Enrolment/sp_enrolment_discussion_paper.pdf
\item \textsuperscript{18} http://www.irishtimes.com/news/education/education-groups-welcome-school-admission-proposals-1.1513943
\item \textsuperscript{19} Ibid.
\end{itemize}
The Audit of School Enrolment Policies (2008)

The review of policy in this area commenced with the audit which was undertaken at the request of the then Minister for Education and Skills, Mary Hanafin, T.D. The aim was to identify any disparities between schools in terms of their admission policy.\(^{20}\)

The audit included pupils from the Traveller community and those with special needs.

The audit looked at how the written enrolment policies of some of these schools compared with their actual enrolment patterns as well as the effect of admission practices and policies on the distribution of newcomer pupils across schools.\(^{21}\) The findings did not find any system-wide enrolment practices that would give rise to concern but did find:

- The need for enhanced information for parents about their rights, should a school refuse to enrol their child;
- Those aspects of the written enrolment policies of schools which may be deemed exclusionary, e.g. pre-enrolling children from birth or providing preference to children of past pupils, thereby putting new arrivals to communities at a disadvantage;
- The potential for improved inter-school co-operation in a given area in order to address enrolment anomalies;
- Possible proposals for intervention in local admissions where inter-school co-operation is not achieved.

ESRI study (2009) Adapting to Diversity: Irish Schools and Newcomer Students

The ESRI study looked at the experience of schools in accommodating immigrant children and young people. It drew from the first national survey of primary and second-level Principals on diversity (1,200 schools)\(^{23}\) and complemented this with twelve detailed case-studies of primary and secondary schools.

\(^{20}\) Ibid.

\(^{21}\) Newcomer students are defined as those from immigrant families where both parents were born outside of Ireland whether or not the student’s first language is Irish or English (Source: ESRI Research series no.8 of June 2009, p.41).


\(^{23}\) This was a postal survey with a 63% response rate.
The study found that newcomer students comprised 10% of the school-going population in primary schools and 6% of the post-primary school-going population in 2007. Notably, in primary schools, this was not evenly distributed and 4 in 10 primary schools had no newcomer children, while others had a very high proportion of newcomer children. Those with a high proportion of newcomer children tended to be urban schools, often catering for more disadvantaged students. Where schools are oversubscribed, they tend to operate enrolment policies which favour ‘first come, first served’, and priority to siblings etc. These policies favour more settled communities and newcomer students tend to be under-represented in these schools.

**Discussion Paper on a *Regulatory Framework for School Enrolment (Department of Education and Skills 2011)*[^24]**

Part One of this Paper sets out the current legislative framework in respect of school enrolment. It also examines a number of issues that the Department considered should be taken into account in the development of a new legislative framework and sets out some guiding considerations for the development of same. Parts Two and Three identify specific options for legislation that, if implemented, would provide a new regulatory framework for school enrolment. Part Two sets out options for primary legislation and Part Three sets out options for regulation that would cover both the content of school enrolment policies and also the actual operation of such policies.

3. Current policy as legislated for


Presently, there are two statutory solutions for resolving difficulties relating to school admission policies. The first is an appeal by a parent under Section 29 of the *Education Act 1998*. The second, potentially, is the use of Sections 16 or 17 of the *Education Act 1998* to dissolve a board of management where the functions of the board are not being effectively discharged (e.g. in respect of admissions). The relevant Acts are discussed in this section.

**Education Act, 1998**

Section 9 of the *Education Act 1998*, provides that schools must set out an admission policy that will provide maximum accessibility to their school. This policy must be published in:

“...such manner as the board with the agreement of the patron considers appropriate...”

Section 33 of the Act provides that the Minister may make regulations relating to any matters set out in the Act, including admission policy.

If a school refuses to enrol a pupil, they must inform parents of their right under Section 29 of the *Education Act 1998* to appeal the decision.

Section 29 of the *Education Act 1998* gives parents the right to appeal decisions made by a school in relation to enrolment policy. An appeal to the Secretary General of the Department of Education and Skills may be made by a parent, the applicant (if they are aged 18 or over) or the National Educational Welfare Board (NEWB). If the dispute relates to an Education and Training Board (ETB) school, an appeal can be made in the first instance to the ETB (formerly the Vocational Education Committee).

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27 Response to a Parliamentary Question by the Minister for Education and Skills on 15th October 2013.
28 http://www.education.ie/en/Parents/Services/Appeal-against-Permanent-Exclusion-Suspension-or-Refusal-to-Enrol/Section-29-Appeals-Procedures.pdf
29 Ibid.
Education (Welfare) Act, 2000

The Education (Welfare) Act 2000 is another important piece of legislation relating to school admissions. Section 19 of the Act provides that a school may not refuse to admit a student except where such a refusal is in accordance with the policies of the school concerned.

Section 26 (1) of the Education (Welfare) Act 2000 provides that the NEWB may appeal a decision of a school Board of Management under the provisions of Section 29 of the Education Act 1998.\(^\text{30}\) The NEWB does not need to consult or obtain the approval of the parent or pupil in order to make such an appeal. In addition, where a child is refused admission Section 27 of the Act imposes a duty on the NEWB to make all reasonable efforts to have the child enrolled in another school.\(^\text{31}\)

Equal Status Acts 2000 to 2012

These Acts prohibit discrimination on nine grounds: gender, marital status, family status, age, disability, race, sexual orientation, religious belief, and membership of the traveller community. The Acts specify that a school may not discriminate in its admission policy on any of these grounds, however, there are certain exemptions. Single sex schools may discriminate on the gender ground, and denominational schools may give preference to applicants from one faith over others, or refuse an applicant, if it can prove that refusal is essential to maintain the ethos of the school.

Education for Persons with Special Educational Needs (EPSEN) Act, 2004

Section 10 of this Act provides that the National Council for Special Educational Needs (NCSE) may designate the school, in which a child with special educational needs will attend, either of the NCSE’s own volition or at the request of a parent. Where this is done, the designated school must admit the child.\(^\text{32}\) The Act also provides that when making this decision the NCSE must take into account the wishes of the parent, the needs of the child, and the capacity of the school to meet those needs. A school may appeal the decision of the NCSE, while a parent may appeal where the NCSE does not designate a school.

\(^{31}\) Ibid.
\(^{32}\) Ibid.
Section 10 has not been commenced to date. In relation to this section, the General Scheme states that:\textsuperscript{33}

“It is not proposed to remove this power from the statute books but to re-frame it in the context of the wider provisions within Head 9. In this regard, the provisions of Heads 8 and 9 are inter-related.”

4. Key Provisions and stakeholder views

This section examines some of the key provisions as discussed by stakeholders in their written submissions and presentations to the Committee and provides an overview of the points raised, under selected headings and themes.

4.1 Admission policies – Affirmation that the school will not discriminate

4.1.1 What the Bill proposes to do

Under Head 3 of the General Scheme, a school must include a statement in its admission policy that it will not discriminate against applicants on any of the nine discriminatory grounds set out in equality legislation.

4.1.2 Response from Stakeholders

The stated aim of Head 3, to reinforce the principle of inclusiveness and accessibility, was welcomed by many stakeholders. However, a number of concerns were raised in relation to this Head.

4.1.3 Religious ethos

A 2012 report by the Forum on Patronage and Pluralism in the Primary Sector stated that 96% of primary schools in Ireland are under denominational patronage and claims that this is unique among developed countries.34

The General Scheme of the Bill reaffirms the exception provided to denominational schools under Section 7 of The Equal Status Act 2000. In areas where schools are oversubscribed, Section 7 of the Equal Status Act 2000 may, potentially, result in local children who are not of a particular denomination being unable to access a school in their area.

The Teachers’ Union of Ireland (TUI) write that the current proposals “…continue to give schools considerable scope to refuse admission or exclude on the basis of

characteristic spirit or ethos..." and considers that the *Equal Status Act 2000* may need to be amended. The Irish National Teachers Organisation (INTO), presenting to the Committee on 4th December 2013, stated its opposition to the exception given to denominational schools under Section 7 of *The Equal Status Act 2000*.

Atheist Ireland[^35] contend that it is unacceptable for a school to be allowed to give preference to some religious faiths over others, in order to “maintain the ethos of the school” and maintains that Ireland is in breach of its international human rights obligations by permitting what it describes as religious discrimination.

Speaking to the Committee on 11th December 2013, Ms. Jane Donnelly of Atheist Ireland said that:

“The State allows my only local State-funded school to tell me it will admit all Catholic pupils first and that it might then get around to my children if there are extra places available and only if we do not undermine its ethos.”

Ms. Donnelly also refers to Article 42.3.1 of the Constitution which states:

“The State shall not oblige parents in violation of their conscience and lawful preference to send their children to schools established by the State, or to any particular type of school designated by the State.”

Ms. Donnelly argues that the State ignores this Article inasmuch as secular parents have, in her view, no choice but to send their children to schools with a religious ethos. Ms. Eukaria O’Grady, a private citizen, presented to the Committee on 15th January 2014. Ms. O’Grady argued that the requirement for parents to provide proof of membership of a certain denomination in order to access State-funded schools is contrary to constitutional and human rights. Ms. O’Grady refers to the European Convention on Human Rights[^36] articles 8 (Right to respect for private and family life), 9 (Freedom of thought, conscience and religion) and 14 (Prohibition of discrimination) which, she argues, state that people are not obliged to divulge this type of information.

In relation to State-funding of primary schools, the Department of Education and Skills explains that:[^37]

[^35]: Atheist Ireland is an advocacy group which promotes atheism and “an ethical, secular society where the State does not support or finance or give special treatment to any religion.” It is a member of Atheist Alliance International, an umbrella organisation of groups and individuals in the United States of America and around the world committed to “promoting and defending reason and the atheist worldview.” Source: [http://www.atheist.ie/information/about/](http://www.atheist.ie/information/about/) accessed on 20th December 2013.


“The state pays the bulk of the building and running costs of state-funded primary schools, but a local contribution is made towards their running costs. Teachers’ salaries are paid by the Department of Education and Skills”

Historically, however, schools were built by the Patron body and so remain in their ownership – this has changed in relation to schools built since 1999.³⁸

Mr. John Suttle, author of the paper entitled *Illegal Religious Discrimination in National Schools in Ireland*,³⁹ argues that religious discrimination in relation to admissions to schools is banned by Section 7(2) of *The Equal Status Act 2000* and that the exception provided in Section 7(3)(c) does not apply to national schools because it is limited by Article 44.2.4 of the Constitution.

Article 44.2.4 of the Constitution states that:

“Legislation providing State aid for schools shall not discriminate between schools under the management of different religious denominations, nor be such as to affect prejudicially the right of any child to attend a school receiving public money without attending religious instruction at that school.”

Mr. Suttle notes however that there has never been a direct court judgment or a Government report looking specifically at religious discrimination in admission policies. Mr. Suttle spoke to the Committee on 15ᵗʰ January 2014 and urged that:

“all schools receiving any support from the State must abide by the two pillars of the national school system, which are (1) all religious denominations together in one school and (2) with separate religious instruction.”

The Ombudsman for Children, Ms. Emily Logan in her submission to the Committee refers to the United Nations Convention on the Rights of the Child (UNCRC). Article 2 states that parties must ensure that children are not discriminated against on a number of grounds including religion. Ms. Logan also cites a 2006 review of Ireland’s implementation of the UNCRC by the UN Committee on the Rights of the Child, which recommended that the State amend the existing legislative framework to eliminate what it judged to be discrimination in school admissions.


The Ombudsman for Children also cites a 2011 review by the UN Human Rights Council which recommended that Ireland eliminate religious discrimination in access to education. The Ombudsman for Children’s submission (s 2.19) notes that the State did not accept this recommendation but did indicate that issues of access were being considered as part of its review of the school admission system.

The Ombudsman also draws attention to the committee charged with monitoring the implementation of the International Covenant on Civil and Political Rights (ICCPR) which recommended that the State increase its efforts to provide non-denominational primary education in all regions of the State. Likewise Ireland’s 2011 report by a UN Committee under the UN Convention on the Elimination of All Forms of Racial Discrimination (CERD) expressed concern over the lack of diversity of school types in Ireland and recommended the establishment of more non-denominational or multi-denominational schools as well as amending the existing legislation that inhibits students from being admitted into schools because of denomination.

Both Atheist Ireland and the Ombudsman for Children make reference to Article 2 of Protocol 1 of the European Convention on Human Rights which states that:

“No person shall be denied the right to education…the State shall respect the right of parents to ensure such education and teaching in conformity with their own religions and philosophical convictions.”

The Ombudsman for Children argues that the proposed legislation offers an opportunity to discuss the relationship between the State’s two principles, i.e. (i) that it will provide equal access to education for all children and (ii) that children will be given priority in admission to schools of their own denomination.

The Ombudsman recommends that:

“Section 7 of the Equal Status Act 2000 should be amended to provide that no child should in general be given preferential access to publicly-funded education on the basis of their religion, subject to a derogation that may be granted to a denominational school where the operation of this principle gives rise to a situation in which a school’s student body may no longer reflect the school’s denominational character.”

40 The UN Committee for the Elimination of Racial Discrimination
Some religious groups, however, have defended the right to provide denomination-based education and in some instances to prioritise applicants according to their religious beliefs. Speaking to the Committee on 15th January 2014, Ms Marie Céline Clegg of the Loreto Education Trust said:

“Accountability is being sought in the proposed legislation respecting arrangements for those who wish to withdraw from religious instruction, as is their constitutional right, but there is no corresponding emphasis on accountability in relation to the rights of those who wish to have religious instruction as an integral part of the curriculum in accordance with the characteristic spirit of the school as articulated by the patron in the exercise of its statutory responsibility.

The balancing of rights is an important governance and management function in schools as it is for the Government. Article 26.3 of the Universal Declaration of Human Rights states “Parents have a prior right to choose the kind of education that shall be given to their children”. Protocol 1, Article 2, requires the State to respect the right of parents to ensure such education and teaching as is in conformity with their own religious and philosophical convictions. The UN International Covenant on Economic, Social and Cultural Rights unambiguously upholds this right.”

Referring to Regulation 13 (ii), CPSMA write that:

“CPSMA is concerned that the requirement to explicitly acknowledge a child’s constitutional right not to receive a religious instruction is indicative of a move towards an attempted secularization of denominational schools.”

CPSMA express concern that the proposals:

“... seek to create a generic form of Primary School that is denomination neutral and essentially amounts to an interference in the constitutional right of a religion to manage its own affairs. CPSMA regards this as an alarming development, not just for Catholic but, for all Faith based schools.”

In the COIBOE’S submission to the Committee they argue that:

“The COIBOE considers the right of religious (minority) groups to prioritise entry to schools on religious grounds as essential to the maintaining of the ethos of schools under religious patronage.”

Dr. Ken Fennelly of COIBOE speaking to the Committee on 4th December 2013 regarding Head 4, and the proposal to insert a new Section 33 said:

“At this point, the proposals move from the making of regulations to prescribe the format of school admissions policies, to prescribing the content of school admissions policies...Clearly in a school which is under the patronage of a religious body, the appropriateness of the Minister seeking such powers, even if they are only to be used as a last resort, is open to question in our view. The
committee might wish to consider how this proposal sits with Article 44 of the Constitution which states that religious bodies have the right to manage their own affairs.”

The Constitution specifically sets out the State’s duties in respect of education in Article 42. In addition, the provisions of Article 44 which govern religion and religious freedom, provide among other things for:

- public funding of denominational schools;
- the right of religious denominations to manage their own affairs; and
- the right of pupils to attend a school without attending religious instruction in that school.

Professor Gerry Whyte has highlighted the potential for tension between the various constitutional protections afforded by Articles 42 and 44 and states that: 42

“The conflict between these ideologies did not emerge for many years because of the dominant position of the Roman Catholic Church in Irish society.”

4.1.4 Special Schools

The National Association for Boards of Management Special Education (NABMSE) argue that Head 3 as currently drafted will make it impossible for special schools or special units to differentiate between pupils with different types of special needs. NABMSE argue that special schools must be able to do this in order to meet the needs of its students. The group gave the example of a school for children with hearing impairment, who are presented with an application from a child with autism, who has full hearing. In such a scenario NABMSE argue, they should be entitled to refuse enrolment.

NABMSE also refer to the judgment in the case of The Board of Management of Lucan Educate Together v The Secretary General of the Department of Education and Skills, where it was decided by Mr Justice O’Keefe that the school was found to have lawfully refused entry to a student whose learning difficulties were seen as more severe than the school’s admission policy said it would admit. On a separate issue NABMSE queried whether schools, when publishing their admissions policy can refuse to enrol

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an applicant on the basis of a lack of resources and have this written into the admissions policy.

### 4.1.5 Impact on further education

The Education and Training Boards Ireland (ETBI) believe that the provisions under Head 3 and the regulations published by the Minister are not conducive to some aspects of further education. In particular they are concerned about banning the practice of admitting students based on academic ability, which they argue is an essential practice in further education. In particular they highlight Regulation no.22 of the draft 'Admissions Process' Regulations, which states that schools may not conduct any assessment of a student’s academic ability as part of their application:

“For example, it would not be good educational practice to admit a student with little or no competence in the Irish language to a second level stream or school teaching all subjects through the medium of Irish. Neither would it ordinarily be reasonable to enrol a student in 5th year to study Design and Communication Graphics unless s/he had studied Technical Graphics at Junior Cycle.”

The National Association of Principals and Deputy Principals (NAPD) make a similar point and argue that the interviewing (draft Regulations on ‘Admission Process’ no.20) of prospective applicants is a normal part of the admissions process into Post-Leaving Certificate (PLC) courses as well as a crucial element in the Recognition of Prior Learning (RPL) strategy adopted by many PLC providers. NAPD argue that referral of prospective students from the Department of Social Protection, through *Intreo*, as well as any pending Youth Guarantee, will be contrary to the proposals in the draft legislation.

Speaking to the Committee on 4th December 2013, a Department official said that the regulations are focused on entry to second level and:

“An interview for a post leaving certificate course is not one which could be a soft barrier to admission…Clearly there is a valid educational reason for interviews for post leaving certificate courses.”

Minister of State Dinny McGinley TD, speaking in the Seanad on 20 November 2013 also stated that:43

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43 [http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/seanad2013112000035](http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/seanad2013112000035)
“The draft regulatory framework applies to all recognised primary and post-primary schools and its primary focus is on the enrolment of junior infants at primary level and first year students at post-primary level. The Minister acknowledges that some adjustment will need to be made to the scheme to ensure no unintended consequences of the legislation on the arrangement for enrolment in post-primary and post-leaving certificate courses within such schools.”

4.2 School admission policies - accessibility

The Joint Managerial Body (JMB), which represents voluntary secondary schools, expressed concern that admission policies will become too complicated and incomprehensible to parents and recommended a straightforward statement which affirms that the school operates an inclusive enrolment policy. Pavee Point, on behalf of the travelling community, recommends that all school admission policies and application forms should be written in plain English so that they are accessible to all parents.

The JMB also argue that no provision is given to allow for arrangements to monitor enrolment and maintain a gender balance in the case of co-educational schools.

4.3 Regulating school admissions

4.3.1 What the General Scheme proposes to do

Section 33(g) of the Education Act, 1998 allows the Minister to make regulations relating to the admission of students to schools. However this power is general and the Act does not set out explicitly the extent or scope of such regulations.44 To date this power has not been exercised in respect of enrolment.45

Head 4 of the General Scheme proposes amending Section 33 of the Education Act 1998 so as to:

“…insulate any regulations from challenge on the grounds that the Minister may be exceeding his powers under 33(g) by making clear in primary legislation what the regulations will cover.”46

46 Draft General Scheme of the Education (Admission to Schools) Bill 2013, p.12.
Head 4 proposes amending Section 33 by, substituting subsection (g) with a new subsection and inserting a new subsection (m). This new subsection sets out new regulatory powers in respect of schools’ admission policies such as:

- the selection criteria to be applied where a school is oversubscribed;
- a declaration that the school will not charge enrolment fees;
- the position of the school in relation to upholding the constitutional rights of students not to attend religious instruction; and
- the arrangements by which an applicant may appeal against a decision to refuse admission, among other things.

Speaking to the Committee on the 4th of December 2013 a Department official explained that it is the Department of Education and Skills’ intention that, in the case of oversubscribed schools, admission criteria will be published so that parents can easily identify what has and has not been upheld. The Department also intends that a school must state in its admission policy whether or not it is an oversubscribed school. The Department presented the Committee with details of what criteria will be permissible under the proposed legislation.

The list provided by the Department is not exhaustive, but includes giving priority on the basis of:

- having a sibling who is currently attending or previously attended the school;
- the date of birth of the child for enrolment in a primary school;
- the applicant’s religion (in denominational schools);
- living in the school catchment area;
- attendance in a feeder primary school for enrolment in a post-primary school; and
- being the child of a member of school staff.

**4.3.2 Response from Stakeholders**

The Ombudsman for Children welcomes that the provisions of this Head will mean that schools will have to provide an offer of enrolment where places are available and states that this will be a “substantial advance” on the current framework for admission
to schools. However, some stakeholders raised the following issues in relation to this Head.

4.3.3 Special Needs
Presenting to the Committee on 4th December 2013, the National Parents Council Primary expressed concern that Head 4 requires that a school’s admission policy would include the school’s policy regarding the admission and participation of students with a disability or special educational needs. They believe this should not be part of the admissions policy as it relates to issues following admission and may result in the school limiting their affirmation statement under Head 3.

4.3.4 Open-ended regulatory authority
The JMB are concerned that the Minister may make the provision of funding for building projects, or recognition of new or existing schools, conditional on a school making changes to an existing Admissions Policy or determining the content of a new policy. The JMB argue that no provision should give open-ended regulatory authority and that all areas comprehended by this section be identified and listed.

4.3.5 Withdrawal from religious instruction
Many stakeholders highlighted their concerns around the issue of religious instruction, arguing that at present this constitutional right is a duty owed by the State. NABMSE write that it would seem the State is attempting to pass its obligations on to schools.

The Church of Ireland Board of Education (COIBOE) pointed out that:

“…the proposed wording is confused in its allocation of responsibilities for upholding this State granted right.”

With regard to the arrangements for upholding the constitutional right of students who do not wish to attend religious instruction in schools, the COIBOE representatives noted that the current situation is that schools facilitate this where possible and in practice it is the parent who withdraws their child from class time and schools facilitate this on the basis of practicality and within the scope of available resources on the basis of goodwill.
Stakeholders highlighted potential difficulties regarding resources on this issue as any student who leaves religious instruction must be supervised. For instance, the COIBOE write that:

“Should this now become an obligation on schools it will obviously have to be resourced”

NABMSE also believe that it will be particularly difficult for smaller schools to allocate staff resources to supervision duties should any parent choose to withdraw their child from religious instruction. The Association of Community and Comprehensive Schools (ACCS) also highlight the difficulty that any withdrawal by parents of students from religious instruction would present in terms of resources. Responding to this provision, the Loreto Education Trust Board expressed concern that:

“The difficulties posed by having to put in place clearly articulated arrangements to cater for those who wish to withdraw, as is their right, has the potential to push Religious Education to the periphery of the school curriculum.”

4.3.6 Enrolment of a child in a school – Objections by the Health Service Executive (HSE) and An Garda Síochána

Head 4 combined with Regulation 12(b) (‘Content of Policy’), offers a role for the HSE and An Garda Síochána to object to the enrolment of a child in a school if it would have a detrimental effect on the safe running of a school. This provision raised concern among some stakeholders. Down Syndrome Ireland (DSI) express concern that the regulation does not “detail the right to natural justice” and that a right to due process has been established in Irish courts when it comes to the passing of ‘soft information’. DSI argue that neither the HSE nor An Garda Síochána have the available resources to carry out the extensive investigations required to do this. Also the group queried whether this provision is in conflict with data protection legislation. The TUI believes it would be better that staff refer any concerns about an individual student to the NEWB.

The National Parents’ Council Post-primary argue that there is no right given to parents to respond to information provided by An Garda Síochána or the HSE. Inclusion Ireland also made this point and suggested that the passing of information about criminal behaviour may conflict with provisions in the Children Act 2001.47 Presenting to the Committee on the 4th December 2013, the NCSE said that the ‘labelling’ of children is

serious and can have long-term implications. They were concerned that the provision could lead to children being denied places without a fair process being in place.

4.3.7 Do admissions cover those transferring into schools mid-year?

The NABMSE state that it is unclear whether admission policies extend to mid-year transfers or to admissions later in the school cycle and seek clarity on this. The group write that the legislation needs to be clear about what is required of transfer policies and admission policies for those not of the ‘intake group’. Also, NABMSE ask if the NCSE/NEWB will respect the transfer policies of a school into which they are proposing to allocate a child.

4.3.8 Enrolment of applicants in care

Mr. Gabriel McCabe, a private citizen and foster parent wrote to the Committee to highlight the situation with regard to children in care. This citizen noted that:

“There is not one paragraph, not one word mentioned about Children in Care in this Bill or its Regulations…in 2014 we are in denial about our treatment of Children in Care.”

Mr. McCabe argues that because children in care move homes in their early years, they often find it difficult to gain access to oversubscribed schools. This means they must sometimes attend schools which are located further away, often leaving them isolated within the community in which they live.

While Mr. McCabe welcomes the Minister’s commitment to abolish waiting lists, he notes that the Minister intends to allow schools to phase out existing waiting lists over a number of years. In the case of secondary schools that hold waiting lists from birth, he argues that some arrangement should be made for children in care.

Speaking to the Committee on 15th January 2014 Mr. McCabe said that:

“There are approximately 4,000 school-going children in care in Ireland and there are 4,000 schools in the country. In other words, we are talking about an average of one child in care per school across all classes. It is hardly a major burden on each school to do its share to alleviate the plight of these disadvantaged children.”
Mr. McCabe recommends that children in care be given highest priority when it comes to school admissions and points to the UK, where legislation has guaranteed this.48

4.3.9 Standardised deadline for admission process to schools

Pavee Point recommended that a standard deadline for enrolment be put in place in all schools to make it easier for parents to enroll their children and avoid confusion.

4.3.10 The past pupil or ‘parent’ rule

This refers to the practice of prioritising places for applicants whose parents previously attended the school. Presenting to the Committee on the 11th December 2013, Presentation College Cork stated that they supported the parent rule, as it creates a sense of tradition and history in respect of a school.

However, the Irish Traveller Movement (ITM) are critical that up to 25% of available places in any year may be granted to children of past pupils. This is provided for in Regulation 15 (Content of Policy). ITM write that this rule is discriminatory as it gives an advantage to some students, in that their parents have received secondary education. ITM submit that the current proposals give what they term a discriminatory rule a statutory footing. The group also argues that when combined with the sibling rule it has a significant negative impact on children from disadvantaged backgrounds with regard to access to education. Pavee Point is also critical of this derogation, arguing that the practice of prioritising children of past pupils is:

“...by its very nature discriminatory and has a disproportionate impact on communities with high levels of educational disadvantage.”

The Ombudsman for Children also considers the continuance of this practice under a derogation as unjustifiable given its impact on Travellers and immigrant children. The Ombudsman states that despite the curtailment under the proposals, the derogation is potentially open-ended, unlike the one for waiting lists which is time-limited. The Ombudsman recommends that this derogation be removed.

48 Implemented within the Schools Admissions Code (section 1.7 of the February 2012 edition) available online at: http://media.education.gov.uk/assets/files/pdf/s/school%20admissions%20code%201%20february%202012.pdf
4.3.11 Children of staff

The draft Regulations propose that, where a school is oversubscribed, it would be permissible for the school to give priority to a student who has a parent who is a member of the staff of the school. Lucan Community College, in defining the community that it serves, includes (among other categories of applicant) an applicant who has a parent on the staff of the college. It does this on the grounds that it includes children of those who have a clear understanding of the college rules and ethos that they have responsibility for implementing and developing. The Board of the College has made a case for this over the years, and it has received legal advice that such practice is common-place in the enrolment policies of schools, has sound objectives, and is not currently a concern in relation to legal challenge.

On the other hand, such a practice could be seen to discriminate against other applicants for enrolment, some of whom may reside closer to the school concerned.

4.4 New appeals process in cases where an application to enrol has been refused

4.4.1 What the Bill proposes to do

The provisions of the Education Act 1998, specify that establishing and maintaining an enrolment policy is a function of a school, and allow for an appeal process under Section 29 of the legislation by parents, or students aged 18 or over, to the Secretary General of the Department.49

Presently there are only two ways in which difficulties regarding school admissions may be resolved. These are:

- the Section 29 appeal system as noted above; and
- the patron of a school or the Minister may dissolve the board of management where there is a concern about how a Board has discharged its functions.

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Appendix 3 provides details of Section 29 Appeals undertaken from 2008 - 2012. The figures were supplied, in response to a Parliamentary Question, by the Department of Education and Skills in July 2013.

As noted by the Minister for Education and Skills in the press release which accompanied the General Scheme, the Section 29 process has:

“... triggered multiple appeals in oversubscription cases and has created a significant administrative burden for schools.”

Presenting to the Committee on the 4th December 2013 a Department official said that the Section 29 appeals process has a significant flaw, in that it makes no distinction between not getting enrolled in a school of choice and not getting enrolled in any school in the area.

The proposed legislation will transfer responsibility for appeals against a decision by a school to refuse admission, from the Department of Education and Skills to the relevant school’s Board of Management.

However, Section 29 appeals would continue in cases of suspension or expulsion from school.50 The Minister’s intention is to replace the appeals procedure with one that is “…less burdensome, less-adversarial and more cost-effective…”51

Head 6 provides that the school Principal is responsible for implementing the admission policy of the school and will be accountable to the Board of Management in that regard.

The stated rationale for this provision is to ensure that the decision making process in respect of school enrolment is kept separate from the appeal process and that “an appeal will not be heard by the same entity that made the decision.”52 This is because, as set out in Head 7, appeals against refusal to enrol will be heard by the Board of Management. The Board of Management may then uphold or dismiss the appeal and its decision is final.

51 Ibid.
52 Ibid.
Speaking to the Committee on the 4\textsuperscript{th} of December 2013 a Department official explained that it is the Department’s view that where there is oversubscription, Section 29 appeals are futile. The official argued that in these instances it is better to have a simpler, local appeals mechanism. The official also argued that under current legislation, Section 29 appeals are only initiated after local solutions have been exhausted. Furthermore, the Department pointed out that there “…should not be any appeals in 80% of schools, because they are now required in law to enrol everyone.”\textsuperscript{53}

\textsuperscript{53} Department official in discussion with the Committee on 4\textsuperscript{th} December 2013.
4.4.2 Response from Stakeholders

The Irish Traveller Movement argues that the removal of Section 29 appeals will weaken the position of the Department of Education and Skills, while strengthening the position of schools when operating their admission policies, which will “no longer be accountable to the Department for decisions in this regard.”

Speaking to the Committee on 11th December 2013, Presentation College Cork argued that the current appeal system under Section 29 was working well, was transparent and should remain as it is. The Ombudsman for Children also recommends that Section 29 appeals be retained as the process is independent.

Barnardos welcome that appeals would be heard locally under the proposals but recommend that a standard template or checklist be used, so that parents can be better assured of a fair hearing. Barnardos recommend that such a checklist would form part of a Regulation.

Ms Eithne Reid O’Doherty advocated the retention of an independent appeals and mediation service under section 29 citing case law and constitutional considerations relating to the respective roles of Principal and Board of Management, potential conflict between the proposed Bill and Equal Status legislation, and issues relating to EU law.

4.4.3 Possibility of judicial review and litigation

Heads 5 and 7 received close scrutiny among the submissions received by the Committee. Several stakeholders expressed concern that if the current section 29 right of appeal is abolished, and parents are unhappy with the final decision of the Board of Management, that the only other course available to them will be judicial review, leaving the Board of Management at risk of litigation. Down Syndrome Ireland, COIBOE, NABMSE, the Catholic Primary Schools Managers Association (CPSMA) all raise this as a concern. The CPSMA is concerned that this provision will prove more, rather than less burdensome as the Board of Management may face a “barrage of appeals”, particularly in over-subscribed schools. This, CPSMA argue, may affect people’s willingness to serve on boards of management. In addition, JMB believe that school insurers will not indemnify school management against any such litigation.
Some stakeholders criticised the fact that the same Board of Management who wrote the admission policy in the first place, will be tasked with deciding on the merits of an appeal. The TUI write that the new mechanism assumes that there is a distinction between the Principal and the Board of Management, when in reality they share overall responsibility for the school. The TUI also argue that a Board of Management may be reluctant to overturn a decision made by the school’s Principal and this may undermine the process.

The NABMSE suggested to the Committee that there may be unintended consequences and that the Ombudsman for Children's Office (OCO) may be inundated with complaints relating to refusal to enroll applicants in schools.

4.4.4 Reform not abolition of Section 29 appeals

The National Parents’ Council Post-primary recommend that Section 29 of the Education Act be reformed and made more transparent, not abolished. JMB and Inclusion Ireland also call for reform, while Down Syndrome Ireland argue that proposals must retain an independent appeal against the refusal to enrol a child in school:

“Removing this option is to remove a vital cog of natural justice in enrolment procedures.”

The JMB advise against the dangers of using a legislative approach to enrolment and are concerned that this appeals process may add to the workload of the Board of Management.

Pavee Point, who presented to the Committee on 11th December, argue that while Section 29 appeals are cumbersome, they are currently the only way in which an Education Welfare Officer can establish if a school is full. Pavee Point therefore recommend that if this process is withdrawn an alternative system should be put in place, which would allow an Education Welfare Officer to determine if a school is full. Pavee Point also recommend that decisions made on appeal by the Board of Management are reviewed by the Inspectorate as part of the whole school evaluation process as a means of providing oversight for these decisions. Where an applicant is refused enrolment, Pavee Point argue that an external appeals process must be established, given the close relationship which exists between the Board of
Management and the school Principal. Furthermore they argue that where an appeal involves the refusal to enrol a member of the travelling community, the Appeals Committee should include at least one representative from a Traveller organisation.

4.5 Increased workload for Principals and the Board of Management

Some stakeholders expressed concern that the provisions under Head 6 (school Principal will be solely responsible for implementing the admission policy of the school) will put Principals under increased pressure. CPSMA consider this to be a radical shift from the present situation where the school Principal implements policy on behalf of the Board of Management.

CPSMA argue that as the Principal will be responsible for making decisions in respect of every application and communicating this to parents, this new function may prove "extremely onerous" for Principals, particularly in over-subscribed schools. The JMB also argue that this will increase the workload for school principals.

NABMSE argue that many special schools use advisory panels or sub-committees to process applications as these are often complex and technical. The group argues that the proposed legislation does not take such advice into account.

The INTO, presenting to the Committee on the 4th December 2013 also expressed concern that Principals would experience an increased workload and claim that 70% of this group also carry out full-time teaching duties. They also believe that the proposed new appeals mechanism would "place an enormous strain on a volunteer board."

4.6 Power of the NEWB and NCSE to designate a school, and associated appeal mechanism

4.6.1 What the Bill proposes to do

Heads 8 and 9 amend and reframe the powers previously set out in Section 10 of the *EPSEN ACT 2004*, which provides that the National Council for Special Education (NCSE) may designate a particular school for a child with special educational needs.
In making this designation the NCSE will have regard to the educational needs of the child, the wishes of the parents and the capacity of the school to meet the needs of the student. Once a designation is made the school must admit the child.

In the case of a child who does not have special educational needs but cannot find a school, the National Education Welfare Board (NEWB) may designate a school. In such cases the NEWB will have regard to the availability of places in the local schools, as well as the best interests of the child.

The proposals provide for an appeal mechanism to designations made by the NCSE/NEWB, through the establishment of an Appeals Committee. Schools may appeal to the Appeals Committee and the appeal may be upheld on two grounds: (i) the decision of NCSE or NEWB is unreasonable or (ii) in the case of a school, to which Section 7(3)(c) of the Equal Status Acts 2000-2012 applies, (i.e. a denominational school) where the school has proven that refusal to admit the child is essential to maintaining the ethos of the school. Parents may also appeal if the NCSE or NEWB fails or refuses to designate a school.

Presenting to the Committee on 4th December 2013 a Department official argued that giving power to the NEWB was preferable to “a parent being dragged around appeals committees” when no school will enroll their child. The official said that the proposed legislation would ensure that such a student would be enrolled.

4.6.2 Response from stakeholders

Barnardos have welcomed these proposals, as does the Ombudsman for Children who notes that currently there is no authority that can intervene where a child has been refused enrolment in a number of schools. The Ombudsman does, however, recommend that the principle of acting in the child’s best interests be included for the NCSE as it is for the NEWB. The Ombudsman also recommends that children who are affected by decisions made under this provision be consulted.

The CPSMA are critical that under the proposals set out in Head 9, schools will be required to admit students without being given information on their emotional, behavioral and special educational needs.
The National Parents Council Primary (NPCP) support the provisions set out under Head 9 but would like to see more clarity with regard to the support that will be provided to children while their case is appealed. The group also disagree with the wording of Head 9(2), which states that the Council will have regard for the capacity of the school to meet the child's educational needs, as this, they believe conflicts with Principal 1 of the NCSE’s policy advice to the Minister, that: “All children, irrespective of special educational need, are welcome and able to enrol in their local school.”

Down Syndrome Ireland welcome Head 9 but seek clarity and recommend that the NCSE should only become involved where the parent has failed to find an “appropriate” school placement (and not “any” school placement as is set out in the General Scheme). They also say that when the NCSE become involved, a child should be enrolled in their local school when possible. Down Syndrome Ireland argue that the Bill does not address the ‘soft barriers’ to enrolment as identified by the NCSE. Such barriers, cited by Down Syndrome Ireland, include:

- Schools not applying for additional resources, so that they are not an option for parents of a child with special educational needs;
- Schools not offering the Leaving Certificate Applied programme.

The NCSE welcomed what amounts to the effective commencement (by Head 9 of the General Scheme) of the provisions previously contained in Section 10 of the EPSEN Act 2004. Presenting to the Committee on the 4th December 2013, the NCSE said that while it understood the concerns that some schools may have over this provision they:

“…would not take such a power lightly or exercise it unless it is absolutely necessary.”

In their submission to the Committee, An Foras Pátrúnachta, suggested that both resources and whether the parents and child understand the linguistic ethos of Irish-language schools should be taken into account.

4.6.3 Schools enrolling children with special educational needs are under-resourced

Down Syndrome Ireland argue that the proposals do not tackle the issue of schools being under-resourced to deal with special educational needs, leaving some students
with only 1 hour per day of schooling. The group argues that resources must be given to schools to accommodate these children, in a timely manner. Inclusion Ireland, welcoming the provisions of this Head, also state that where a school is directed to enrol a child with special educational needs, additional resources must be made available to that school.

In a similar vein, the INTO informed the Committee that concerns have been expressed about the designation of schools by the NEWB/NCSE in situations where the appropriate resources are not in place in schools and recommend that the situation is addressed before schools are designated.

4.6.4 Transparency and fair allocation

Commenting on Head 9, the National Parents’ Council Post Primary (NPCPP) argues that there is a need for transparency in relation to the provisions set out under this Head and the legislation should ensure that all schools will be designated a “fair share” of students with special educational needs.

4.6.5 Interference in the autonomy of schools

The NABMSE suggest that Head 9 interferes with school autonomy and that there is no exemption upon which a school may rely where the NCSE/NEWB requires a school to admit a child who has previously been expelled from the school, or refused admission on the basis of a HSE/An Garda Síochána opinion.

Presenting to the Committee on the 4th December 2013 the NABMSE said that while the NCSE is required to take the capacity of a school into account, there is no further guidance in the General Scheme and draft Regulations on how decisions will be made.

4.7 Requirement for schools to cooperate with one another and create a common enrolment/application system in some localities

4.7.1 What the Bill proposes to do

Head 11 will provide the Minister with a new power to direct schools to operate a common admission process, where the Minister is of the opinion that this would be in
the best interests of students in the locality. The Head provides that the Minister will consult with the patron(s) of the schools concerned before doing so.

The explanatory note, contained within the General Scheme, sets out the reasons behind this new power and explains that the provision:

- Will help the Minister to address the situation where, despite the existence of sufficient school places in a particular locality, a cohort of pupils are unable to secure a school place;
- By ensuring that every child has the possibility of applying to any of the schools in a locality, will ensure transparency and fairness and prevent ‘soft barriers’ to entry;
- In the case of an unexpected school closure which results in issues around continuity of provision for pupils, and where a solution is not forthcoming locally, will enable the Minister to address this.

The explanatory note states that in the scenarios outlined above, the approach provided for by Head 11 is more appropriate for students than relying on the provisions of Head 9 (powers granted to the NCSE/NEWB). The explanatory note also states that where the Minister directs two or more schools to operate a common admission process, the Minister may determine the process for same but it is not intended that the schools would need to apply a common admissions policy.

It is envisioned that such schools would continue to apply their own admission policies and only the process would be run in cooperation with other schools.

4.7.2 Response from Stakeholders

The INTO support increased cooperation between schools in relation to enrolment and point towards good examples of this occurring in North Kildare and Waterford. It writes that this is particularly important where there has been significant demographic change. The INTO also called for schools to be given clear guidance on the management of data, and the use of appropriate criteria in enrolling pupils.
The National Parents Council Primary (NPCP) supports the provisions under Head 11 and believes they will provide clarity and transparency for parents in these circumstances.

The NABMSE write that it is unclear at this stage how the provisions under Head 11 will affect cases of “joint enrollment” (where a child is enrolled in two schools simultaneously, e.g. a child with special needs is enrolled in a mainstream school as well as a special school). The NABMSE strongly recommend that there is legislative guidance on practical issues such as how the capitation grant should be split and where the child should be formally enrolled.

Access Education, a private company whose aim is to provide an online enrolment system to primary and secondary schools, regard the current system of enrolment in Ireland as inefficient. They quote the results of their own survey of 162 parents which found that 81% agreed that they would like to be able to enrol their child online.

Stakeholders representing Irish-language education and the COIBOE expressed reservations as to how this system would operate while taking into account the linguistic and religious ethos (respectively) differences between schools in an area. The COIBOE at a meeting with the Committee on 4th December stated that:

“co-operation and dialogue among schools locally is encouraged by [COIBOE]…A difficulty arises for the Protestant minority schools when such co-operation becomes non-voluntary…”

The CPSMA believe it is better for local communities to reach their own solutions, with assistance of the Patron if necessary, without solutions being imposed by the Minister. The group argues that schools may be wary of cooperation for many reasons, including any consequences in terms of staff retention if it faces a decline in enrolment. CPSMA also stated that any common application scheme would have to respect the autonomy of the Board of Management in operating its Admissions Policy in accordance with the ethos of the school.

In response to the Minister’s assertion that it is not the intention that schools would have a common policy, but rather a common process, Mr. Noel Malone, a school Principal, speaking to the Committee on the 15th January 2014, argued that the Minister should insist on a common admission policy across all participant schools,
with geographical location as a first priority. Mr. Malone said that such a system should not have “light touch regulation.”

Finally, the CPSMA recommend that this legislative provision not be commenced until after a review has been completed of the pilot Common Application System (CAS) which is in operation in Limerick. However, it is unclear whether any review is currently being proposed.

The JMB argue that the experience of common admission policies in Limerick have not been “universally positive” for either schools or parents. The JMB are also critical that Head 11 makes no reference to the practice of parents making multiple applications to schools, late cancellations, or failure to present in September. Neither, they argue, does the Head clarify what constitutes an operational geographic or demographic area for these local arrangements.

A number of stakeholders were of the view that a common application system may be useful in terms of tackling the current practice of parents making multiple admissions to schools and accepting places in more than one school.

**4.7.3 Parental school choice and ethnic segregation**

The issue of parental school choice and how it can lead to segregation was brought to the Committee’s attention through the submissions of Ms. Colette Kavanagh, a school Principal, and Mr. Tom Moriarty, also a school principal (both are Educate Together Principals). Ms Kavanagh wrote:

“Parental school choice has been shown to be a significant determinant of segregation in schools…unregulated parental school choice should not be granted at the expense of social cohesion.”

Ms Kavanagh argues that the current system of school choice favours the: “Irish, educated, Catholic parent over the immigrant in almost all cases.”

Mr. Moriarty writes:

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54 See the Limerick Leader article entitled “Complete review' of common application system for schools required' available online at: [http://www.limerickleader.ie/news/local-news/complete-review-of-common-application-system-for-schools-required-1-5486677](http://www.limerickleader.ie/news/local-news/complete-review-of-common-application-system-for-schools-required-1-5486677)
“…there are schools in Dublin existing side by side where one is almost completely international in nature and the other is exclusively Irish…Essentially we are looking at racial segregation.”

Mr. Moriarty writes that where there are a number of schools in an area operating under the same patron, they should be obliged to operate a common enrolment policy. In such a scenario there would be a choice but only for a particular patron and not a particular school.

A 2009 paper looking at the situation regarding parental school choice in the Netherlands found that: 55

“The more that parental choices are influenced by the ethnic mix of a school’s students, the more segregated they are likely to become over time and the more difficult it is for policy makers to ignore the fact that schools are segregated.”

The OECD published a working paper in January 2012 which looked at current policies regarding school choices in OECD countries. 56 The review showed that more than two-thirds of OECD countries have increased school choice opportunities for parents over the past twenty-five years. However the author of the paper describes the debate around school choice as “perhaps one of the most ardently discussed issues in the current education policy debate” with school choice advocates claiming that expanding school choice will increase equity, while school choice critics argue that it leads to segregation based on socio-economic status and ethnicity.

The OECD paper notes that not all parents are equally capable of making informed decisions as regards education and that:

“Disadvantaged parents and students, whose expectations are less well formed, that do not have access to the right type of information and whose knowledge on how to take advantage of complex mechanisms of school choice is limited, are further isolated.”

However, the author of the working paper argues that school choice schemes may be carefully designed so that they benefit both advantaged and disadvantaged families, so long as there are:


• Fair selection criteria for schools;
• Availability of information on school performance and on choice arrangements for all families; and
• Support to schools which may be harmed through choice schemes.

4.8 Patron/Minister may appoint a person independent of the school to operate the school's admission policy

4.8.1 What the Bill proposes to do

Head 12 provides the patron of the school with the power, with the consent of the Minister, to remove control of the admission policy from the Principal if it believes that the admission policy is not being operated in accordance with the legislation. In this situation the Patron may appoint a person or persons independent of the school to operate the lawful admissions policy of the school.

Head 12 also gives the Minister the power to direct the Patron to appoint an independent person to operate the admission policy of the school, where the Minister believes that the admission policy is not being implemented in accordance with the legislation. Presently, under the Education Act 1998, the Patron can dissolve the Board of Management. According to the explanatory note published with the General Scheme, the new proposals would allow for a “narrower sanction” by allowing the Board of Management to remain intact.57

Head 13 provides that if the Patron refuses to discharge a direction issued under Head 12, or the Minister is not satisfied that the situation leading to that direction has been rectified, the Minister may appoint a person independent of the school to implement the admission policy of the school.

The Department believes that exercising this power would “serve as a strong deterrent to any wrongdoing.”58 In the explanatory note, the Department claim that the role of the independent person appointed would be confined to the matters specified in Head 12 and would not encroach in any wider manner.

57 Ibid.
58 Ibid.
4.8.2 Response from Stakeholders

The Ombudsman for Children welcomes the new powers given to the Minister under the new proposals which, she argues:

“…represent a substantial and much-needed set of tools for the effective oversight of schools’ admission policies.”

The Ombudsman notes that currently there is no statutory power available to the Minister to intervene in cases where there are irregularities in how schools operate their admission policy. The Ombudsman recommends that the legislation should specify a timeframe within which the Patron must comply with the direction of the Minister, beyond which an independent person may be appointed by the Minister.

The COIBOE, however, express concern that Heads 12 and 13 may bring the school’s Patron into conflict with their Board of Management. Furthermore they question the legitimacy of this proposal, in the context of Article 44 of Bunreacht na hÉireann, which gives religious bodies the right to manage their own affairs. They suggest that the role of the Department’s Inspectorate could be expanded instead, to assume these powers as an alternative (possibly by amending Section 13 (3)(a)(i) of the Education Act 1998).

The National Parents Council Post Primary (NPCPP) say that the General Scheme is silent on the credentials of the type of person who would be appointed.

Similarly, the CPSMA is concerned about the lack of detail in this provision.
5. Issues relating specifically to the Gaeltacht Language Planning Areas (GLPAs) and Irish language schools

5.1 Schools situated in Gaeltacht Language Planning Areas

This analysis of the proposed measures and their potential impact on Irish-language primary and secondary schools focuses on the Galltacht rather than the Gaeltacht.

It may be noted however that Eagraíocht na Scoileanna Gaeltachta did make a submission to the Minister in 2011 seeking recognition within the forthcoming legislation for the special socio-linguistic situation of the Gaeltacht as set out in the *Comprehensive Linguistic Study of the use of Irish in the Gaeltacht* (Department of Community, Rural and Gaeltacht Affairs, 2007).

Such recognition does not seem to be catered for in the General Scheme of the Bill or the draft Regulations.

5.2 Statistics

A total of 41,439 pupils are currently attending Irish-medium schools in the Galltacht in Ireland. The submission made by Gaelscoileanna Teoranta to the Joint Committee notes that there are 78 children from the Travelling community in Gaelscoileanna – statistics in relation to children with special needs are being compiled. Approximately 10% of Gaelscoileanna have DEIS recognition.

An Chomhairle um Oideachas Gaeltachta agus Gaelscolaíochta (COGG) stated that, as a result of a lack of capacity in Irish-language primary schools (Gaelscoileanna), 22% of prospective pupils are refused enrolment – the corresponding percentage in respect of Irish-language secondary schools (Gaelcholáistí) is 29%. The average

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59 The Galltacht, as defined by Niall Ó Dónaill’s Irish-English dictionary (An Gúm, 1998 edition), are those districts in Ireland which are primarily English-speaking.


61 A full set of detailed statistics categorised by county and level of education is available online here: [http://www.gaelscoileanna.ie/assets/Irish-Medium-Education_English.pdf](http://www.gaelscoileanna.ie/assets/Irish-Medium-Education_English.pdf)


63 An Chomhairle um Oideachas Gaeltachta agus Gaelscolaíochta was founded under the provisions of Article 31 of the Education Act of 1998.
percentage of pupils in Irish-language schools who are native speakers of the language is estimated to be approximately 1.7% (Gaelscoileanna) and 3.35% (Gaelcholáistí).

5.3 Overall State strategy in relation to the future development of the Irish language
Foras na Gaeilge points out that the State’s overall strategy document for the development and promotion of the Irish language, *Stratégie 20 Bliai don Ghaeilge*64 - *Twenty Year Strategy for the Irish Language*, sets out “challenging” objectives for the Government in relation to the preservation and promotion of the language.

COGG makes a similar point in their submission when they draw attention to the Strategy’s aim (p.9) to increase the total number of daily speakers from 83,000 to 250,000 by the year 2030.

5.4 Value for Money (VfM) issues in relation to Irish-language education
COGG believe that both from the perspectives of the quality of education and achieving value for money in relation to State expenditure that children who have attended Gaelscoileanna should have the opportunity to continue their education in the same medium at secondary school level. Foras na Gaeilge addresses this continuity of education provision though it does not relate it directly to VfM – in addition, it adds the pre-school level to this ‘chain’ of education provision.

5.5 Contribution of Irish-language education to children’s fluency in and use of that language
The submissions make the following points with regard to the value of the education system to acquiring proficiency in Irish:

- Outside of the home, children spend most of their time in school;

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64 Leagan Gaeilge ar fáil ag: [http://www.ahg.gov.ie/ie/Straiteis20BliaiGhaeilge2010-2030/Foilseachain/Strait%C3%A9is%2020%20Bliain%20don%20Ghaeilge.pdf](http://www.ahg.gov.ie/ie/Straiteis20BliaiGhaeilge2010-2030/Foilseachain/Srait%C3%A9is%2020%20Bliain%20don%20Ghaeilge.pdf)

• *Tumoideachas* or Immersion Education\(^{65}\) has been proven to be the best method of learning a language.

Foras na Gaeilge posits that having as high a number of native speakers in a Gaelscoil / Gaelcholáiste as possible should assist the school in ensuring that Irish is the normal language of usage.

The Department of Education and Skills discussion paper on a *Regulatory Framework for School Enrolment* (June 2011) contains one paragraph relating to 'language policy' which is reproduced in its entirety here and which states that (p.33):

“Some schools give priority to pupils whose parents attest to supporting the linguistic policy of the school or on the basis of the competence of the parents in a particular language. The operation of this criterion clearly puts applicants at a disadvantage and denies them access if their parents do not have the language competency. It could also be argued that requiring parents to respect the linguistic policy is a more balanced approach than requiring them to attest to support it. This is particularly important if the school in question is the only school available to the child.”

It may be noted that this description does not distinguish between the two categories of parents mentioned within the paragraph, i.e.

- parents who attest to supporting the linguistic policy of the school; and
- parents who are competent in the language which is the medium of instruction of the school.

The issue of the home language of the children is not referenced in the Department’s consultation paper.

5.6 Priority for enrolment in Gaelscoileanna

Gaelscoileanna Teoranta’s submission also mentions the importance of links between naíonraí, Gaelscoileanna and Gaelcholáístí and advises that protecting the Irish language ethos at primary and secondary level would be advanced by allowing children who have attended naíonraí to be given priority in Gaelscoileanna admissions policies (section 14(ii) of the *Draft Regulations Content of Policy* refers).

This is based on the importance of *tumoideachas* to acquisition and fluency in Irish.

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5.7 Equality in the treatment by the State of the Irish and English languages

Both Foras na Gaeilge and COGG question any scenario in which parents whose children are native speakers of Irish could be required to attend schools where the medium of instruction is English.

Foras na Gaeilge was also concerned that the issue of equality is not addressed in the General Scheme and that the outcome would be that English-speakers will effectively be guaranteed the opportunity to enrol in a school which has English as its medium but that this will not be the case for native speakers of Irish even where a Gaelscoil is located in their area.

Foras na Gaeilge identify an excess of demand over places available as the primary reason for the proposed legislation. They propose that the solution therefore is to allow Gaelscoileanna to increase their enrolment capacity in those areas where demand exists.

Finally, Cearta Oideachais in its submission to the Joint Committee gives an overview of the role they envision for Gaelscoileanna/Gaelcholáistí in promoting a more equal society:

“We believe that it is not necessary to erode the rights of one minority - the small community of Irish speaking families - in order to promote the rights of other minorities. For example, Gaelscoil Caitlín Maude in Dublin has addressed this issue by setting aside 10% of their places for children from minority groups – a policy that promotes diversity and inclusion of other minority groups without excluding children from the minority Irish-speaking community... A parent’s decision to raise children through Irish in contemporary society is an endorsement of linguistic diversity. Parents who make this commitment undoubtedly welcome greater linguistic and cultural diversity in the Gaelscoil population, as this normalises multilingualism from a child’s perspective i.e. not everybody speaks English as a first language.”

5.8 Current enrolment policies of Gaelscoileanna

The organisation Cearta Oideachais gave the Committee the results of its (incomplete) survey of the current enrolment policies of Gaelscoileanna (primary level).

They note that there are three broad categories with regard to enrolment policies and children who are native speakers of Irish:
policies that clearly state that native speakers of Irish will receive a certain (varying level of) priority;

- policies that operate an Irish-language ethos, for example giving priority to those families where a parent has fluency in Irish; and

- policies that give no priority at all to native Irish speakers.

The table giving details of this research is available in Appendix 4 to this paper.

5.9 Indigenous languages in a minority-language situation - International examples of best practice

Both Foras na Gaeilge and Cearta Oideachais referred in their submissions to the importance of establishing what is best practice in other countries. Canada was a country mentioned by both, and Cearta Oideachais provided a useful overview of some aspects of the systems employed in that multilingual country.66

- Under the Canadian Charter of Rights and Freedoms, children whose home language is French and who live in a province where the majority language is English have a legal right to primary and secondary education in the French language;

- The method for determining if a child is a French speaker for the purposes of implementing the above right is a matter for individual provinces and territories to determine;

- The province of New Brunswick operates a simple method of establishing minority language education rights:
  
  “Where a superintendent has a doubt as to the linguistic proficiency of a person, the superintendent shall administer such tests as the Minister considers necessary to determine the linguistic proficiency of the person.” 67

- In all provinces and territories in Canada once a child is eligible for elementary education in their home language, that eligibility stays with them throughout

66 Government responsibilities and functions are shared between federal, provincial and territorial governments. Canada has two official languages at the federal level. Other languages have some recognition at other levels of Government – notably the Inuit language which is a third official language in one territory.

67 The relevant provincial Act would seem to be that which came into force in 1997 and is available online at: http://laws.gov.ca/en/ShowPdf/cs/E-1.12.pdf
their school years, guaranteeing them access also to second level education in their home language.

5.10 Proposed amendments to the Draft Regulations on Admission Process

The organisation Cearta Oideachais has drafted a proposed amendment to the draft Regulations. That amendment relates to the Regulations’ intention to prevent any form of interview (except in the case of boarding schools) as part of the admissions process and to prohibiting giving recognition to (in this case) previous education in a naíonra.

The organisation’s clarification of their proposed amendment is that:

“We believe the model we are proposing is the simplest and most effective way of dealing with the educational needs of native Irish speaking children in the context of Schools Admissions policy. It is based on current best practice at primary or elementary level both in Ireland and in New Brunswick...Overall the amendments amount to a limited provision affecting only about 3% of places in Gaelscoileanna and would therefore have a minimal impact on the overall effect of the new school admissions legislation and regulations...We understand that an important principal underpinning the new regulations on enrolment is to remove any ‘soft barriers’ as described by the Minister for Education and Skills for children from various minority and ethnic groups and children with physical and intellectual disabilities. We too are very conscious of not creating new barriers in any way. … It is argued here that a limited clause such as this will in fact protect against its abuse.”
6. CONCLUSIONS

Conclusion 1

Notwithstanding –

- the provision by Vocational Educational Committees over the years of multi-denominational education at post-primary level, and
- the growth in the provision of such education by the Educate Together patronage body, and at primary level in more recent times by the Education and Training Boards

several stakeholders including the Ombudsman for Children noted the lack of diversity of school types available in Ireland.

In that context, concerns were raised by stakeholders in respect of Head 3 (iii)(II), which reaffirms the religious ethos exemption provided for in Section 7(3)(c) of the Equal Status Act, 2000. Some stakeholders claimed that this provision may be in breach of provisions of Bunreacht na hÉireann, and Ireland’s obligations under the European Convention on Human Rights and the United Nations Convention on the Rights of the Child. On the other hand, others claim that Bunreacht na hÉireann, in effect, protects the position of denomination-based education.

Section 7(3)(c) has not been challenged in the Courts. There is a potential tension between Articles 42 (Education) and 44 (Religion) of Bunreacht na hÉireann, and this poses a particular difficulty when legislating in this policy area.

http://www.etbi.ie/etbs/first-level-education/
**Conclusion 2**

Multiple patronage and ethos as a basis for policy can lead to segregation and inequality in the education system. The objectives of admission policy should be equality and integration.

**Conclusion 3**

It needs to be clarified whether or not the Bill will apply to the Further Education Sector.

If it does, the proposed Regulations (see draft ‘Content of Policy’ Regulations (no.14(viii)) should take into account the importance to the Sector –

(a) of being permitted to interview prospective students, and

(b) of recognising prior academic achievement in assessing applications for admission to certain specialised courses.

**Conclusion 4**

Schools’ admission policies (see Head 4) should be written in a simple and plain style so that they are accessible to all parents. Guidance in this regard from the Department of Education and Skills could be strengthened.

**Conclusion 5**

Concerns have been raised in relation to the implications for the parents and students concerned of the proposed provision (Head 4) to allow an objection to enrolment of an applicant by An Garda Síochána or the Health Service Executive (HSE). Safeguards are required to address these concerns. This issue also emphasises the need for and independent appeals system (Conclusion 9 refers)
Conclusion 6

The use of waiting lists can give rise to discrimination against new-comers to an area. This discrimination should be addressed sooner rather than later.

It is proposed to allow schools that currently use waiting lists to phase out this practice over a number of years (draft ‘Content of Policy’ Regulations (no.16). Unless there are legal obstacles, waiting lists should be phased-out as soon as possible, and preferably from 2015. Pending the phasing-out of such lists, there is a need for greater transparency, for applicants and others, in relation to their management and use.

It has also been pointed out to the Committee by stakeholders that the transitional use of waiting lists could be viewed as particularly unfair towards children in care and may potentially place them at risk of isolation in their community. It may be that this risk could be mitigated by giving children in care a high priority in relation to school admissions policies – not just in the transitional period but on an on-going basis.

A comprehensive strategy should be developed in relation to the position of children in care to ensure that they are not directly or indirectly discriminated against in school admission policies.
Conclusion 7

Some stakeholders argued that the derogation included in the draft ‘Content of Policy’ Regulations (no.15) in respect of children of past pupils may not be compatible with the objectives as set out by the Minister. It is also unclear as to why the relevant percentage was set at 25%. The Committee considers that there should be no such derogation, and that a school should not be permitted to give priority to a student on the grounds that he or she is the son or daughter of a former student of the school.

The Committee considers that a school should be permitted to give priority to a student who has a sibling who is currently attending the school.

Conclusion 8

The Minister may wish to review whether a school admission policy should be allowed to give priority to an applicant one of whose parents is a member of staff of the school.
**Conclusion 9**

The ways in which Boards of Management could be offered some protection from litigation in the case of appeals, while also protecting the rights of parents to take legal action where they deem it necessary, should be explored.

If the “section 29” appeals process is replaced, there should be an independent and transparent appeals process, and this could possibly be provided for on a regional basis. Consideration should also be given, in the context of such a process, to provide for independent appeals in relation to the refusal of a school to offer a pupil a place in Transition Year.

A standard template or checklist should be used in relation to such appeals in order to ensure a fair hearing.

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**Conclusion 10**

Where a school is designated to enrol a student with special educational needs, resources should be provided by the Department of Education and Skills within a statutory timetable (Head 9).

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**Conclusion 11**

Where a Patron has more than one school in a particular area, consideration could be given to requiring that Patron to put-in-place a common application system.

Schools in a particular area should, irrespective of their patronage, cooperate in relation to admissions.
**Conclusion 12**

It may be worth ensuring that Head 11 providing for a common applications system between schools takes account of -

- the Common Application System (CAS) currently in operation in Limerick, as well as systems in other States (including the United Kingdom), and
- the effectiveness and impact of such systems.

**Conclusion 13**

(Head 4) Consideration could be given to the specific linguistic needs and status of schools within Gaeltacht Language Planning Areas (GLPAs - as defined in the *Gaeltacht Act 2012*) and the language planning process which is being rolled out under the auspices of the Department of Arts, Heritage and the Gaeltacht.

**Conclusion 14**

The proposed legislation needs to take account of the need to protect the integrity of Irish medium schools while ensuring that no discrimination takes place in relation to admissions.

The proposed legislation could take into account the *Twenty-year Strategy for the Irish language* by considering allowing a high priority in their enrolment policies to the small percentage of schoolchildren who are native speakers of Irish (outside of the Gaeltacht).
Appendix 1: Preparation of legislation

Constitutional issue or Substantial issue involving Legal Policy

Consult Attorney General’s Office

Proposals within ambit of existing Policy and not involving Constitutional issue or Substantial issue involving Legal Policy

Prepare General Scheme of Bill & draft Memorandum to Government including RIA

Consult Departments and Attorney General’s Office on General Scheme

Revise General Scheme and/or Memorandum to accept or respond to observations received

Submit General Scheme and Memorandum to Government

Consultation with outside interests if necessary

Government approval of General Scheme

Attorney General requested to arrange drafting

Prepare draft text of Bill & Memorandum to Government

Consult Departments on text

In the event of proposed substantive amendments anytime after approval of the General Scheme including proposed Committee or Report Stage amendments

Government approval of text submitted with Memorandum to Government

Initiation of Bill (with expl. Memo) in Dail/Seanad

Explanatory Memorandum on bill

Proposals for new Policy

Consult Government Departments on Policy Proposal

New Policy approval by Government

Oireachtas Committee if appropriate and approved by Government

Recommendations taken into account as appropriate

Government approval of any significant changes

Appendix 2: Regulatory Impact Analysis

The Department of Education and Skills has published a Regulatory Impact Analysis (RIA) on the Draft General Scheme of an Education (Admission to Schools) Bill 2013.69

Appendix 3: Section 29 Appeals Overview

The following tables were provided by the Minister for Education and Skills, Mr. Ruairí Quinn, T.D., in response to a Parliamentary Question on 2ND July 2013. The tables provide details of Section 29 Appeals undertaken in each of the previous five years.

**TABLE 1**

<table>
<thead>
<tr>
<th>Total Number of Appeals lodged</th>
<th>Year 2012</th>
<th>Year 2011</th>
<th>Year 2010</th>
<th>Year 2009</th>
<th>Year 2008</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>355</td>
<td>367</td>
<td>369</td>
<td>390</td>
<td>385</td>
</tr>
</tbody>
</table>

**TABLE 2**

<table>
<thead>
<tr>
<th>Details of results of section 29 appeals from 2008 to 2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Refusal to Enrol</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>resolved before hearing</td>
</tr>
<tr>
<td>upheld at hearing</td>
</tr>
<tr>
<td>not upheld at hearing</td>
</tr>
<tr>
<td>*Referred back to Board of Management</td>
</tr>
<tr>
<td>Total</td>
</tr>
</tbody>
</table>

| Expulsions                                                 |
|                                                            |
| resolved before hearing                                   | 15        | 22        | 25        | 20        | 8         |
| upheld at hearing                                          | 16        | 16        | 5         | 9         | 24        |
| not upheld at hearing                                      | 67        | 43        | 37        | 35        | 52        |
| *Referred back to Board of Management                      |           |           | 2         |           |           |
| Total                                                      | 98        | 81        | 69        | 64        | 84        |

| Suspensions                                                |
|                                                            |
| resolved before hearing                                   | 3         | 3         | 0         | 3         | 8         |
| upheld at hearing                                          | 10        | 11        | 3         | 2         | 9         |
| not upheld at hearing                                      | 0         | 2         | 1         | 3         | 5         |
| *Referred back to Board of Management                      |           |           |           | 1         |           |
| Total                                                      | 13        | 16        | 5         | 8         | 22        |

* Pre a Supreme Court Judgement this was an option open to committee members, post the judgement it was no longer an option

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70 Reference Number: 32123/13
Appendix 4: Cearta Oideachais (incomplete) survey of Gaelscoileanna admission policies

Gaelscoil admission policies Dublin

<table>
<thead>
<tr>
<th>Priority only for Children being raised through Irish</th>
<th>Irish language Ethos type priority</th>
<th>Both types of priority</th>
<th>No priority</th>
</tr>
</thead>
<tbody>
<tr>
<td>9</td>
<td>2</td>
<td>7</td>
<td>3</td>
</tr>
<tr>
<td>42%</td>
<td>9.5%</td>
<td>33%</td>
<td>14%</td>
</tr>
</tbody>
</table>

The results of the incomplete national survey based on information from 77 out of 124 Gaelscoileanna indicate that 58 schools or 75% have provisions which would give some sort of priority to children who are being raised through Irish.

Gaelscoil admission policies nationally

<table>
<thead>
<tr>
<th>Priority only for Children being raised through Irish</th>
<th>Language Ethos type priority</th>
<th>Both types of priority</th>
<th>No priority</th>
</tr>
</thead>
<tbody>
<tr>
<td>43</td>
<td>5</td>
<td>10</td>
<td>19</td>
</tr>
<tr>
<td>56%</td>
<td>6.5%</td>
<td>13%</td>
<td>24.5%</td>
</tr>
</tbody>
</table>

Source: Cearta Oideachais submission to the Joint Committee
## Appendix 5: Groups and individuals who made written submissions, and/or participated in the public hearings of the Committee

<table>
<thead>
<tr>
<th>No.</th>
<th>Group or Individual</th>
<th>Participated in public hearing</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>National Association of Principals and Deputy Principals (NAPD)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>11 Wentworth, Eblana Villas, Grand Canal Street Lower, Dublin 2</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Barnardos</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Christchurch Square, Dublin 8</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Joint Managerial Body (JMB)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Emmet House, Milltown, Dublin 14</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>National Parents Council Primary</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>12 Marlborough Court. Dublin 1</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Ceart a Oideachais</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>42 Páirc an Phiarsaigh, Sallynoggin, Co Átha Cliath</td>
<td></td>
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<tr>
<td>6</td>
<td>An Chomhairle um Oideachas Gaeltachta agus Gaelscolaíochta (COGG)</td>
<td>Yes</td>
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<tr>
<td></td>
<td>35 Cearnóg Mhic Liam, Baile Átha Cliath 2.</td>
<td></td>
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<tr>
<td>7</td>
<td>INTO</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>35, Parnell Sq., Dublin 1</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Comhdháil Náisiúnta na Gaeilge</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>46 Sráid Chill Dara, Baile Átha Cliath 2, Éire</td>
<td></td>
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<tr>
<td>9</td>
<td>Sinn Féin</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(Jonathan O’Brien TD, Leinster House, Kildare Street, Dublin 2)</td>
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<td>10</td>
<td>Foras na Gaeilge</td>
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<td></td>
<td>Teach an Gheata Thiar, 4 Sráid na Barriona, Béal Feirste BT1 6ED</td>
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<td>11</td>
<td>Gaelscoiléanna Teo</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>Institiúid Oideachais Marino, Ascaill Uí Ghriofa, BÁC 9</td>
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<td>12</td>
<td>Presentation Brothers College</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>Mardyke, Co. Cork</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Ken Whyte, Principal &amp; Secretary to the Board of Management</td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>The Association of Community &amp; Comprehensive Schools (ACCS)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>10 H Centrepoint Business Park, Oak Drive, Dublin 12.</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>Loreto Education Centre</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>Foxrock, Dublin</td>
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<tr>
<td>15</td>
<td>National Association of Boards of Management in Special Education (NABMSE)</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>Kildare Education Centre, Friary Road, Kildare Town, Co Kildare</td>
<td></td>
</tr>
<tr>
<td>No.</td>
<td>Group or Individual</td>
<td>Participated in public hearing</td>
</tr>
<tr>
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<tr>
<td>16</td>
<td>CPSMA</td>
<td></td>
</tr>
<tr>
<td></td>
<td>New House, St. Patrick's College, Maynooth, Co. Kildare</td>
<td></td>
</tr>
<tr>
<td>17</td>
<td>Comhluaadar Teoranta</td>
<td></td>
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<tr>
<td></td>
<td>6 Sráid Fhearchair, Baile Átha Cliath 2.</td>
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<td>18</td>
<td>An Foras Pátrúnachta</td>
<td>Yes</td>
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<td></td>
<td>Bloc K3 Campus Gnò Mhaigh Nuad, Maigh Nuad, Co. Chill Dara</td>
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<td>19</td>
<td>Education and Training Boards Ireland (EBTI)</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>Piper's Hill, Kilcullen Road, Naas, Co. Kildare, Ireland</td>
<td></td>
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<tr>
<td>20</td>
<td>General Synod Board of Education and Education Officer (RI)</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>Church of Ireland House, Church Avenue, Rathmines, Dublin 6</td>
<td></td>
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<tr>
<td>21</td>
<td>Committee on Management for Protestant Secondary Level Schools</td>
<td></td>
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<td>22</td>
<td>Inclusion Ireland</td>
<td>Yes</td>
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<tr>
<td></td>
<td>Unit C2, The Steelworks, Foley Street, Dublin 1</td>
<td></td>
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<td>23</td>
<td>Pavee Point Traveller and Roma Centre</td>
<td>Yes</td>
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<tr>
<td></td>
<td>46 North Great Charles Street, Dublin 1</td>
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<td>24</td>
<td>National Parents’ Council Post Primary</td>
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<tr>
<td></td>
<td>Unit 5 Glasnevin Business Centre, Ballyboggan Road, Dublin 11</td>
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<tr>
<td>25</td>
<td>Tom Moriarty, School Principal, Adamstown Castle Educate Together school.</td>
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<td>26</td>
<td>Conrád na Gaeilge, 6 Sráid Fhearchair, Baile Átha Cliath 2</td>
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<td>27</td>
<td>National Council for Special Education (NCSE)</td>
<td>Yes</td>
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<tr>
<td></td>
<td>1-2 Mill Street, Trim</td>
<td></td>
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<tr>
<td>28</td>
<td>ASTI</td>
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<tr>
<td>29</td>
<td>Le Chéile Catholic Schools Trust</td>
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<td>30</td>
<td>Lucan Community College</td>
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<td>31</td>
<td>Irish Primary Principals’ Network</td>
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<td>32</td>
<td>Association of Trustees of Catholic Schools</td>
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<td>33</td>
<td>Teachers’ Union of Ireland</td>
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<tr>
<td>34</td>
<td>Sinéad Nic Gabhann</td>
<td></td>
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<tr>
<td>35</td>
<td>Anne Barden, Cooperhill, Drogheda</td>
<td></td>
</tr>
<tr>
<td>No.</td>
<td>Group or Individual</td>
<td>Participated in public hearing</td>
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<tr>
<td>36</td>
<td>Pól Ó'Marcacháin</td>
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<td>37</td>
<td>Heather Smith, Principal of Fermoy Adair School</td>
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<tr>
<td>38</td>
<td>Eithne Reid O'Doherty, 8 Sitric Place, Arbour Hill, Dublin 7</td>
<td></td>
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<tr>
<td>39</td>
<td>John Suttle, 24A Hollybrook Grove, Clontarf, Dublin 3.</td>
<td>Yes</td>
</tr>
<tr>
<td>40</td>
<td>Sadhbh Kurzawska, Access Education, 2 Millrace Court Clonskeagh Road, Dublin 6</td>
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<tr>
<td>41</td>
<td>Anne Gormley, Overdale, Ennis Road, Limerick</td>
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<tr>
<td>42</td>
<td>Margaret Meagher, 2 Seaview Terrace, Donnybrook, Dublin 4</td>
<td></td>
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<td>43</td>
<td>Leah O'Leary, Solicitor, Independent Law Centre, Irish Traveller Movement, 4 - 5 Eustace Street, Dublin 2</td>
<td>Yes</td>
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<tr>
<td>44</td>
<td>Mrs Brenda McGann, 13,Carrickbrennan Lawn, Monkstown, Co Dublin</td>
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<td>45</td>
<td>Atheist Ireland, 7 Dargle Road, Drumcondra, Dublin 9</td>
<td>Yes</td>
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<td>46</td>
<td>Agnes Russell, 2 Lifford Park, South Circular Rd, Limerick, Ireland</td>
<td>Yes</td>
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<tr>
<td>47</td>
<td>Kieran O’Neill, 23 Bramley Grove, Dublin 15</td>
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<td>48</td>
<td>Derval Duggan, Melrose, Killtuman, Dublin 18</td>
<td>Yes</td>
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<td>49</td>
<td>Noel P. Malone, Headmaster, Coláiste Chiaráin, Croom, Co. Limerick</td>
<td>Yes</td>
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<tr>
<td>50</td>
<td>Josephine Henry, Martin Brady, 17 Newbridge Avenue, Sandymount, Dublin 4</td>
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<td>51</td>
<td>Esker Educate Together National School (Adamstown, Co Dublin) Colette Kavanagh, Cliftonville, Sidmorton Rd, Bray</td>
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<td>52</td>
<td>Gerry Jeffers, 43 Finsbury Park, Churchtown, Dublin 14</td>
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<td>53</td>
<td>Gabriel McCabe, Cuan Dor, Scholarstown Road, Dublin 16</td>
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<td>54</td>
<td>Diarmuid Murphy, Rossilare, Co Wexford</td>
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<td>55</td>
<td>Alan Whelan, Beaufort, Co Kerry</td>
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<td>56</td>
<td>Yvonne Bambury, Fahy Bambury McGeever Solicitors, 153 North King Street, Dublin 7</td>
<td></td>
</tr>
<tr>
<td>57</td>
<td>Educate Together, 11– 12 Hogan Place, Dublin 2</td>
<td></td>
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</tbody>
</table>
Notes

1 All written submissions to the Joint Committee on Education and Social Protection, and all presentations made at its public hearings, were considered by the Joint Committee in preparing this Report, although not all of them have been specifically referred to in the body of the Report.

2 Submissions made to the Joint Committee are shown on the Oireachtas website:

http://www.oireachtas.ie/parliament/oireachtasbusiness/committees_list/educationandsocialprotection/presentations/

3 Transcripts of the public hearings of the Joint Committee are also shown on the Oireachtas website; click on the relevant public hearing date:

04 December 2013

11 December 2013

15 January 2014

4 The Draft General Scheme of the Education (Admission to Schools) Bill is available on the website of the Department of Education and Skills. Click here to view.
### Appendix 6: Membership of the Joint Committee on Education and Social Protection

<table>
<thead>
<tr>
<th>Role</th>
<th>Members</th>
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<tbody>
<tr>
<td>Chair</td>
<td>Joanna Tuffy (Lab)</td>
</tr>
<tr>
<td>Deputies</td>
<td>James Bannon (FG)</td>
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<tr>
<td></td>
<td>Ray Butler (FG)</td>
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<td></td>
<td>Joan Collins (PBPA)</td>
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<tr>
<td></td>
<td>Clare Daly (IND)</td>
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<td></td>
<td>Brendan Griffin (FG)</td>
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<td></td>
<td>Jim Daly (FG)</td>
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<td></td>
<td>Derek Keating (FG)</td>
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<td></td>
<td>Charlie McConalogue (FF)</td>
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<td></td>
<td>Nicky McFadden (FG)</td>
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<tr>
<td></td>
<td>Jonathan O’Brien (SF)</td>
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<td></td>
<td>Willie O’Dea (FF)</td>
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<tr>
<td></td>
<td>Aodhán Ó Ríordáin (Lab)</td>
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<td></td>
<td>Aengus Ó Snodaigh (SF)</td>
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<td></td>
<td>Brendan Ryan (Lab)</td>
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<tr>
<td>Senators</td>
<td>Hildegarde Naughton (FG)</td>
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<td></td>
<td>Jim D’Arcy (FG)</td>
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<td></td>
<td>Marie Moloney (Lab)</td>
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<td></td>
<td>Mary Moran (Lab)</td>
</tr>
<tr>
<td></td>
<td>Marie-Louise O’Donnell (IND)</td>
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<td></td>
<td>Averil Power (FF)</td>
</tr>
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</table>
Appendix 7: Orders of Reference of the Joint Committee

a. Functions of the Committee – derived from Standing Orders [DSO 82A; SSO 70A]

(1) The Select Committee shall consider and report to the Dáil on—

(a) such aspects of the expenditure, administration and policy of the relevant Government Department or Departments and associated public bodies as the Committee may select, and

(b) European Union matters within the remit of the relevant Department or Departments.

(2) The Select Committee may be joined with a Select Committee appointed by Seanad Éireann to form a Joint Committee for the purposes of the functions set out below, other than at paragraph (3), and to report thereon to both Houses of the Oireachtas.

(3) Without prejudice to the generality of paragraph (1), the Select Committee shall consider, in respect of the relevant Department or Departments, such—

(a) Bills,

(b) proposals contained in any motion, including any motion within the meaning of Standing Order 164,

(c) Estimates for Public Services, and

(d) other matters as shall be referred to the Select Committee by the Dáil, and

(e) Annual Output Statements, and

(f) such Value for Money and Policy Reviews as the Select Committee may select.

(4) The Joint Committee may consider the following matters in respect of the relevant Department or Departments and associated public bodies, and report thereon to both Houses of the Oireachtas:

(a) matters of policy for which the Minister is officially responsible,

(b) public affairs administered by the Department,

(c) policy issues arising from Value for Money and Policy Reviews conducted or commissioned by the Department,

(d) Government policy in respect of bodies under the aegis of the Department,

(e) policy issues concerning bodies which are partly or wholly funded by the State or which are established or appointed by a member of the Government or the Oireachtas,

(f) the general scheme or draft heads of any Bill published by the Minister,

(g) statutory instruments, including those laid or laid in draft before either House or both Houses and those made under the European Communities Acts 1972 to 2009,
(h) strategy statements laid before either or both Houses of the Oireachtas pursuant to the Public Service Management Act 1997,

(i) annual reports or annual reports and accounts, required by law, and laid before either or both Houses of the Oireachtas, of the Department or bodies referred to in paragraph (4)(d) and (e) and the overall operational results, statements of strategy and corporate plans of such bodies, and

(j) such other matters as may be referred to it by the Dáil and/or Seanad from time to time.

(5) Without prejudice to the generality of paragraph (1), the Joint Committee shall consider, in respect of the relevant Department or Departments—

(a) EU draft legislative acts standing referred to the Select Committee under Standing Order 105, including the compliance of such acts with the principle of subsidiarity,

(b) other proposals for EU legislation and related policy issues, including programmes and guidelines prepared by the European Commission as a basis of possible legislative action,

(c) non-legislative documents published by any EU institution in relation to EU policy matters, and

(d) matters listed for consideration on the agenda for meetings of the relevant EU Council of Ministers and the outcome of such meetings.

(6) A sub-Committee stands established in respect of each Department within the remit of the Select Committee to consider the matters outlined in paragraph (3), and the following arrangements apply to such sub-Committees:

(a) the matters outlined in paragraph (3) which require referral to the Select Committee by the Dáil may be referred directly to such sub-Committees, and

(b) each such sub-Committee has the powers defined in Standing Order 83(1) and (2) and may report directly to the Dáil, including by way of Message under Standing Order 87.

(7) The Chairman of the Joint Committee, who shall be a member of Dáil Éireann, shall also be the Chairman of the Select Committee and of any sub-Committee or Committees standing established in respect of the Select Committee.

(8) The following may attend meetings of the Select or Joint Committee, for the purposes of the functions set out in paragraph (5) and may take part in proceedings without having a right to vote or to move motions and amendments:

(a) Members of the European Parliament elected from constituencies in Ireland, including Northern Ireland,

(b) Members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and

(c) at the invitation of the Committee, other Members of the European Parliament.
b. Scope and Context of Activities of Committees (as derived from Standing Orders [DSO 82; SSO 70])

(1) The Joint Committee may only consider such matters, engage in such activities, exercise such powers and discharge such functions as are specifically authorised under its orders of reference and under Standing Orders.

(2) Such matters, activities, powers and functions shall be relevant to, and shall arise only in the context of, the preparation of a report to the Dáil and/or Seanad.

(3) It shall be an instruction to all Select Committees to which Bills are referred that they shall ensure that not more than two Select Committees shall meet to consider a Bill on any given day, unless the Dáil, after due notice given by the Chairman of the Select Committee, waives this instruction on motion made by the Taoiseach pursuant to Dáil Standing Order 26. The Chairmen of Select Committees shall have responsibility for compliance with this instruction.

(4) The Joint Committee shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Committee of Public Accounts pursuant to Dáil Standing Order 163 and/or the Comptroller and Auditor General (Amendment) Act 1993.

(5) The Joint Committee shall refrain from inquiring into in public session or publishing confidential information regarding any matter if so requested, for stated reasons given in writing, by—

(a) a member of the Government or a Minister of State, or
(b) the principal office-holder of a body under the aegis of a Department or which is partly or wholly funded by the State or established or appointed by a member of the Government or by the Oireachtas:

Provided that the Chairman may appeal any such request made to the Ceann Comhairle / Cathaoirleach whose decision shall be final.