

The Education Act 1998
The Education Welfare
Act 2000

QUESTIONS
& ANSWERS



ACKNOWLEDGEMENT

It is unlikely that there is a Trade Union office in Ireland with more day to day dealings with legal issues than the INTO Conditions of Service section. Operational responsibility for the section rests with the Senior Officials Anne McElduff and Billy Sheehan, who have prepared, written and edited this guide. Over the years they have developed an unmatched and invaluable expertise in the area of Primary Education and the Law and they are also directly involved in the implementation negotiations with the partners in education. The INTO wishes to acknowledge and to thank Anne and Billy for this most practical and comprehensive publication.

This booklet does not purport to be a legal interpretation or an exhaustive analysis, but rather a ready reference designed to be of practical assistance to principals and teachers in developing an understanding of the key aspects of both the Acts.

THE EDUCATION ACT 1998

AND

THE EDUCATION WELFARE ACT 2000

QUESTION AND ANSWER GUIDE



An INTO Publication

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QUESTION AND ANSWER GUIDE TO THE EDUCATION ACT 1998

QUESTION 1:

What is the Education Act, 1998 about?

ANSWER:

In broad summary, the Education Act comprises the following:

- m a rationale for the education system focusing on a number of key principles which are repeated throughout the Act;
- m some specific new measures which schools/the Department of Education and Science are required to put in place and which are specifically mentioned in the Act;
- m statements in relation to aspects of the education system which, by and large, reflect existing practices, for example, the role and functions of the Inspectorate, the functions of a school and the functions of the principal and teachers; and
- m technical and administrative provisions which govern the education system, such as provisions in relation to the recognition of schools, the role of the patron of a school and matters in connection with the National Council for Curriculum and Assessment.



QUESTION 2:

What is the significance of the rationale set out in the Act?

ANSWER:

The first paragraph of the Act (the preamble) summarises the key principles which permeate the Act throughout and which, in particular, are found in paragraph 6 – the objectives of the Act, paragraph 9 which sets out the functions of a school and paragraph 15 which outlines the functions of a Board of Management. In summary, these recurring principles include:

- m the obligation to provide for the education of every person in the state;
- m inclusivity and equality of access, with specific references and emphasis on ensuring provision for persons with disabilities or other special educational needs and that, in general, the rights of parents to send their children to a school of their choice are respected;
- m accountability and transparency: the opening line of the Act refers to the interests of the 'common good', ie the public interest and, in this regard, specific reference is made to ensuring that the education system is accountable to students, their parents and the State for the education provided;
- m respect for diversity: including respect for diverse values, beliefs, languages and traditions in Irish society; and
- m the spirit of partnership: the Act requires the education system to be conducted in a spirit of partnership between schools, patrons, students, parents, teachers and the community served by the school and the State.

The significance of this combination of principles, is that they underpin a rationale for which every person concerned with the implementation of the Act must have regard. Accordingly, any procedures or policies agreed as part of the implementation of the Education Act will be required to reflect, as appropriate, these principles. For example, enrolment/admissions policies must be published – in accordance with the principle of transparency – and such policies will be expected to incorporate matters such as provision for children with special needs and respect for the rights of parents to send their children to a school of their choice.



QUESTION 3:

What are the key new measures set out in the Education Act which will impact on schools?

ANSWER:

In summary, they are as follows:

Section 9(g) which provides that parents (or students of 18 years or upwards) are entitled to have access in the prescribed manner to records kept by the school relating to the progress of the student in his/her education.

Section 15(d) which obliges the Board of Management to publish its enrolment/admissions policy, including the policy of the school relating to expulsion and suspension of students.

Section 20 which provides that the Board of Management must establish procedures for informing parents of matters relating to the operation and performance of the school and that such procedures may include the publication and circulation to parents, teachers and other staff of a report on the operation and performance of the school in any school year.

Section 21 which provides that the Board of Management must prepare a school plan which will include the objectives of the school relating to equality of access, participation in the school and provision for students with disabilities or who have other special educational needs. The Section goes on to say that the school plan should be prepared in accordance with such directions as may be given from time to time by the Minister in relation to school plans and that the Board should make arrangements for the circulation of copies of the school plan to the patron, parents, teachers and other staff of the school.

Section 28 which makes provision for the Minister, following consultation with the partners in education, to draw up a Complaints Procedure (Grievance Procedure) for processing complaints by parents or students of 18 years; and

Section 29 which requires the Department of Education and Science to establish an appeals procedure for the purposes of processing appeals by parents/students of 18 years, against Board of Management decisions, particularly decisions in relation to expulsion and suspension of pupils or where the Board refuses to enrol a pupil. Section 29(d) of the Act provides that appeals against other categories of Board decisions may also be made and discussions among the partners on this aspect of the Section are ongoing.

QUESTION 4:

What does the Act say about the functions of teachers and principal teachers?

ANSWER:

As already explained, the rationale of the Act and the new measures specified affect every person involved in the implementation of the legislation. In addition, part V of the legislation, Sections 22-24, deal specifically with the principal and teachers. To a significant degree these Sections simply re-state existing practice in statutory form. For example:

- m **Section 22** charges the principal and teachers with responsibility for the instruction provided to students in the school and the Section goes on to provide that the teachers shall foster learning, regularly evaluate students and periodically report the results and shall collectively promote co-operation between the school and the local community. The Section also states that subject to the terms of their contracts/collective agreements, teachers should carry out duties assigned by the principal and in the case of the principal, s/he should carry out duties assigned by the Board of Management.
- m **Section 23** authorises the Board of Management to appoint a principal teacher in accordance with agreed procedures and the Section goes on to set out the functions of a principal, such as, responsibility for the day to day management of the school, the provision of leadership to the teachers and pupils, the creation of a supportive learning environment, the obligation to set objectives for the school following consultation and to encourage the involvement of parents in the education of their pupils. The Section states that the principal shall have all such powers as are necessary to carry out his/her functions, that s/he is required to comply with Board policy, to consult with the teachers wherever practicable and to be accountable to the Board of Management for the management of the school. The principal is also entitled to be a member of any and every committee appointed by the Board of Management; and
- m **Section 24** provides that the numbers, qualifications and remuneration of teachers, paid for by the Government, shall be

subject to Ministerial approval. The Section also authorises the Board of Management to appoint teachers or to suspend/dismiss teachers in accordance with existing practice/procedures pending the issuing of any procedures in the future. Finally, the Section goes on to state that the existing terms and conditions of teachers continue to apply.

QUESTION 5:

Does the Act alter the role of the Inspectorate?

ANSWER:

Part 111 of the Act/Section 13 deals entirely with the Inspectorate. This Section also, by and large, reflects the existing practices of the Inspector in statutory form. The Section provides that the Inspector should support and advise recognised schools and in this regard, s/he is entitled to initiate visits to schools and may consult with the Board of Management, patron, parents and teachers. The Inspector is entitled to evaluate the organisation and operation of the school, to evaluate the education standards, assess the implementation and effectiveness of any programmes and, as appropriate, report to the Minister, the Board of Management, patron, parents and teachers. The Inspector may also conduct assessments of the education needs of students.

The Inspector continues to be responsible for advising teachers and Boards of Management in respect of the performance of their duties and the Act says that, in particular, the Inspector should assist teachers in employing improved methods of teaching and conducting classes.

The Inspectorate also has functions in relation to conducting research and advising the Minister in relation to education policy and provision.

QUESTION 6:

Does the Education Act recognise Parents' Associations?

ANSWER:

Yes. Section 26 of the Act provides for the right of parents to establish a Parents' Association. It states that the Parents' Association shall promote the interests of the students in the school in co-operation with the Board of Management, principal and teachers. The Parents' Association may advise the principal or the Board on any matter relating to the school and, in turn, they are required to have regard for any such advice. Furthermore, the Board of Management is required to promote contact between the school and the general community and to give all reasonable assistance to parents who wish to establish a Parents' Association.



QUESTION 7:

What powers are conferred on the Minister under the Education Act?

ANSWER:

The Act provides that the Minister shall have all such powers as are necessary or expedient for the purposes of performing his/her functions. The Act provides that the Minister is responsible for the provision of funding and support services to recognised schools and in doing so, s/he is required to have regard to the resources available, the provision for education and training made by other agencies, the need to reflect the diversity of educational services and existing practices.

The Minister is also responsible for the recognition of schools and, in this respect, will consider an application for recognition from a proposed new school, in the light of factors such as; viability, whether the needs of the students cannot reasonably be met by other existing schools in the area, the curriculum to be followed and whether the patron of the proposed new school agrees to co-operate with regular inspection and evaluation and such other regulations which may be set down by the Minister from time to time. The corollary also applies in that the Minister may also withdraw recognition from a school.

In addition, the Act provides that the Minister shall make all reasonable efforts to consult with the partners in education.



QUESTION 8:

What does the Act say about the Curriculum?

ANSWER:

One of the functions of a recognised school is to ensure that the education provided, meets the requirements of education policy as determined, from time to time, by the Minister. The Act goes on then in Section 30 to provide that the Minister may, following consultation with the partners in education and the National Council for Curriculum and Assessment, prescribe a curriculum, to include the subjects to be offered in recognised schools and the various syllabi. The Act says that a school may provide other courses of instruction also, provided that the prescribed curriculum is taught. Further, the Act states that a student shall not be required to attend instruction in any subject which is contrary to the conscience of the parent or of the student if aged 18 years.



QUESTION 9:

What other important provisions are there in the Act?

ANSWER:

There are a number of other provisions, the key ones being the establishment of:

- m a body of persons to plan and co-ordinate support for teaching through the Irish language – Section 31. This body will be responsible for considering matters such as policy, textbooks, support services and the conduct of research;
- m the Educational Disadvantage Committee to consider policies and strategies for the purposes of identifying and correcting educational disadvantage – Section 32;

- m Education Support Centres (formerly Teachers' Centres), managed by management committees, to provide services for schools, teachers, parents and Boards of Management – Section 37; and
- m the National Council for Curriculum and Assessment on a statutory basis – Part vii.

Further, Section 53 confers on the Minister the power to refuse access to any information in respect of the comparative performance of schools, in terms of pupils academic achievement or the comparative overall results in an examination among different schools.



QUESTION 10:

Does the Act contain any sanctions or offences in relation to non-implementation of any aspect of the legislation?

ANSWER:

The Act contains a number of offences, which relate, in general to the post-primary state examinations. The legislation provides that it shall be an offence if a person knowingly and maliciously obstructs the public examination process, for example, either through personation, destruction of material, or publication of examination papers other than as prescribed. The maximum penalty for perpetrating such an offence is either a fine of up to £5000 or a term of imprisonment not exceeding 2 years.

No offence or sanction applicable to the primary sector is specified in the Act.



QUESTION 11:

Does the Education Act mean that teachers and schools will now be directly answerable to the Courts for non-implementation/breaches of the Act?

ANSWER:

As stated in answer to Question 10, there are new offences created under this Act, which relate to the public examination system. Parents who wish to test or complain about any matter relating to non-implementation/breaches, will have recourse in the first instance to Section 28, the Complaints Procedure and in the second instance, to Section 29, the appeals procedure.

Notwithstanding, it cannot be ruled out that an individual/group would seek redress in the Courts through, for example, a judicial review or other legal device. However, such a course of action has always been open to a complainant and there is no indication that the enactment of the Education Act will affect or increase the propensity of complainants to initiate court proceedings.



QUESTION 12:

When is the Education Act operational from, and how does this date impact on existing DES Circulars and the Rules for National Schools?

ANSWER:

The Education Act was passed in 1998 and became operational from December 2000. Apart from the various principles contained in the Act to which schools must have regard and the specific new measures which are the subject of discussions among the partners (c/f Q. 3 and 13), by and large, existing practices and procedures operating in schools will continue to apply after the implementation date. The Act itself makes provision for the continued application of 'articles of management' ie operational and management procedures such as Circulars and the Rules for National Schools; it provides for the continued recognition of practices and traditions relating to the organisation of schools; and furthermore, the Act specifically states that, except as agreed, the terms and conditions of teachers and other staff of the school under which they were employed before the Act came into operation will continue to apply.



QUESTION 13:

What is happening with regard to the implementation of the new measures specified in the Act?

ANSWER:

The INTO is currently involved in a series of meetings with the partners in education which are preparing procedures to implement the specific new measures specified in the Act. It is likely that the various new procedures to be put in place by the DES, will eventually be issued as legal documents, such as Statutory Instruments. Currently the following discussions are ongoing:

- m **Section 28** Agreement has been reached that the new Section 28 complaints (grievance) procedure will, to a significant degree, reflect the existing INTO/Management complaints procedure. The new procedure will comprise an informal, semi-formal and formal stage, where ultimately the written complaint is formally referred to the Board of Management for investigation and determination. Some outstanding procedural issues remain to be resolved including consideration of the scope of the Section 28 procedure.
- m **Section 29** The DES has prepared draft procedures for the purpose of providing an appeals mechanism for parents/students of 18 years, against decisions made by Boards of Management in relation to the exclusion or suspension of pupils and refusals to enrol. An appeals committee will be established by the DES to hear an appeal and there will also be provision for facilitation prior to the matter going to appeal. The legislation specifies that an appeal must be dealt with in a period of thirty days from the date of receipt of the appeal by the Secretary General of the DES and that the appeals committee shall issue a notice in writing of the determination of the appeal and the reasons therefor. The appeals committee may also make recommendations as to the action, if any, to be taken. At the time of writing, there are a number of outstanding matters to be addressed, such as, the conclusion of Section 28, the provision of clear guidelines on codes of behaviour and discipline, the provision of clear guidelines on enrolment/admissions policies, and the parameters of any

remedying action or directions which an appeals committee may make. Further, the INTO has sought guidance, support, resources and training for principal teachers and school staffs as a pre-requisite to the introduction of Section 29.

m **Section 9(g)** The negotiators are considering the practical implementation of this provision, including consideration of the definition of school records, the length of time for which records should be retained, the procedure for seeking access, the manner of access and whether, in certain circumstances, it is appropriate to refuse access. The question of an appeals mechanism and the provision of the necessary resources is also under consideration.

m **Section 15(d)** In order to come to a common understanding of what may be included in an enrolment/admissions policy, the INTO has had initial discussions with CPSMA, on foot of which draft INTO/CPSMA guidelines on an admissions /enrolment policy have been prepared.

The key elements contained in the draft guidelines include:

- the principles outlined in the Education Act ;
- suggested general information about the school which should cover matters such as the school's name and contact details, the school's denominational character and the range of classes taught; and
- details of the enrolment procedures, such as, the dates and time specified by the Board of Management to process enrolments, whether for example a form is available, the provision of relevant information by parents, and clarification on the process of decision making in the event that demand exceeds the number of places available.

At the time of writing, the INTO is continuing negotiations on these key new aspects of the Education Act. As indicated above, there are a number of outstanding issues to be addressed, particularly the issue of resources, availability of appropriate guidelines and provision for the inclusion of children with special needs.

SUMMARY OF THE KEY SECTIONS CONTAINED IN THE EDUCATION ACT/1998

SET OUT IN CHRONOLOGY

(THE ACT CONSISTS OF A PREAMBLE AND 9 PARTS AND 2 SCHEDULES)

PREAMBLE:

- 1 to make provision in the interests of the common good for the education of every person in the State including any person with a disability or who has special education needs;
- 1 to ensure that the educational system is accountable to students, their parents and the State, respects the diversity of values, beliefs, language and traditions in Irish society, and is conducted in a spirit of partnership between schools, patrons, students, parents, teachers and other school staff, the community served by the school and the State;
- 1 to provide for the recognition and funding of schools and their management through Boards of Management;
- 1 to provide for the role and responsibility of principals and teachers.

Arrangement of Sections

Part I – Preliminary and General (Sections 1 to 7)

- | | |
|----------------------|-----------------------------|
| ρ Objects of Act (6) | ρ Functions of Minister (7) |
|----------------------|-----------------------------|

Part II – Schools (Sections 8 to 12)

- | | |
|-----------------|-----------------------------|
| ρ Patronage (8) | ρ Functions of a school (9) |
| ρ Funding (12) | |

Part III – The Inspectorate (Section 13)

Part IV – Boards of Management (Sections 22 to 24)

- | | |
|--|----------------------------|
| ρ Establishment (14) | ρ Functions (15) |
| ρ Accounts (18) | ρ Report on operation (19) |
| ρ Report and information to parents (20) | ρ School Plan (21) |

Part V – The Principal and Teachers (Sections 22 to 24)

- | | |
|--|------------------|
| ρ Functions (22) | ρ Principal (23) |
| ρ Conditions of service of teachers (24) | |

Part VI – Miscellaneous (Sections 25 to 34)

- | | |
|-------------------------------------|---|
| ρ Parents' Associations (26) | ρ Grievance Procedure (28) |
| ρ Appeals to Secretary General (29) | ρ Curriculum (30) |
| ρ Teaching through Irish (31) | ρ Educational Disadvantage Committee (32) |
| ρ Education Support Centres (37) | |

Part VII – National Council for Curriculum and Assessment (Sections 38 to 48)

- | | |
|----------------------|------------------|
| ρ Establishment (39) | ρ Functions (41) |
|----------------------|------------------|

Part VIII – Examinations (Sections 49 to 53)

- | | |
|-----------------|--|
| ρ Offences (52) | ρ Refusal to access certain information (53) |
|-----------------|--|

Part IX – Bodies Corporate (Sections 54 to 59)

- | | |
|------------------------------------|------------------|
| ρ To provide related services (54) | ρ Functions (56) |
|------------------------------------|------------------|

Ô Part 1 – Preliminary and General

Section 6: Objects of the Act

Every person concerned in the implementation of the Education Act is asked to have regard to the following objectives:

- (a) to give practical effect to the constitutional rights of children in so far as they relate to education;
- (b) to provide that there is made available to people resident in the State, a level and quality of education appropriate to meeting the needs and abilities of those people;
- (c) to promote equality of access and participation in education;
- (d) to promote opportunities for adults to avail of educational opportunities through adult and continuing education;
- (e) to promote the rights of parents to send their children to a school of their parents' choice;
- (f) to promote best practice in teaching methods;
- (g) to promote effective liaison and consultation between schools, centres for education, patrons, teachers, parents, local communities, etc.
- (h) to contribute to the realisation of national educational policies and objectives;

- (i) to contribute to the realisation of national policy in respect of the Irish language;
- (j) to contribute to the maintenance of Irish as a primary community language in Gaeltacht areas;
- (k) to promote the language and cultural needs of students having regard to the choices of their parents;
- (l) to enhance the accountability of the education system; and
- (m) to enhance transparency in the decision making process.

Section 7: Functions of the Minister

- 1** The Minister is assigned the following functions under the Act:
- (a) to ensure, subject to the provisions of this Act, that there is made available to each person resident in the state, including a person with a disability or who has other special educational needs, support services and a level and quality of education, appropriate to meeting the needs and abilities of that person;
 - (b) to determine national educational policy;
 - (c) to plan and co-ordinate:
 - (i) the provision of education in recognised schools and centres for education; and
 - (ii) support services.

Sub-Section 4 of this section states that the Minister in exercising his/her functions shall make all reasonable efforts to consult with the education partners including the teacher unions.

Ô Part II – Schools

Section 8 deals with the issue of the patronage of schools and also obliges the Minister to maintain a register of persons recognised as patrons.

Section 9 of the Act sets out the function of a school. These functions are broadly similar to those set out as the objectives of the Act in Section 6. Thirteen separate functions are set out which place a duty on the school to inter-alia:

- + ensure that the education needs of all students, including those with a disability or other special educational needs, are identified and provided for;
- + to promote the moral, spiritual, social and personal development of students;

- + to ensure that parents of a student have access in the prescribed manner to records kept by that school relating to the progress of that student in his/her education;
- + to conduct its activities in compliance with any regulations made from time to time by the Minister;
- + to establish and maintain an admissions policy which provides for maximum accessibility to the school.

Sections 10 and 11 deal with the recognition of schools and the matter of withdrawal of recognition respectively.

Section 12 deals in a very general way with the matter of the funding of schools.

Ô Part III – Inspectorate

Section: 13

3 Functions of Inspectors:

- + to support and advise schools and teachers;
- + to evaluate the quality and effectiveness of educational provision in the state;
- + to conduct research;
- + to promote excellence;
- + to disseminate information and promote informed debate;
- + to report on the use of Irish in schools;
- + to advise the Minister on educational policy and provision;
- + to perform functions in relation to state examinations;
- + to carry out functions in accordance with agreed procedures;
- + provision for an appeal against an Inspector's Report.

Ô Part IV – Boards of Management

Section 14: Establishment and Membership of Boards of Management

- 2** A Board shall fulfil the functions assigned by the Act. A Board can now be sued in its corporate name.

Section 15: Functions of Board

- 1** To manage the school on behalf of the patron and for the benefit of the students and their parents.
- 2** The Boards shall:

- (a) do so in accordance with the policy determined by the Minister;
- (b) uphold and be accountable to the patron for so upholding the characteristic spirit of the school;
- (c) consult with the patron;
- (d) publish the policy of the school concerning admission to the school, including the policy in relation to expulsion and suspension of pupils, and participation by students with disabilities and other educational needs taking into account that principles of equality and parental choice are respected;
- (e) promote respect for diversity of values, beliefs, traditions, language and ways of life in society;
- (f) have regard to the efficient use of resources; and
- (g) use the resources provided to make reasonable provision and accommodation for students with a disability or other special educational needs.

Section 16: Dissolution by a Patron

- 1** Subject to consent by the Minister, the Patron may remove an individual or dissolve the Board (for a six month period).

Section 17: Dissolution by a Patron at the request of Minister

- 1** Makes provision for the Minister to request the patron to dissolve the Board.

Section 18: Keeping up Accounts and Records

- 1** Annual audit or certification required of Board accounts.
- 2** Accounts available for inspection by Minister and by parents of students in the school.

Section 19: Report on Operation of the Board

- 2** Provision for the Minister/patron to appoint person to carry out report where the Minister/patron is of the view that the functions of the Board are not being effectively discharged.

Section 20: Report and Information

A Board shall establish procedures for informing the parents of students in the school of matters relating to the operation and performance of the school and such procedures may include the publication and circulation of a report on the operation of the school in any school year with particular reference to the achievement of objectives as set out in the school plan.

Section 21: School Plan

- 1** A Board shall make arrangements for the preparation of a school plan and ensure that it is regularly reviewed and updated.
- 2** The school shall state the objectives of the school relating to equality of access and participation including access by pupils with disabilities and special needs.
- 3** The school plan shall be prepared in accordance with such directions as may be given from time to time by the Minister.
- 4** A Board shall make arrangements for circulation of copies of the school plan to the patron, parents, teachers and other staff of the school.

Ô Part V – The Principal and Teachers

Section 22: Function of Principal and Teachers

- 1** The principal and the teachers under the direction of the principal shall have responsibility for the instruction provided to students.

Section 23: The Principal

- 1** Principals appointed by the Board of Management.
- 2** The Principal shall:
 - + be responsible for the day to day management of the school including guidance and direction of the teachers and other staff and be accountable to the Board of Management;
 - + provide leadership to the teachers and other staff and the students;
 - + be responsible for the creation of a school environment which is supportive of learning among the students and promotes the professional development of teachers;
 - + under the direction of the board set objectives for the school and monitor the achievement of those objectives;
 - + encourage the involvement of parents.
- 3** Principals to have all such powers as are necessary to carry out duties in accordance with the policies of the Board and regulations made by the Minister.
- 4** The principal to be member of every Committee appointed by a Board.
- 5** The Principal shall consult with teachers and other staff.

Section 24: Provision relating to Staff

- 1** Teachers appointed by Board of Management.
- 2** Numbers and qualifications of teachers determined by Minister.
- 3** Board may suspend or dismiss teachers in accordance with procedures agreed from time to time.
- 4** Existing procedures will apply until changed.
- 5** Conditions of employment of teachers determined by Minister.
- 6** Except in the case of agreement, nothing in the Act shall have the effect of altering the terms and conditions of teachers.

Ô Part VI – Miscellaneous

Section 25: School Year, Week, Day

Gives the Minister the authority, following consultation with the education partners, to prescribe the length of the school year, week and day.

Section 26: Parents' Association

- 1** Parents may establish a Parents' Association.
- 2** A Parents' Association may:
 - (a) advise the principal or the Board on any matter relating to the school and the principal and the board shall have regard to any such advice; and
 - (b) adopt a programme of activities which will promote the involvement of parents in consultation with the principal in the operation of the school.
- 3** The Board shall promote contact between the school, parents of students and the community and shall give all reasonable assistance to the Parents' Association.

Section 27: Information to Students

- 1** A Board shall establish and maintain procedures for the purpose of informing students in the school of the activities in the school.

Section 28: Grievance Procedure

- 1** The Minister, following consultation, may prescribe procedures in accordance with which:
 - (a) the parent of a student may appeal to the Board a decision of a teacher or any other member of staff;

- (b) grievances of students or their parents relating to the students' school may be heard, and appropriate action taken;
- (c) any procedures will emphasise the desirability of resolving grievances in the school concerned.

Section 29: Appeals to General Secretary

1 Right of Appeal to Secretary General where a Board:

- (a) permanently excludes a student;
- (b) suspends a student;
- (c) refuses to enrol a student; or
- (d) from an agreed list of issues which can be appealed.

2 Establishment of Appeals Committee.

Section 30: Curriculum

Gives the Minister the power, following consultation with the education partners, to prescribe the curriculum for recognised schools.

Section 31: Teaching through Irish

The Minister shall appoint a body of persons to advise in relation to the provision and promotion of education through the medium of Irish including the provision of Irish language textbooks and teaching aids.

Section 32: Educational Disadvantage Committee

The Minister, following consultation with the partners establishes an educational disadvantage committee to advise on policies and strategies to identify and correct educational disadvantage.

Ô Part VII – National Council for Curriculum and Assessment

Sections 38 to 48 deal with the establishment, on a statutory basis, of the National Council for Curriculum and Assessment; the composition of the Council; its functions, the appointment of a CEO and staff and matters relating to accounts, information, establishment of sub-committees and the production of an annual report.

Ô Part VIII – Examinations

Sections 49 to 53 deal with the State Examinations at 2nd and 3rd level including the creation of an offence in relation to unlawfully interfering with examination papers, etc.

Ô Part IX – Bodies Corporate

Sections 54 to 59 confer on the Minister the authority to establish, from time to time, a body to provide services related to education.

QUESTION AND ANSWER GUIDE TO THE EDUCATION WELFARE ACT 2000

QUESTION 1:

What is the Education Welfare Act about?

ANSWER:

Essentially, the Education Welfare Act is about promoting school attendance and, in this regard, the Act replaces the old School Attendance Act of 1926 and subsequent related pieces of legislation. The Act also focuses on the issue of participation in school, specifically in terms of matters such as suspensions and expulsions. The Act also makes specific provisions in relation to children who are educated at home and in relation to young people in employment.

QUESTION 2:

How does the Act provide for the promotion of school attendance?

ANSWER:

The Act contains a number of important statutory provisions in order to ensure school attendance. These include:

- m a statutory obligation on parents to ensure their child attends a recognised school;
 - m an obligation on schools to register all children attending; and
 - m the establishment of the National Educational Welfare Board (NEWB) which will have specific statutory functions in the matter of school attendance, particularly the setting up and administration of a new register for all children receiving education in places other than schools and the appointment of Education Welfare Officers (EWO).
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QUESTION 3:

Can you give some further explanation about the statutory obligation on the parent?

ANSWER:

Section 17 of the legislation states that the parent of a child shall cause the child concerned to attend a recognised school on each school day, except in circumstances where the parent applies to have the child registered on the new register to be established by the NEWB. Where a parent fails or neglects their duties as prescribed under the Act, that parent shall be guilty of an offence which may result in a fine being imposed or imprisonment.

Furthermore, where a child is absent from the school where s/he is registered, the parent of the child is required under the Act to notify the principal of the school of the reasons for the child's absence.



QUESTION 4:

How does the NEWB work?

ANSWER:

The Minister for Education and Science shall appoint the new National Educational Welfare Board which shall comprise a Chairperson and twelve other appointees representative of parents, teachers, school management, relevant voluntary bodies and other government departments involved in matters related to school attendance. The NEWB will have a range of statutory powers, the principal one being to establish and maintain a register of all children in receipt of education in a place other than a recognised school. Parents of children who are not attending a recognised school, for example, in circumstances where the child is being educated at home, are required under the Act to register their child with the NEWB. The NEWB has powers to establish that the child is receiving a certain minimum education and, in this regard, the NEWB will authorise an officer to examine the quality of education being provided outside of the school, including consideration of matters such as materials used and time spent on education.

The NEWB will also appoint Education Welfare Officers who will replace the old school attendance officers. The EWO's have statutory powers under the legislation and schools will be required to liaise with these officers – see next question. An EWO will have powers to enter a school and inspect the register or other relevant records.

QUESTION 5:

What specific duties/measures must be undertaken by principals arising from this legislation?

ANSWER:

In summary, the legislation requires principal teachers:

- m to register each child/student on the day the child first attends the school and the child will then be deemed to be registered in that school;
- m not to remove the student's name from the register unless the child is transferring to another school or the principal has received notification that the child is registered by the NEWB;
- m to communicate to a school, to which a student is transferring, any problems relating to school attendance which the child concerned had and any other appropriate matters relating to the child's educational progress;
- m to keep a record of the pupil's attendance at the school and the reasons for any failure to attend; and
- m to inform the EWO in writing, where a student is suspended for a period in excess of 6 days/or where a student is absent in excess of 20 school days in a school year/or where the student's name is removed from the register/or where, in the opinion of the principal the student is not attending regularly. The EWO will then be obliged to make all reasonable efforts to ensure the continued education of the child and to consult with the pupil, teachers and parents accordingly.

QUESTION 6:

What does the Education Welfare Act say about the matter of pupil assessment?

ANSWER:

In relation to assessment, one of the key powers of the NEWB, is that it can arrange to have children assessed as to their intellectual, emotional and physical development, by such person as may be determined by the NEWB and with the concurrence of the parent. In circumstances where a parent refuses to give his/her consent, the NEWB may apply to the Circuit Court for an Order that the assessment of the child be carried out. This should be of significant benefit to schools who, we expect, should be able to access the assistance of the NEWB through the EWO.

QUESTION 7:

What does the Education Welfare Act say about school discipline?

ANSWER:

In relation to the matter of discipline, the Act provides that each school is required to prepare a code of behaviour in respect of the students registered in the school and that the NEWB may issue guidelines, following consultation with the partners, on the drafting of such codes. The code of behaviour will specify the standards of behaviour to be observed by students attending the school, the measures to be taken where a student fails or refuses to observe those standards, suspension and expulsion procedures, the grounds for removing a suspension imposed and the procedures to be followed by parents when notifying the school of a student's absence. The Act provides that, prior to registering a pupil, the principal teacher shall provide the parents of the child with a copy of the school's code of behaviour and that the principal *"may, as a condition of so registering such child, require his or her parents to confirm in writing that the code of behaviour so provided is acceptable to them and that they shall make all reasonable efforts to ensure compliance with such code by the child"*.

The Act also provides that children may be expelled from primary schools. However, before doing so, the EWO must be notified of the school's intention twenty school days in advance.

QUESTION 8:

Are schools required to perform any other functions pursuant to the legislation?

ANSWER:

The Board of Management is required to prepare a statement of strategies and measures that it proposes to adopt in order to foster school attendance. The legislation intends that the NEWB will issue guidelines in relation to the preparation of such statements, which should generally cover matters such as the identification at an early stage of pupils who are at risk of developing school attendance problems, home/school links and the development of programmes aimed at promoting good behaviour among students and encouraging regular attendance.

The Board of Management is also required to submit a report on the levels of attendance at the school during the preceding year, for the EWO and the parents' association.

QUESTION 9:

Does the Act have any implications for employers?

ANSWER:

Yes it does. The NEWB will also establish a separate register for young persons for the purposes of ensuring that employment does not interfere with the young person's education/training plan. A young person who wishes to seek employment will be required to apply to the NEWB for a certificate of registration and it shall be an offence for an employer (which may result in a fine being imposed or imprisonment) to employ a

young person on any work unless the young person is the holder of a valid certificate of registration.



QUESTION 10:

Are there any fines/sanctions/penalties/offences specified against schools or teachers who do not fulfill their obligations under the Act?

ANSWER:

No. The only offences specified relate to parents and employers.



QUESTION 11:

When does this Act come into force?

ANSWER:

The Act was passed by the Oireachtas in July 2000 and shall come into operation 2 years after the date of its passing.



QUESTION 12:

What is the INTO doing about this legislation?

ANSWER:

The INTO has already contacted the DES in terms of initiating discussions on the practical implications of the Act for schools. Specifically, the Organization has raised the following matters:

- m forms of communication between schools and the NEWB and between schools and the new EWOs;
- m School Registers;

- m the practicalities of communications between parents and schools in terms of attendance and specifying reasons for absences;
- m the drafting of codes of behaviour and, in particular, the drafting of procedures for suspension and expulsion;
- m the matter of requiring parents to accept codes of discipline;
- m guidelines for the proposed statement of strategies to be drafted by the board of management; and
- m the co-ordination of the implementation of the Welfare Act with the Education Act.

At the time of writing, the Minister for Education and Science, Dr Michael Woods, TD, has decided to establish an interim Board to undertake the necessary consultation and preparatory work prior to the formal commencement of the Act's provisions. The DES has assured the CEC that the issues raised by the Organization will be referred to the interim Board and that the education partners will be fully consulted by the Board in these matters.

Finally, the matter of additional rewards and remuneration arising from the implementation of this legislation is currently being pursued through the salary negotiations.



SUMMARY OF THE KEY SECTIONS CONTAINED IN THE EDUCATION WELFARE ACT/2000

SET OUT IN CHRONOLOGY

(THE ACT CONSISTS OF A PREAMBLE AND 4 PARTS AND A SCHEDULE)

THE PREAMBLE:

The preamble sets out in summary points the key objectives of the Act to provide for:

- the entitlement of every child in the State to a certain minimum education;
- the registration of children receiving education in places other than recognised schools;
- the compulsory attendance of certain children at recognised schools; and
- for the establishment of the National Educational Welfare Board.

PART I – Preliminary and General/Contains Sections (S) 1 – 8

The preliminary and general Section generally sets out definitions and operational arrangements, such as the manner of service of documents, details of the Acts repealed, reports on the operation of the Act.

In this section, key definitions include:

‘child’ means a resident in the state who has reached the age of 6 years and who:

- (a) has not reached the age of 16 years; or
- (b) has not completed 3 years of post-primary education, whichever occurs later, but shall not include a person who has reached the age of 18 years.

‘recognised school’ means:

a school designated by the Minister ...under the Education Act, 1998, to be a school recognised for the purposes of that Act.

This part also states that the School Attendance Acts, 1926 to 1967 are hereby repealed.

PART II – National Educational Welfare Board/Contains Sections (S) 9 – 13

- S9** Establishment of National Educational Welfare Board (NEWB).
- S10(1)** Refers to the general functions of the NEWB to ensure that each child attends a recognised school or otherwise receives a certain minimum education, and to assist in the formulation and implementation of policies and objectives of the Government concerning education and, for those purposes, 11 functions are set out including:
- to promote and foster an environment that encourages children to attend school and participate fully in the life of the school;
 - to assist recognised schools in so far as is practicable to meet their obligations under the Act;
 - to support, monitor, and assess the effectiveness of strategies and programmes aimed at preventing non-attendance in school;
 - to advise the National Council for Curriculum and Assessment.
- S10(2)** The Board shall have all such powers as deemed necessary for the performance of its functions.
- S10(4)(5)(6)** The Board can arrange for a child to be assessed with the concurrence of the parent or, where a parent refuses, the Board may apply to the Circuit Court for an Order that an assessment be carried out.
- S11(1)(2)** Appointment of Educational Welfare Officers (EWO).

- S11(4)** A Board of Management, principal, teachers and other members of staff shall give all such assistance as may reasonably be required by the EWO.
- S12** NEWB to appoint a Liaison Officer to ensure the activities of the NEWB are co-ordinated with other relevant authorities.
- S13(1)** The Minister may give a direction in writing to the NEWB requiring it to comply with policy decisions in relation to the functions of the NEWB.

PART III – Education Welfare and Compulsory School Attendance. Sections (S) 14 - 31

- S14(1)** ‘The Register’ – NEWB shall establish a register of all children in receipt of education in a place other than a recognised school.
- S14 (2)(3)(4)** Parent must apply to the NEWB to have the child registered.
- S14(5)** NEWB shall, for the purpose of determining whether the child is receiving a certain minimum education, carry out an assessment by an ‘authorised person’.
- S14(10)** NEWB following assessment may:
- register the child;
 - register the child subject to certain condition;
 - refuse to register.
- S14(20)** Assessments carried out by Inspectors.
- S15** Parents’ Right of Appeal of an NEWB decision in relation to registration.
- S16** Minister may issue guidelines and make recommendations of a general nature, in relation to determining what constitutes ‘minimum education’.
- S17(1)** The parent of a child shall cause the child concerned to attend a recognised school on each school day unless:
- he or she is registered by the NEWB;
 - the parent is appealing an NEWB decision;

- the child is attending a school outside the State; or
 - there exists some other sufficient cause.
- S18** Where a child is absent the parent must notify the school of the reason for the child's absence (procedure to be set out in school's own Code of Discipline).
- S19(1)** Enrolment of children to be in accordance with the school's enrolment policy (S15(2)(d) of the Education Act).
- S20(1)** The principal must maintain a register of all pupils attending the school.
- Particulars to be entered on date of first attendance.
 - In the case of pupil transfer, notify original school.
 - Original school to remove child from its register.
 - Original school to provide information to new school about attendance record of pupil and other matters relating to child's progress.
- S21(1)** The principal shall maintain a record of the attendance or non-attendance of each student.
- S21(2)** A record of attendance shall specify the fact of attendance and the reason for absence.
- S21(4)** Educational Welfare Officer must be informed in writing by the principal where:
- a student is suspended for 6 days or more;
 - a student is absent for an aggregate of 20 school days or more in a school year;
 - a student is struck off from the school register; or
 - where, in the opinion of the principal, the student is not attending regularly.
- S21(5)** Educational Welfare Officer to make all reasonable efforts to ensure continued education of the child.
- S21(6)** Board of Management to submit an annual report on the levels of attendance at the school to the Educational Welfare Officer and the parents' association.
- S21(8)** Educational Welfare Officers' right to inspect school register/school attendance records.

- S22** Board of Management to develop, as part of the School Plan, a statement of strategy to encourage regular attendance in accordance with guidelines to be issued by the NEWB.
- S23(1)** Board of Management to develop a code of behaviour for the school, which shall specify:
- standards of behaviour;
 - sanctions;
 - procedure for suspension/expulsion; and
 - how a child’s absence is to be notified by the child’s parents to the school.
- S23(3)** Provision for NEWB to issue guidelines to schools on codes of behaviour.
- S23(4)** Parents may be asked to confirm in writing that they accept and will support the code of behaviour as a condition of registration.
- S24(1)** Contains provision for expulsion and an obligation to give prior notice to the EWO of the Board of Management’s decision and the reasons therefor.
- S24(2)** Educational Welfare Officer to make all reasonable efforts to ensure that provision is made for the continued education of the student.
- S24(4)** A student shall not be expelled from a school before the passing of 20 school days following the receipt of notification by the EWO – this provision does not prejudice the right of the Board of Management to take other reasonable measures to ensure that good order and discipline are maintained.
- S25(1)** Board may serve a ‘School Attendance Notice’ on a parent who, in the opinion of the NEWB, is failing/neglecting to cause his/her child to attend a school (unless child is registered by NEWB).
- S25(3)** Before making a school attendance notice the NEWB shall make all reasonable efforts to consult with the parents and the principal of the school specified in the notice.

- S25(4)** A person who contravenes a school attendance notice shall be guilty of an offence and shall be liable on summary conviction to a £500 fine or 1 month's imprisonment or both.
- S25(6)** In proceedings for an offence, it shall be a defence for a parent to show that s/he has made all reasonable efforts to cause the child to attend a school.
- S25(8)** Where a parent is convicted of an offence or where a parent has relied on the defence of showing all reasonable efforts, the NEWB shall inform the Health Board.
- S26** The NEWB may appeal a Board of Management decision to suspend/expel/refuse to enrol a student under Section 29 of the Education Act.
- S29** Provides for the establishment of a register of young persons for the purposes of employment.
- S29(9)** An employer shall not employ a young person on any work unless s/he is the holder of a valid certificate issued by the NEWB.

PART IV – Provisions relating to Finance and Staff of the Welfare Board/Sections(S) 32 – 41 and Schedule

Sections 32 to 41 deal with the administration of the NEWB, including matters such as:

- m grants to the NEWB;
- m accounts and audits;
- m reports and information;
- m appointment of the Chief Executive;
- m provisions governing remuneration and superannuation of staff; and
- m performance of functions by NEWB staff.

The Schedule outlines the composition of the NEWB as follows:

- m a chairperson appointed by the Minister from among persons with special interest and expertise;
- m the Chief Executive Officer;

- m a representative of parents;
- m a representative of school management organisations;
- m a representative of teacher organisations;
- m a representative of Educational Welfare Officers;
- m a representative of relevant voluntary or other bodies; and
- m six appointees of other government departments with a special interest or expertise, specifically, Health and Children/Justice, Equality and Law Reform/Social, Community and Family Affairs/Enterprise, Trade and Employment/Tourism/and Sport and Recreation.

The Chairperson of the NEWB shall hold office for a period of 5 years from the date of his/her appointment and an ordinary member shall hold office for a period of 3 years.

Members of the Board shall be eligible for reappointment.