

# DISCUSSION PAPER ON A REGULATORY FRAMEWORK FOR SCHOOL ENROLMENT

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Any views or comments on the options for the regulation of school enrolment outlined in this discussion paper should be forwarded to the Department on or before **28 October 2011** by emailing;

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Enrolment Discussion Paper

Department of Education and Skills

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Cornamaddy

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**See Page 9 for further details.**

## **Foreword by the Minister**

I know how important school enrolment is to parents, their children and schools. While most schools are in a position to accommodate all applicants for enrolment, it is still the case that the demand for places can exceed the number that are available leading to disappointment for parents and pupils when the school inevitably has to refuse some applicants. In some instances refusals are made even where a school is not full. I am conscious as well that operating enrolment processes, particularly where difficulties arise, can add to the workload of schools already busy with all the day to day issues of normal school life. Through this discussion paper I want to stimulate a fresh look at how we deal with such situations. At the heart of this paper is the simple question “Can we find a better way for all concerned?”

In looking at changes we might make we also have to take account of the significant social and economic change that has occurred over recent years. The enrolment policies and practices that served schools and parents well in the past may not now fully accommodate the needs and diversity of our modern society. It is known, for example, that some commonly used selection criteria can disadvantage children and families where they have moved to a new locality for whatever reason. The discussion process presents the challenge for us of striking the right balance between preserving aspects of enrolment policies and processes that are grounded in tradition with the need to ensure fairness in what we do.

Ensuring equality of educational opportunity is the objective of all civilised societies. A critical element in achieving this objective is to have school enrolment arrangements that support access through inclusive, transparent and fair enrolment policies and practices in our schools. I am prepared to bring forward legislative changes to underpin that objective. This document is an invitation to the education partners and other interested parties to participate in shaping those changes by working through the range of issues and options to be considered.

I look forward to receiving and considering your views on this important topic.

**Ruairí Quinn, TD**  
**Minister for Education and Skills**

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## Introduction and Overview

The purpose of this discussion paper is to inform consideration by the education partners and other interested parties, of the range of issues and options to be considered in creating a new regulatory framework for application to recognised schools, both in terms of the content of schools' enrolment<sup>1</sup> policies and the processes operated by schools when enrolling children.

In the context of this discussion paper, a regulatory framework generally can be taken to mean both primary and secondary legislation. Primary legislation means Acts passed by the Oireachtas. Secondary legislation means legislation for which responsibility has been delegated by the Oireachtas to some other party. In practice, it is usually Government Ministers to whom responsibility has been delegated and secondary legislation (also commonly referred to as “regulations”) usually takes the form of Statutory Instruments. Secondary legislation (regulations) cannot exceed the authority given to it under the relevant primary legislation. Secondary legislation in this discussion paper is referred to as regulations.

The feedback from the publication of this discussion paper will help inform the nature and scope of a new regulatory framework for school enrolment.

The work on a new regulatory framework will also be informed by the views previously expressed to the Department by the education partners (and others) following the publication, in 2008, of the [report of the audit of school enrolment policies](#) with any further views provided following publication of this discussion paper.

The audit of school enrolment policies was undertaken by the Department in 2007 to examine the degree to which disparities existed between schools in terms of the enrolment of newcomer pupils. The audit of school enrolment policies, in almost

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<sup>1</sup> The terms enrolment and admission are used interchangeably throughout this discussion document.

2,000 schools at primary and post-primary level, also looked at issues such as the enrolment of children who are members of the Traveller community and children with special educational needs. The [results](#) were published on the Department's website in April 2008. In addition, the audit looked at the written enrolment policies of a proportion of these schools and how these policies translate into practice in terms of actual enrolment patterns.

At a general level, while the audit found no evidence of any system wide enrolment practices that give rise to concern, it did give rise to wider policy questions relating to:

- 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 newcomers 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.

The development of a new regulatory framework will also have regard to the Economic and Social Research Institute (ESRI) report “[Adapting to Diversity: Irish Schools and Newcomer Students](#)” by Emer Smyth, Merike Darmody, Frances McGinnity and Delma Byrne. This report was published in 2009 and looked at a broad range of issues in relation to the integration of newcomer pupils in schools. An element of the overall research considered the effects of admission practices and policies on the distribution of newcomer pupils across schools.

The research found that 80% of schools surveyed enrolled all children who presented and selection criteria were used for the other 20% of schools. It also found among the schools concerned that there were a small number of schools with high concentrations of migrant pupils i.e. over 50% migrant pupils and a few which had over 80% migrant pupils.

In looking at the distribution of newcomer pupils across the schools surveyed, the precise factors influencing enrolment patterns could not easily be identified. However, the authors reported that some of the selection criteria commonly applied by schools tended to disadvantage newcomer pupils. Examples of such criteria are preference to those applicants with siblings already in the school, date of application, preference to children of staff or past pupils and primary school attended. In some cases, the use of religion as a criterion was also found to disadvantage newcomers.

It is the Department's responsibility to ensure that schools in an area can, between them, cater for all pupils seeking school places in an area. However, this may result in some pupils not obtaining a place in the school of their first choice. As an individual school may not have a place for every applicant, a selection process may be necessary. This selection process, like the enrolment policy on which it is based, should be non-discriminatory and should be applied fairly in respect of all applicants.

A key objective for a new regulatory framework for school enrolment is to provide a statutory basis that can better ensure that schools' enrolment policies and procedures are non-discriminatory and are applied fairly in respect of all applicants. The options outlined in this discussion paper are aimed at bringing about greater transparency and consistency through regulating both the content of enrolment policies and the operation of the admission process. A key aspect of this would involve setting out, in regulation, a range of selection or oversubscription criteria that are permissible, or not, for schools to use when they have excess demand for school places. In relation to the operation of the enrolment process this discussion paper looks at standardising the timeframe for the commencement of enrolment in schools, the notification

requirements from schools about enrolment, the application process, decision-making process and also a new appeals process.

The overall approach taken in this discussion paper is to consider for regulation only those aspects of enrolment policies and practices where a common or national approach may be desirable, and otherwise to provide the maximum discretion to schools. It is proposed that any legislative changes in the area of enrolment would seek to maintain and support the current position whereby decision making resides with the Board of Management to the greatest extent possible.

Within an overall regulatory framework of clearly set out requirements, procedures and prescribed timelines, better transparency and effective compliance mechanisms, the number of cases where grievances might arise should diminish. This discussion paper further suggests that an option, in the context of such a framework, might be to strengthen and enhance, by way of regulation, the local based appeal process and provide for an external appeal process only in those cases where a pupil is not offered a place in any school in the locality.

Part One of this discussion paper sets out the current legislative framework in respect of school enrolment. It also examines a number of issues that need to 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 regulations that would cover both the content of school enrolment policies and also the actual operation of such policies.



Any views or comments on the options for the regulation of school enrolment outlined in this discussion paper should be forwarded to the Department on or before **28 October 2011**, by emailing

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**Please Note:**

- Respondents are asked to identify if they are submitting a personal observation/comment or an observation/comment on behalf of a named organisation/association.
- Respondents are asked to limit their observations/comments to no more than 5,000 words.
- It will not be possible to respond to views or comments that are submitted to the Department. Please also note that any views or comments submitted may be published on the Department's website.

## Part One: Background and Context

### 1.1 Current legislative framework

The main existing legislative provisions in respect of school enrolment are contained in the Education Act 1998, the Education (Welfare) Act 2000 and in the Equal Status Acts 2000 to 2004.

#### 1.1.1 Education Act, 1998

The Education Act, 1998 in Section 9 (m) sets as a function of a school to “*establish and maintain an admissions policy which provides for maximum accessibility to the school*”. This section makes reference to Section 15(2) (d) which sets as a function of a Board to:

*“publish, in such manner as the Board with the agreement of the patron considers appropriate, the policy of the school concerning admission to and participation in the school, including the policy of the school relating to the expulsion and suspension of students and admission to and participation by students with disabilities or who have other special educational needs, and ensure that as regards that policy principles of equality and the right of parents to send their children to a school of the parents’ choice are respected and such directions as may be made from time to time by the Minister, having regard to the characteristic spirit of the school and the constitutional rights of all persons concerned, are complied with”*

Section 29 provides for appeals by parents (or students who have reached the age of 18) to the Secretary General<sup>2</sup> of the Department and includes a refusal to enrol a student in a school as a decision by a school that may be appealed. Decisions taken by schools in relation to the suspension or permanent exclusion of a student can also be appealed under this provision. Access to the Section 29 process is conditional on the

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<sup>2</sup>In the case of a school established or maintained by a Vocational Education Committee (VEC), the appeal against the decision of the Board of Management of the school shall be made, in the first instance, to its VEC and thereafter an appeal may be made to the Secretary General of the Department.

conclusion of any appeal procedure provided by the school or the patron of the school in accordance with Section 28 of the Act.

All other appeals against decisions by a school, or grievances relating to a school, fall to be dealt with under the provisions of Section 28 and there is no access for parents/students to the Section 29 process. By limiting the classes of decision that can be appealed to the Secretary General, the current legislative provisions therefore distinguish decisions that affect initial access (admission) or continued access (suspension or permanent exclusion) to an education from all other types of decisions made by schools.

Section 33 of the Act provides that the Minister may make regulations relating to all or any of matters set out in the Act including at 33(g) “*admission of students to schools*”. To date, this power has not been exercised in respect of enrolment.

### **1.1.2 Education (Welfare) Act, 2000**

Some provisions of the Education (Welfare Act) 2000 also form part of the current regulatory framework relating to school admission.

Section 19 of the Education Welfare Act 2000 provides that the Board of Management shall not refuse to admit a student, except where such refusal is in accordance with the admission policy of the school concerned. This section also provides that the parent of a child applying for admission shall provide the school with such information as may be prescribed by the Minister and that, as soon as practicable, but not later than 21 days after a parent has provided such information, the Board of Management of the school concerned shall make a decision in respect of the application and inform the parent in writing of that decision. To date, the information that a parent must provide to a school when applying for admission has not been prescribed.

Section 26 (1) provides the National Educational Welfare Board (NEWB) with the right to appeal a decision of a Board of Management under the provisions of Section

29 of the Education Act, 1998. It confines this right to decisions taken by a school in relation to admission or expulsion of a pupil. The right of appeal does not require the NEWB to consult or obtain the approval of the parent or pupil or limit the right of appeal if an appeal is lodged by the parent in relation to the same decision by a Board of a school.

In the case of an appeal brought by a parent or a student against a decision of a school concerning admission or expulsion, Section 26 (2) of the Education (Welfare) Act 2000 amends Section 29 of the Act of 1998 and provides for the making of such submissions (whether in writing or orally) to the appeals committee as the NEWB considers appropriate.

Section 27 of the Act imposes a duty on the NEWB where a child is refused admission or permanently excluded to make all reasonable efforts to have the child enrolled in another school or to make such other arrangements as it considers appropriate to ensure that a child receives a certain minimum education.

### **1.1.3 Equality Legislation**

School enrolment policies and practices are also covered by equality legislation (Equal Status Acts 2000 to 2004) which prohibits discrimination on nine distinct grounds - gender, marital status, family status, age, disability, race, sexual orientation, religious belief and membership of the traveller community. While the Equal Status Acts specify that a school may not discriminate in the admission of a student, including the terms or conditions of the admission of a student, certain exemptions apply. The existence of single sex schools is recognised and the law provides for an exemption in relation to the gender ground. A second exemption concerns schools where the objective is to provide education in an environment that promotes certain religious values.

A school that has this objective can admit a student of a particular religious denomination in preference to other students. Such a school can also refuse to admit a

student who is not of that religion, provided it can prove that this refusal is essential to maintain the ethos of the school.

#### **1.1.4 Education for Persons with Special Educational Needs Act, 2004**

Although not yet commenced, Section 10 of the Education for Persons with Special Educational Needs Act, 2004 provides that the National Council for Special Educational Needs (NCSE) may, either of its own volition or at the request of a parent, designate the school which a child with special educational needs will attend. Where the NCSE designates a school, the school is required under the Act to admit the child. The Act provides that the NCSE, in making the designation, must take into account the needs of the child, the wishes of the parents and the capacity of the school to accommodate the child and meet his or her needs. An appeal mechanism is provided whereby the school may appeal against the designation to an independent appeals board. Similarly a parent may also appeal where the NCSE has either failed or refused to designate a school.

#### **1.1.5 Summary**

In summary the existing legal framework, while including a power for the Minister to make regulations, is in essence confined to specifying that establishing and maintaining an enrolment policy as a function of a school and providing for an appellate process under Section 29 of the Education Act 1998, to the Secretary General of the Department of Education and Skills (and/or a VEC<sup>3</sup>) when a school has refused admission.

There are at present effectively only two remedies provided for in statute for resolving difficulties relating to school admission practice. One is an appeal initiated by a parent under Section 29 of the Education Act 1998. The second is the potential use of Sections 16 or 17 of the Education Act 1998 by the Minister or the Patron to remove a Board of Management where there is a concern about how a Board has discharged its functions in relation to school admission. A new regulatory framework might include

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<sup>3</sup> In the case of a school established or maintained by a Vocational Education Committee (VEC), the appeal against the decision of the Board of Management of the school shall be made, in the first instance, to its VEC and thereafter an appeal may be made to the Secretary General of the Department.

enhancing the range of statutory remedies available where problems arise concerning enrolment in a school or schools.

The legislative framework also recognises that in relation to some children, those with special needs and those who come to the attention of the NEWB, additional measures can be required in relation to school admission.

The legislative framework as it stands is the product of incremental change where a number of additional or complementary provisions were made in subsequent legislation that augmented or modified the provisions in the Education Act, 1998. Developing a new framework provides an opportunity to look at school enrolment in a holistic manner with a view to a more integrated approach and having regard to the roles of the different agencies that might interact with schools at any time in relation to admission policies or decisions, principally the Department of Education and Skills, the NEWB, the NCSE and the Equality Authority.

## **1.2 Developing a new regulatory framework**

A new framework could also bring about greater transparency and consistency through regulating both the content of enrolment policies and the operation of the admission process. By doing so, it would create greater confidence for parents that the admission criteria laid down by schools and the procedures used by them are legitimate, reasonable and fair. Such a national framework would provide reassurance not only for parents but for schools that other schools, through their particular practices, are not impacting unreasonably on enrolment in an area.

It is clear that the existing legislation has recognised the particular significance to a child and his/her parents of an adverse decision by a school in relation to the admission, suspension and permanent exclusion of a child and providing in Section 29 (7) (b) of the Education Act 1998 a power to the Secretary General of the Department of Education and Skills to “*give such directions to the Board as appear to the Secretary General (having regard to any recommendations made by the appeals committee) to be expedient for the purpose of remedying the matter which was the subject of the appeal and the Board shall act in accordance with such directions*”.

A question to be considered is whether all refusals by schools to enrol a pupil have equal gravity in terms of impact on an individual student. For example where a pupil, along with other pupils, is refused enrolment simply because the demand for places exceeds supply in that particular school, the pupil may readily find an alternative place in another school. In such a case the pupil is effectively being denied his or her school place of preference. In contrast where a pupil is being denied a place by a school that has no shortage of places the pupil concerned is effectively being denied access to an education. Arguably in the latter case, in terms of the impact on a pupil, a decision not to enrol is proximate to a decision to suspend or expel. An appeal process such as provided by Section 29 may provide a remedy or there may need to be additional or alternative remedies.

The development of the new regulatory framework will be guided by the experience to date of the operation of the Section 29 appeal process, the need to support and encourage, as required, inter-school co-operation on enrolment and will seek to address situations where no school place can be found for a child. These issues are expanded in more detail in the sections below.

### **1.2.1 Section 29 appeal process**

The development of a new regulatory framework will take account of the operation of the school admission process since the enactment of the Education Act in 1998 and in particular the adequacy of the existing avenue of redress provided by Section 29 to deal with issues and grievances about enrolment.

Section 29 of the Education Act 1998 allows an appeal to be made to the Secretary General of the Department of Education and Skills<sup>4</sup> in respect of a decision by a Board of Management or by a person acting on behalf of the Board of Management to refuse to enrol a student in the school. Parents are required to lodge a Section 29

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<sup>4</sup> In the case of a school established or maintained by a Vocational Education Committee (VEC), the appeal against the decision of the Board of Management of the school shall be made, in the first instance, to its VEC and thereafter an appeal may be made to the Secretary General of the Department.

appeal with the Department within 42 days of being notified by a school of a refusal to enrol.

The procedures provide for a full hearing by an independent appeal committee. This committee will review the documentation and presentations from parents, schools and as appropriate the NEWB and NCSE. The appeal committee's determination on whether to uphold the appeal is binding, save a judicial review to the High Court.

The introduction of an appellate process under section 29 was, in itself an improvement on the pre-existing arrangements leading schools to be more cognisant of their responsibilities in this area. However the experience of the section 29 process has shown that difficulties and limitations continue to exist in relation to how issues and grievances in relation to enrolment can be addressed.

In 2010 there were 295 appeals admitted against refusals to enrol; an increase of 76% since 2006 and a 750% increase since 2002 (the first full year of appeals). The overwhelming majority of those appeals concerned situations where demand for places in a particular school exceeded supply as distinct from situations where a place could not be secured in a school(s) where places are available and the exclusion is specific to one child.

The Section 29 appeal process has also become more litigious with some schools challenging the determinations made by appeal committees.

The purpose of Section 29, as it stands, is to provide to parents a non-judicial appeal process that can be easily accessed. However, it can be argued that in reality the Section 29 process is burdensome:

- for parents having to provide extensive written documentation, attend hearings and make oral presentations before appeal members. These adversarial requirements may be a barrier to some parents appealing a decision by a school that refuses enrolment to their child. Further, parents have to make multiple appeals i.e. appeal against each school that refuses enrolment to their child.



- for schools, as with parents, having to provide extensive documentation, in some cases in duplicate where multiple appeals by parents arise. VECs can have the additional burden of administering and determining an appeal involving a VEC school which may subsequently be appealed, through the same appeal procedures, to the Secretary General of the Department of Education and Skills.
- for the Department having to administer an increasing volume of appeals as well as dealing with the legal challenges that have arisen.

The 2008 enrolment audit also raised the issue of lack of awareness amongst parents of the section 29 process, particularly among newcomer communities where parents may be less familiar with how the system operates or where there may be communication difficulties. Another matter is how parents might be equipped to deal with a refusal that is presented as informal “advice” to enrol in another school on the basis that the other school would better meet the needs of the child concerned.

The majority (circa. 60%) of school admission appeals taken to date under Section 29 have not provided the remedy sought by the applicant i.e. the admission of the pupil to the school concerned. In most cases this is because the reason for refusal initially was simply a situation where the demand for places in the school concerned exceeded supply and the school adjudicated the applications on the basis of criteria in its admissions policy.

Arguably many of these futile appeals might not have been lodged if there was greater transparency about how a school deals with oversubscription both in terms of setting criteria in an enrolment policy and the process applied to rank applicants against those criteria.

If greater parental confidence can be created in relation to the validity and reasonableness of the content of admission policies and the process operated by schools where there is oversubscription, it may be that recourse to a national appellate process would not be required. In such instances, in order for a parent to succeed in an appeal lodged locally, he or she would simply have to establish the case that the selection process using the criteria did not operate correctly in the applicant’s individual case.

### **1.2.2 Inter-school co-operation**

Inter-school co-operation on enrolment where it exists at present has no statutory underpinning and its success is contingent on the readiness of all schools in an area to participate.

At primary level inter-school co-operation is most often seen to operate between Catholic primary schools within the same parish. At second level one example of co-operation is the Common Application System in Limerick City. This came about as a result of a particular situation a number of years ago in Limerick City when a substantial number of pupils, mainly boys from disadvantaged areas of the city, were left without a post-primary school place. The problem occurred despite there being sufficient capacity overall in schools in the city to meet the demand arising from pupils leaving primary and progressing into second level education. The then Minister brought together the trustees and management authorities of all of the post-primary schools involved to ensure that a co-ordinated approach would be taken to enrolments. Following this initiative the schools agreed the terms of a common application system for the 2005/06 school year onwards and this was facilitated through the Limerick Education Centre with support from the Department.

Notwithstanding the potential benefits that inter-school co-operation can bring in terms of ensuring places for all children, reducing appeals, clarity and certainty for parents etc, there is limited evidence of such co-operation at post primary level or across primary schools located in the same locality but under different patronage. In a new regulatory framework provision could be made for the Minister to have a power to direct, if required, particular schools to co-operate in relation to the admission process and to also define the terms of any such co-operation process.

### **1.2.3 Inability to access any school place**

Circumstances can arise where a child is unable to gain a place in any school in a locality even though one or more schools in the area have available places. At present the only remedy in such instance is for the parent to take multiple section 29 appeals i.e. to take an appeal against each individual school's decision to refuse enrolment.

Furthermore, there is no avenue of last resort available for parents when even having exhausted the section 29 process with one or more schools, no school place at all can be found. Normally such cases are resolved through goodwill and co-operation between the NEWB and schools involved. There is a need to consider whether ongoing reliance on such goodwill is a satisfactory and appropriate manner of dealing with such situations when they arise. In the case of pupils with special educational needs, section 10 of the Education for Persons with Special Educational Needs Act 2004 (when commenced) provides for the designation by the NCSE of a school for a pupil with special educational needs. The Act also provides for an appeal to an independent appeal board by the school concerned against this designation. A parent may also make an appeal in circumstances where the NCSE has failed or refused to designate a school for a child with special educational needs. An option would be to extend this concept to other children where there is extreme difficulty in securing a place for reasons other than oversubscription.

It may also be worth considering whether a school can refuse enrolment where there are reasonable grounds that the admission of a pupil could have a very serious detrimental effect on the health and safety of other pupils or staff of the school. This option should be applicable only in very rare circumstances and it is not envisaged that it would be utilised to address issues in relation to behavioural difficulties that may be associated with a special educational need. If such a provision is included in legislation, consideration and guidance may need to be given on how a school would determine if there are grounds for refusing enrolment on this basis. It would also be important that there is provision for an appropriate appeal mechanism for a pupil that has been refused enrolment in such circumstances.

### **1.3 Options for Legislation: Guiding considerations**

Having regard to the issues outlined in [Section 1.2](#) it is considered that the development of a new framework should be informed and guided by the following considerations:

- The need to encourage best practice and consistency through regulating both the content of admission policies and the operation of the admission process.
- The application of the principle of “subsidiarity” whereby decision making is with the Board and patron as far as possible. A fundamental feature of our school system is that the governance and management of a school is within the control of the Board of Management. It is proposed that any new legislation in the area of enrolment would seek to maintain and support this position and would not unduly interfere with the Board’s authority to determine and manage the admission of pupils to its school.
- 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 at all is made available to that child. This should be distinguished from any intervention where the school of choice is not accessible to the student.

## Part Two: Primary Legislation

### 2.1 Requirement for new primary legislation

It is likely that the objectives outlined at [Section 1.3](#) could best be met through new primary legislation that may involve a consolidation of existing provisions combined with new provisions.

New primary legislation could also be used to provide greater clarity on the extent and scope of any regulations that the Minister might make regarding enrolment. This would help avoid ambiguity or uncertainty in relation to the extent of the regulatory powers that the Minister might exercise in this area.

In addition primary legislation is likely to be required to address such issues as:

- Changes to the scope of section 29 of the Education Act 1998.
- Co-operation between schools in the area of enrolment.
- Providing mechanisms to secure a place for a child where no place is otherwise available having regard to earlier enactment of such provisions in the case of special needs pupils.
- Ensuring compliance.

As outlined in [section 1.1.3](#), school enrolment policies and practices are already covered by equality legislation (Equal Status Acts 2000 to 2004) which prohibits discrimination on the nine stated grounds - gender, marital status, family status, age, disability, race, sexual orientation, religious belief and membership of the traveller community. Subject to the exemptions allowed, the Equal Status Acts specify that a school may not discriminate in the admission of a student, including the terms or conditions of the admission of a student. It is not intended that any of the options explored in this paper would alter the provisions of existing equality legislation.

### **2.1.1 Changes to the scope of section 29 appeals process**

As outlined in [section 1.2.1](#), a number of concerns have been voiced in relation to the section 29 process. These concerns have mainly centred on issues such as whether the process has become overly burdensome for parents, schools and the Department. The emergence of legal challenges to appeal committee decisions underpins the need for a quicker, less formal and more parent friendly alternative to the section 29 process as it applies to enrolment.

As an alternative or enhancement to the Section 29 process, a comprehensive statutory framework for enrolment, consisting as appropriate of new primary legislation and regulations, could provide for more effective structures for dealing with issues that arise in relation to the enrolment of pupils. In that scenario, primary legislation would be required to change or remove the existing section 29 provisions in so far as they relate to enrolment.

### **2.1.2 Inter-school co-operation**

Changes to primary legislation would be required to provide the Minister with powers to require co-operation between schools within a particular locality or area as considered in [section 1.2.2](#). This would enable intervention where co-operation does not happen voluntarily. Primary legislation could provide a new power that would allow the Minister, if required, to direct two or more schools to operate a common admission process. These provisions could be invoked where the Minister is of the opinion that to do so would be in the best interests of the pupils of that locality. The purpose of such a legislative provision would be to ensure that where such a collaborative approach is warranted in a particular locality, it could proceed quickly and with statutory authority.

Legislation might also allow the Minister to determine the nature of this co-operation and the changes that schools may need to make in their enrolment procedures to allow this to take place.

Interschool co-operation may also be required where a new school is established in a particular locality or area. This co-operation would take account of agreements with the Department to facilitate the orderly expansion of the new school, while taking into account overall school provision within a particular locality or area.

The patronage of a school can change or there can be other changes of status of a school such as moving to become co-educational. It is important that there is orderly management of such change. Consideration might also be given to giving the Minister the explicit authority to impose certain conditions in relation to enrolment policy when granting consent to any such changes. This would be to allow for the orderly management of change in the education system and to promote co-operation in enrolment policies between schools in the same geographic area.

### **2.1.3 Providing for pupils that are unable to access any school place**

Notwithstanding all of the above measures, rare instances may still occur where no school place at all can be found for a child.

As outlined at [section 1.1.4.](#), in the case of pupils with special educational needs existing legislation (when commenced) provides for the designation of a school by the NCSE with an appellate process to deal with an appeal by the school concerned against such designation.

Primary legislation might provide for a new mechanism to designate a school in circumstances where no school placement at all is available to an individual child but not to situations where it is simply a place in the school of the parents' choice that is unavailable.

### **2.1.4 Ensuring compliance**

The question arises as to what can or should be done where school authorities are not complying with their legal obligations in the area of enrolment of pupils. Under current arrangements, the onus is largely on the individual parent to pursue concerns about schools enrolment policies or practices either through a section 29 appeal or through other legal avenues such as under equality legislation provisions. As outlined earlier, the associated burden with Section 29 appeals and the cost and time involved



in pursuing other legal avenues can limit the extent to which these avenues can be effectively or efficiently used to address situations of unlawful practice.

The powers under the Education Act whereby a patron, or a patron at the request of the Minister, may remove a Board of Management where satisfied that the Board is not effectively discharging its functions might be considered a disproportionate response where a concern is confined to a single issue such as the Board's functions in the enrolment of pupils.

Given these concerns, an option of a lesser sanction whereby a patron or the Minister might have the power to remove enrolment from the Board's control for a defined period might be a more proportionate and appropriate response. Such an option could involve the appointment of an independent enrolment/admission officer and any provision for same would have to be made within primary legislation.

This option would only be activated in circumstances where there is evidence of significant levels of parental concern regarding either the school's policy and/or its implementation of that policy. Such concerns could perhaps be evidenced by the existence of high levels of appeals, by a formal request to a patron or the Minister from the school's Parent Association or where the request is made by a certain minimum number of parents (such minimum number could be prescribed by the Minister). Action on foot of those concerns would only be taken by the patron or Minister where satisfied that all local avenues of appeal have been exhausted or are incapable of resolving the issues in question.

The procedures for the appointment of an independent enrolment/admission officer could be similar to the procedures that apply where a patron proposes to remove a Board of Management i.e. include requirements for notice to be given and representations to be made from the Board before such a decision would be made. However, in this situation the process would be concerned with only removing from the Board its control in the area of enrolment. The Board would continue to retain control and responsibility in all other areas. Where the concerns relate to the Board's implementation of its enrolment policy, an option would be to simply remove the

operation of the enrolment process itself from the control of the Board. In cases where there are concerns about the policy itself, the option might be to remove both the policy and its implementation from the Board's control. In either scenario, an independent person to be appointed by the patron or Minister would assume the relevant responsibilities in relation to the enrolment of pupils.

This approach would provide for the continuation of existing practices whereby enrolment policies and procedures as a general rule operate successfully at school level but make provision for the patron or perhaps the Minister to intervene in the small number of cases where problems arise. Exercising such power would completely remove enrolment policy and/or its implementation from the control of the Board and would serve as a strong deterrent to any malpractice. It would be important that the intervention be proportionate to the significance of the non-compliance issue. Such sanctions would apply only in the most serious cases and where local procedures have failed or are not considered sufficient to resolve the difficulty. The normal powers of the Board could be restored once the matter of concern was remedied and where a patron and/or the Minister are satisfied that it is appropriate to terminate the intervention.

## Part Three: Regulations

### 3.1 Requirement for Regulations

The Education Act 1998 provides for the Minister to make regulations “for the admission of students to schools”. As outlined in [Section 2.1](#) there may be benefit in legislation being more explicit as to the nature and extent of any such regulations. This could help avoid ambiguity or uncertainty in relation to the extent of the powers that the Minister might exercise in this area. The legislation could make clear that regulations made by the Minister may include prescribing (setting out in regulation) such matters as the content of an enrolment policy, including content that may be permissible and not permissible and also may regulate the procedures and practices involved in operating the policy.

To achieve this end, Section 33(g) of the 1998 Act might be amended to specify the extent and scope of admission regulations.

Regulations could focus on two key areas to bring greater consistency, transparency and accountability to the enrolment of pupils to schools. The two main areas are:

- the content of an enrolment policy including, in particular, the over-subscription criteria that a school may or may not use when demand for school places exceeds the supply available, and
- the operation of the enrolment policy by a school, including timelines, and provision for processing appeals from applicants that are refused enrolment by the school.

## **3.2 Content of an enrolment policy**

In relation to the content of an enrolment policy, regulations could address:

- Drafting and publishing requirements
- Characteristic spirit
- Financial contributions to schools
- Enrolment of pupils with special education needs
- Oversubscription

### **3.2.1 Drafting and publishing requirements**

The current legislation requires a school to establish and maintain an enrolment policy. The content of that policy is a matter for the Board of Management of each school. To foster understanding amongst parents in particular of the considerations and the rationale behind any proposed policy, it may be desirable to include in regulations a requirement for Boards of Management to undertake some level of consultation with their local school community when drafting or changing their admissions policy. The nature and extent of such consultation could either be specified in the regulations or it could be left as a matter for each Board of Management to consider what is appropriate for its particular circumstances. The balance to be achieved, when placing consultation requirements on Boards of Management, is to avoid it being too onerous or have the requirement create an excessive administrative burden. The main stakeholders in any such consultation process would be the patron, parents, staff and any other person or persons the Board of Management considers it appropriate to consult.

Schools are required under current legislation to publish their enrolment policy. The current legislation does not specify how this is achieved. An option to consider is whether regulations would give guidance in this regard. For example, regulations could provide, without prejudice to whatever other arrangements a school might wish

to make, that, as a minimum, the enrolment policy is made available electronically or otherwise, to anyone who requests it.

### **3.2.2 Characteristic spirit**

The current legislation requires a Board of Management to uphold, and be accountable to the patron for so upholding, the characteristic spirit of the school as determined by the cultural, educational, moral, religious, social, linguistic and spiritual values and traditions which inform and are characteristic of the objectives and conduct of the school. Regulations might provide that the enrolment policy should set out the characteristic spirit (also known as the school's ethos) and general objectives of a school.

The inclusion of the characteristic spirit in the enrolment policy informs parents and applicants of the fundamental values particular to the school. Regulations might provide that a requirement could be included in enrolment policies that pupils who enrol in a school should respect the ethos of the school as distinct from any requirement for pupils, or their parents, to actively support the ethos of the school.

### **3.2.3 Financial contributions to schools**

The charging of a financial contribution to enrol in a school is permissible only for recognised fee-charging second level schools and revisions to the regulatory framework would have to accommodate the de facto position of those schools.

All other recognised schools are precluded from charging fees. Regulations could make it clear that an application for admission to such schools cannot be conditional on the payment of a financial contribution whether in the form of a booking deposit or in any other format. Regulations might also require a declaration to this effect to be clearly stated in the enrolment policy of all such schools.

While schools precluded from charging fees, may seek voluntary contributions, the key issue is that such a practice must not impact on admission to the school. Regulations could make clear that voluntary contributions may only be sought after

the completion of the enrolment process and when the pupil has been offered a place and is attending the school.

The Department's position is that voluntary contributions from parents of pupils are acceptable provided it is made absolutely clear to parents that there is no question of compulsion to pay and that, in making a contribution, they are doing so of their own volition. The manner in which such voluntary contributions are sought and collected is a matter for school management; however their collection should be such as not to create a situation where either parents or pupils could reasonably infer that the contributions take on a compulsory character.

#### **3.2.4 Enrolment of pupils with special educational needs**

Section 15 of the Education Act requires schools to make provision in their enrolment policy for pupils with disabilities or who have other special educational needs. Schools catering exclusively for children with special educational needs, or schools that have special classes for pupils with disabilities or special educational needs, may need to have separate criteria for enrolment of pupils to the school or classes concerned.

#### **3.2.5 Oversubscription**

A key function of any Board of Management is to assess its overall capacity and determine the number of school places it can make available for new entrants, having regard to such factors as the limitations of the school's accommodation, the demand from applicants for enrolment in the school, the long-term projected size of the school etc.

For those schools in which demand exceeds available places, a key issue for inclusion in a school's enrolment policy is how the limited school places will be allocated amongst the applicants.

While the majority of schools have the capacity to offer places to all applicants, it may, however, be desirable for all schools to include in their enrolment policy details of how, in the event of oversubscription, places will be allocated.

Regulations could therefore require all schools to clearly set out in their enrolment policy their oversubscription criteria including the manner in which the criteria will be applied. This would help to give confidence to applicants and their parents that the enrolment process is carried out in a fair and transparent manner. The actual operation of oversubscription criteria would only be required in those schools where demand exceeds supply.

The following sets out a range of oversubscription criteria that might be regulated in the new regulatory framework. The oversubscription criteria set out below are not ranked in any particular order.

### **Age**

The current provisions in relation to school starting age require that a child must have started school by the time he/she reaches the age of six and a child must be at least 4 years of age before he/she may be enrolled in a primary school. In an oversubscription situation, it is common for primary schools to give priority to applicants based on their age, favouring those children who are older

### **First Come First Served**

Some schools give priority to applicants based on the date that the application was received. As a result, in some cases, parents have felt the need to apply for a school place a number of years in advance resulting in long waiting lists for some schools. The “first come first served” criterion can also result in queues forming outside some schools at the time of the enrolment process. This type of practice increases parental anxiety about accessing a school place. Persons moving to a new area (perhaps seeking or taking up new employment) at the time of enrolment are at a clear disadvantage when seeking to enrol their children in schools that use this criterion. However, if a decision was made to prohibit it then some consideration may need to

be given to whether such lists are abandoned outright or what transition arrangements, if any, would apply for applicants who are already on waiting lists.

### **Siblings**

It is common for enrolment policies to provide for priority to be given to siblings of pupils attending a school. Where possible, parents will generally want all their children to attend the same school – particularly at primary level. Giving priority to younger brothers and sisters of pupils already at a school facilitates those families and therefore it would seem reasonable for regulations to continue to permit schools to give priority to siblings. However, families that have an applicant with no older siblings in that school may be at a disadvantage of accessing his/her closest school or school of choice.

### **Relative of staff / Past Pupils**

Giving priority to an applicant based on being a relative of any member of the school staff, Board of Management, past pupil, benefactor of the school etc. limits the opportunities of getting a school place for applicants who have no previous connections with the school and almost invariably places a child who has recently come to live in an area at a disadvantage.

### **Faith**

The existing denominational school system and equality legislation supports the right of denominational schools to give priority to children of a particular faith. It is not proposed to change this. However, where such schools decide to make a portion of their school places available to applicants who are not of that faith, it may be desirable to provide statutory support for such arrangements.

### **Distance from Schools, Geographical Boundaries and Feeder Schools**

The intake of pupils to schools is sometimes determined by factors such as the distance that pupils live from a school, parish or geographical boundaries and/or feeder school arrangements. Arrangements based on these factors have typically developed over time and some are now in place for considerable periods. It is



appropriate to consider the merits of each of these approaches in terms of how they might be addressed within regulations.

Defining and reviewing geographical areas for schools or groups of schools is a complex and difficult task. Indeed there have been criticisms of some of the planning undertaken by the Department on the basis of catchment areas. For schools of a particular denomination there may also be a parish or diocesan boundary that is of particular relevance and consideration might be given to making provision for same in regulations.

Many post primary schools have long established feeder school arrangements. It is generally the case that these arrangements result in pupils being able to access their closest school. However, the operation of such arrangements can negatively impact on enrolment patterns in primary schools and can sometimes prevent access to a post primary school for a child who hasn't attended the feeder school but for whom the post-primary school in question is the child's closest school.

Giving priority to pupils on the basis of distance from their school is generally considered to be a fair and transparent method for the allocation of school places. If advanced in regulations, it would however be important for schools to be required to clearly set out in their enrolment policy how the distance is measured so as to ensure it is operated in a consistent, fair and transparent manner.

### **Language Policy**

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.

## **Pupil ability**

It is considered appropriate that the regulations should specify that the admission of a pupil should not be based on the pupil's academic or other skills. Any tests, interviews etc. whether formal or informal should not be part of deciding whether an applicant should be offered a place in the school.

## **Open days /Interviews**

While schools may hold open days and meet with parents to answer queries regulations could provide that schools may not include a requirement to attend any open day, meeting or interview as a condition for the allocation of a school place.

## **Random Selection**

The regulations could provide that if a random selection process is used it must be independently supervised by a reputable person invited by the Board of Management. There may be merit in considering whether the regulations should include a requirement for parents of pupils affected to be invited to attend the selection process if they so wish. The benefit of this is that it should help ensure confidence in the selection procedure and thereby minimise appeals from pupils that are not selected.

### **3.3 Operation of the enrolment process**

In relation to the operation of the enrolment process, regulations could address:

- Timescales for enrolment in schools
- Notification requirements
- Application process
- Decision-making process
- Appeals process

### **3.3.1 Timescales for enrolment in schools**

The existing practice is for schools to generally undertake their enrolment process during the springtime of the preceding school year. It is a matter for the Boards of Management of individual schools to decide when to commence the enrolment process for its school. It could be helpful to parents however if there were some standard timeframes that schools would be required to follow in relation to the enrolment process.

An option would be for the regulations to specify the earliest date for the commencement of the enrolment process for the following school year. Under this option schools would still have flexibility in relation to when they commence their enrolment process but it would have to be after the earliest date set out in the regulations.

The benefit with this option is that it would ensure a more consistent approach to the enrolment process across the entire school system. Applicants that are new to an area would therefore be treated equally when school places are being allocated. It would also avoid waiting lists being formed for individual schools. The earliest date for the commencement of the enrolment process could, for example, be 1<sup>st</sup> October prior to the September in which the pupils would commence school and the impact for most schools would therefore be negligible. The regulations would not preclude the enrolment or transfer of pupils mid-year or the enrolment of applicants outside the normal timeframes.

### **3.3.2 Notification requirements**

The regulations could be used to standardise the way the enrolment process is notified to the local school community e.g. in local newspaper, school website etc. Considering how best to standardise the notification of school enrolment for the benefit of parents must be balanced against the need to keep costs to a minimum for schools.

The regulations could set out the key information that must be included in the notification such as:

- details of how to get the enrolment policy of the school,
- details of how to get an application form,
- the date from which applications will be accepted, and
- the closing date for applications.

### **3.3.3 Application Process**

In order to ensure that there is no real or perceived bias against any applicant the regulations might consider specifying that application requirements set by schools can only seek relevant information (by application form content or any other means) sufficient to enable a school to make a decision on an application for enrolment.

The regulations could specify that a written application form must be provided and that an application must be made using this form. The regulations might also consider addressing the issue of standardising the application form. This might include setting out what the application should include. For example, an application might be required to include:

- details of how to get the school's enrolment policy,
- the date from which the school will take applications,
- the latest date for the school to receive the applications,
- the date by which the school will notify applicants of the decision,
- the number of places available in the school.

It could be made a requirement to provide an application form and to extend the invitation to apply where a parent makes a direct approach to a school regarding enrolment even if the school concerned is advising the parent that the needs of the child might be better met in another school. This might guard against a situation where subtle dissuasion is in effect a refusal to consider an application for admission to the school.

If demand for places in a particular school is likely to exceed the supply available then it is useful for applicants to be made aware of this in advance. It may be an option to include in the regulations a requirement that such schools state the number of applications received in the previous school year and the number of places offered to those applicants in order to indicate the likelihood of oversubscription.

Provision might also be made in regulations for setting down standard timeframes that schools would be obliged to follow in relation to the admission process. For example, regulations might include a requirement that all schools give a minimum period of advance notice of the commencement of the enrolment process. Regulations might also include provisions that require schools to provide a certain minimum period of time between the opening date and closing date for receipt of applications. Similarly timescales for issuing decisions and for appeals to be made and processed could be included.

### **3.3.4 Decision-making process**

Section 19 of the Education and Welfare Act, 2000 requires that decisions regarding enrolment must be in accordance with the school's enrolment policy.

Regulations might provide that where the person(s) making the decision has any connection with an applicant, that connection must be made known, in advance, to the Board of Management. This would help to ensure that there is no potential undisclosed conflict of interest.

Where there is excess demand for places the question arises as to whether provision should be made for some of the offers of school places to be made initially on a provisional basis so as to allow for the outcome of any appeals by unsuccessful applicants and to signal to parents that there might be some displacement. This also points to the desirability of having appeals concluded as early as possible.

If a decision is made to refuse an application for enrolment the regulations might provide that the notification to the applicant should:

- provide the reasons for refusal, including details of why the applicant failed to meet the oversubscription conditions,
- inform the parent of the right of appeal, and
- provide details of how such an appeal can be made.

### **3.3.5 Appeals Process**

The only current external appeals process is based on Section 29 of the Education Act 1998 and is intended to be used only after local school based processes have been exhausted.

As detailed at [section 1.2.1](#) the experience of recent years suggests that an alternative to the Section 29 process may be required for dealing with appeals of decisions to refuse enrolment. Within a new regulatory framework of clearly set out requirements, procedures and prescribed timelines, better transparency and effective compliance mechanisms including perhaps ultimately the potential to remove enrolment from the Board's control, the number of cases where appeals might need to be taken should diminish. An alternative is to provide for a combination of an enhanced local appeal process combined with an external appellate process in those cases where a pupil can get no place at all.

This could be supported by specifying a requirement in the regulations that the applicant is informed in writing of the reason(s) for the original decision of the Board of Management to refuse enrolment including the specific reason(s) why the applicant failed to meet any oversubscription conditions applied.

The regulations could require that an appeal against refusal to enrol must be made to the Board of Management and require the appellant to give the reasons for the appeal

showing why he/she considers that the correct application of the school's enrolment policy should have resulted in being offered a place.

On receipt of an appeal the Board of Management would be required to review its decision based on the information provided in the appeal. It would then be required to communicate the outcome to the person within a prescribed timeframe with reasons for same where it is not upholding the appeal.

The regulations could prescribe that the decision of the Board of Management on an appeal would be final and binding on all parties.