



## Regulation overload?

### Education (Admission to Schools) Act 2018

September 2018

#### Introduction

The Minister for Education and Skills (the “Minister”), has as of Wednesday, 3 October 2018, signed a commencement order bringing certain sections of the Education (Admission to Schools) Act 2018 (the “Act”) into immediate operation. The Act which was published on 18 July 2018, will provide a new overarching framework for school admissions.

#### Main changes

The law in this area has developed in a piecemeal fashion<sup>1</sup>. Over the course of 20 years, schools have gone from a situation prior to 1998, of effectively having no legislation governing them, to a situation in 2018 where they now have a very significant cohort of legislation, not least this Act, which when fully commenced, will require schools to revise a significant amount of their policies and procedures.

At present, the only potential remedies available for resolving difficulties relating to school admission practices include:

- Section 29 Appeals under the Education Act 1998
- use of Section 16 or 17 of the Education Act 1998 by the Patron or the Minister<sup>2</sup>
- equality cases/the use of the courts

#### Provisions now in operation

The sections of the Act which are now in immediate operation relate to the following:

- removal of religion criterion
- prohibition on school fees
- powers of the Minister

#### 1. Removal of religion criterion

The role of religion in school admissions has been removed in the vast majority of primary schools. This means that denominational primary schools are no longer permitted to use religion as a selection criterion when considering applications for enrolment<sup>3</sup>.

This change will really only impact oversubscribed denominational primary schools (approx. 20%) which are predominately located in large urban areas. Primary schools that are not oversubscribed must continue to accept all applicants, irrespective of religious affiliation.

There is however, an exception for those who find it difficult to access schools within their own religious ethos. The Act allows a school, upon application, to give priority to the admission of a student if it is satisfied that the student is a member of a minority religion and the school provides a programme of religious instruction or religious education which is consistent with or similar to the religious ethos of that student<sup>4</sup>.

In such cases, the applicant will be expected to provide a statement to the school confirming that the student is a member of a minority religion and that the applicant wishes the student to be educated in a school which provides religious instruction or religious education which is consistent with or similar to the religious ethos of the student.

1 The existing legal framework comprises of the Education Act 1998, the Education (Welfare) Act 2000, the Education for Persons with Special Needs Act 2004 (largely un-commenced) and the Equal Status Act 2000.

2 This is a general power to remove a Board of Management (“BoM”) or a member of the BoM, where there is concern about how s/he/it has discharged her/his/its functions.

3 S 11 (A) of the Act.

4 S 11 (B) of the Act.

## 2. Prohibition on school fees

The charging of fees or the seeking of payment or contributions as part of the school admissions process or for continued enrolment is now prohibited. This rule does not apply to fee charging schools, boarding schools for boarding elements or post-leaving certificate courses, insofar as those fees relate to the costs of providing courses or further education courses<sup>5</sup>. Evidently, this provision will have implications for future “voluntary contributions”.

## 3. Powers of the Minister

The role of the Minister has been increased throughout the Act, which now includes a statutory power to direct two or more BoM's to co-operate with each other in relation to the admissions process of schools concerned<sup>6</sup>. Furthermore, once the remaining sections of the Act have been commenced, the Minister will also have the power to make regulations in relation to the admissions process. Clearly, the Minister/ Department of Education and Skills have significant powers under the Act, the full extent of which remains to be seen.

## Provision for children with special educational needs

As of 3 December 2018, the Minister will have the power to require a school to open a special class for children with special educational needs where the National Council for Special Education (the “NCSE”) deems it necessary<sup>7</sup>. It is hoped that schools will receive the appropriate level of resources and that teachers with requisite training will be made available to schools in order to comply with this requirement.

Where the NCSE, following consultation with the Minister, is of the opinion that there is insufficient capacity in an area for this provision, a report shall be prepared and submitted to the Minister<sup>8</sup>. If the Minister, upon receipt of the report, is of the opinion that additional provision should be made by a relevant person, a notice in writing may be served, from which the relevant person will have 14 days from the service of notice to make a representation to the Minister<sup>9</sup>. Following this, if the Minister remains of the opinion that relevant provision should be made, a notice in writing may be served on the relevant person<sup>10</sup>. The Patron or the relevant body to whom the ownership of the school is vested in, shall have 14 days from the service of the notice to make representations to the Minister<sup>11</sup>. Following this and further consultation and where both parties fail to agree arrangements, the Act also has provision for the matter to be referred to arbitration<sup>12</sup>.

5 S 9 (64) of the Act.

6 S 9 (66) (1) of the Act.

7 S 8 (37A) (1) of the Act.

8 S 8 (37A) (2) of the Act.

9 S 8 (37A) (5) of the Act.

10 S 8 (37A) (6) of the Act.

11 S 8 (37A) (8) of the Act.

12 S 8 (37A) (9) of the Act.

13 S 62 (2)(a) of the Act.

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## Conclusion

It is anticipated that the remaining sections of the Act will be commenced before the 2020/2021 school year.

Schools need to be aware that once the remaining sections of the Act are fully commenced, they will have a strict deadline of only 3 months to prepare a revised admission policy which must comply with the provisions of the Act<sup>13</sup>. Therefore, schools should plan ahead and look to review their admission policies. In addition, all primary schools which give priority to the admission of students on the grounds of religion will now have to review their admission policies to ensure compliance with the relevant sections of the Act now in operation.

We have extensive experience working with schools in drafting admission policies and advising on various equality cases involving religious ethos. We are available to discuss any issues that may arise in practice, as a result of your evolving statutory obligations and to provide guidance on how to prepare for what can best be described as a radical piece of legislation in the Irish educational sphere.



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