



Number 9 of 2007

EDUCATION (MISCELLANEOUS PROVISIONS) ACT 2007

ARRANGEMENT OF SECTIONS

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[No. 9.] *Education (Miscellaneous Provisions) [2007.]
Act 2007.*

ACTS REFERRED TO

Education (Welfare) Act 2000	2000, No. 22
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Number 9 of 2007

EDUCATION (MISCELLANEOUS PROVISIONS) ACT 2007

AN ACT TO PROVIDE FOR CERTAIN CHANGES IN THE HEARING OF APPEALS UNDER SECTION 29 OF THE EDUCATION ACT 1998, TO PROVIDE FOR CERTAIN CHANGES IN THE FUNCTIONS PERFORMED BY THE INSPECTORATE UNDER SECTION 13 OF THAT ACT, TO MAKE PROVISION WITH REGARD TO ACCESS TO CERTAIN INFORMATION UNDER THAT ACT, FOR THOSE AND OTHER PURPOSES TO AMEND THE EDUCATION ACT 1998 AND THE EDUCATION (WELFARE) ACT 2000, TO PROVIDE FOR THE TRANSFER OF CERTAIN LANDS AND TO PROVIDE FOR RELATED MATTERS.

[31st March, 2007]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—In this Act—

Definitions.

“Act of 1998” means the Education Act 1998;

“Act of 2000” means the Education (Welfare) Act 2000;

“Minister” means the Minister for Education and Science.

2.—Section 2 of the Act of 1998 is amended, in subsection (1), by inserting the following definition before the definition of “articles of management”:

Amendment of section 2 of Act of 1998.

“ ‘Act of 2000’ means the Education (Welfare) Act 2000;”.

3.—Section 13 of the Act of 1998 is amended—

Amendment of section 13 of Act of 1998.

(a) in subsection (3), by deleting paragraphs (a)(ii) and (h),

(b) by deleting subsection (4), and

(c) by adding the following subsections:

“(13) The Chief Inspector, with the consent of the Minister, may delegate the performance of one or more of his or her functions to an Inspector nominated by the Chief Inspector and functions so delegated to such an Inspector shall be performable by him or her accordingly.

(14) The Minister may appoint an Inspector to perform the functions of the Chief Inspector during any period in which the Chief Inspector is temporarily unable to perform his or her functions, whether because of absence, ill-health or for any other reason, and, for the duration of that period, the functions of the Chief Inspector shall be performable by the Inspector so appointed accordingly.”.

Amendment of section 29 of Act of 1998.

4.—Section 29 of the Act of 1998 is amended—

(a) in subsection (1)—

(i) by substituting the following paragraph for paragraph (c):

“(c) refuses to enrol—

(i) a student in a school, or

(ii) a student to receive instruction on the curriculum through Irish in a school, if that school provides for the teaching of subjects on the curriculum through Irish for some or all of its students, or”,

and

(ii) by inserting “, subject to subsection (4D),” after “Department of Education and Science and”,

(b) by substituting the following subsections for subsection (4) and subsection (4A) (inserted by the Act of 2000):

“(4) In hearing and determining an appeal under this section against a decision to which subsection (1)(a) or (b) applies an appeals committee shall have regard to—

(a) the nature, scale and persistence of any behaviour alleged to have given rise to, or contributed to, the decision made by or on behalf of the board,

(b) the reasonableness of any efforts made by the school to enable the student to whom the appeal relates (the ‘student concerned’) to participate in and benefit from education,

(c) the educational interests of the student concerned and the desirability of enabling the student as far as practicable to participate in and benefit from education with his or her peers,

(d) the educational interests of, and the effective provision of education for, other students of the school and the maintenance of a classroom and school environment which is supportive of learning among the students of the school and ensures continuity of instruction provided to

students in any classroom concerned and the school,

- (e) the safety, health and welfare of teachers, students and staff of the school,
- (f) the code of behaviour under section 23 of the Act of 2000 and other relevant policies of the school and—
 - (i) in the case of that code of behaviour, the extent to which it is in compliance with that section 23 and any guidelines issued under subsection (3) of that section, and
 - (ii) in the case of those other policies, the extent to which each of them is implemented, promotes equality of access to and participation in education and is in compliance with—
 - (I) any enactment that imposes duties on schools or their boards,
 - (II) any relevant guidelines or policies of the Minister,
- (g) the duties on schools or their boards imposed by or under any enactment,
- (h) guidelines issued pursuant to section 22(7) of the Act of 2000, and
- (i) such other matters as the appeals committee considers relevant.

(4A) Nothing in subsection (4) affects the obligation of an appeals committee to uphold a complaint in relation to the permanent exclusion of a student from a school if the parent of the student or the student, as the case may be, shows that subsection (1) or (4) of section 24 of the Act of 2000 has not been complied with in relation to that exclusion.

(4B) In hearing and determining an appeal under this section an appeals committee shall act in accordance with such procedures as may be determined from time to time by the Minister following consultation with patrons, national associations of parents, recognised school management organisations, recognised trade unions and staff associations representing teachers, and such other persons as the Minister considers appropriate, and such procedures shall—

- (a) provide that the Secretary General may require one or more of the parties to the appeal to furnish to the committee, within a period specified in the requirement, such information as the Secretary General specifies in the requirement,

- (b) provide that the Secretary General may stipulate, as a condition for the committee proceeding to hear and determine the appeal, that a requirement made of a parent or student by the Secretary General in accordance with procedures under paragraph (a) has been complied with, and
- (c) ensure that—
 - (i) the parties to the appeal are assisted to reach agreement on the matters the subject of the appeal where the committee is of the opinion that reaching such agreement is practicable in the circumstances,
 - (ii) hearings are conducted with the minimum of formality consistent with giving all parties a fair hearing,
 - (iii) the appeal is determined within a period of 30 days (the ‘relevant period’) from—
 - (I) save where clause (II) applies, the date of the receipt of the appeal by the Secretary General, or
 - (II) if a requirement, in accordance with procedures under paragraph (a), is made of any of the parties to the appeal, the date on which the period specified in the requirement for furnishing the information concerned expires,

unless the Secretary General extends the relevant period (which the Secretary General has, by virtue of this subparagraph, power to do) where he or she is of opinion that an extension is necessary in all the circumstances of the case (but the period of that extension may not exceed 14 days).

(4C) An appeals committee may draw such inferences as it considers appropriate from any failure of a party to an appeal to comply with a requirement made of the party in accordance with procedures under subsection (4B)(a).

(4D) An appeals committee may refuse to hear, or continue to hear, an appeal under this section if—

- (a) it is of opinion that the appeal is vexatious, frivolous, an abuse of process or without substance or foundation, or
- (b) it is satisfied, having regard to the grounds of appeal and any attempts to facilitate agreement between the parties or any subsequent steps taken by the parties, that in the particular circumstances the appeal should not be considered further.

(4E) At the hearing of an appeal against a decision to which subsection (1) applies, the National Educational Welfare Board and the National Council for Special Education may each make such submissions, if any (whether in writing or orally), as it considers appropriate to the appeals committee.”

- (c) in subsection (7)(b), by inserting “, within such period (if any) as may be specified by the Secretary General in that notice,” after “and the board shall”, and
- (d) by adding the following subsections:

“(13) Notwithstanding subparagraph (iii) of subsection (4B)(c), the Minister may provide by regulations that no appeal under this section shall be heard during a specified period in any year, being a period in that year in which schools are closed; any period that is specified in such regulations for the time being in force shall not be reckoned in calculating the period referred to in that subparagraph (iii) that is applicable to the appeal concerned.

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

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

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

(15) For the purposes of the application of subsection (14), but only for those purposes, a student and his or her parents shall be treated as the one person; for the purposes of that subsection and this subsection, subsection (12) applies in relation to the construction of ‘student’.”

5.—Section 53 of the Act of 1998 is amended by inserting “or the State Examinations Commission” after “Minister”.

Amendment of section 53 of Act of 1998.

6.—The Act of 2000 is amended—

Amendment of Act of 2000.

- (a) in section 26, by deleting—
 - (i) in subsection (1), “paragraph (a) or (c) of”, and
 - (ii) subsection (2),and
- (b) in section 27(1), by deleting “paragraph (a) or (c) of”.

[No. 9.] *Education (Miscellaneous Provisions) [2007.]*
Act 2007.

Transfer of lands
from City of Cork
Vocational
Education
Committee.

7.—(1) In this section—

“Commissioners” means the Commissioners of Public Works in Ireland;

“Committee” means the City of Cork Vocational Education Committee;

“relevant day specified in the order” means—

- (a) if a single day is specified in an order under this section on which all the land, property, rights, powers and privileges to which the order relates shall vest in the Commissioners, that day,
- (b) if different days are specified in an order under this section on which different parts or elements of the land, property, rights, powers or privileges to which the order relates shall vest in the Commissioners, the particular day so specified in relation to the part or element concerned.

(2) Subject to *subsection (4)*, the Minister may by order, with the consent of the Committee and the Minister for Finance, provide—

- (a) that the lands described in the Table to this section together with all property relating thereto whether real or personal (including choses-in-action), and
- (b) that all rights, powers and privileges relating to or connected with such lands or property,

which, in each case, stands vested in the Committee immediately before the relevant day specified in the order shall, on that day, vest in the Commissioners.

(3) An order under this section may specify different days in relation to which different parts or elements of the lands, property, rights, powers or privileges to which the order relates shall vest in the Commissioners.

(4) The Minister shall not make an order under this section unless the Minister is satisfied that the use by the Committee of the land and property to which the order will, if made, relate is not necessary for the performance by the Committee of its functions.

(5) An order under this section shall operate to vest in the Commissioners on the relevant day specified in the order—

- (a) in so far as the order relates to lands or other real property referred to in *subsection (2)*, those lands or other such property for all the estate or interest for which immediately before that day those lands or other property were vested in the Committee, but subject to all trusts and equities affecting those lands or other property subsisting and capable of being performed,
- (b) in so far as the order relates to personal property (including choses-in-action) referred to in *subsection (2)*, that property without any assignment, but subject, where necessary, to transfer in the books of any bank, corporation or company, and

(c) in so far as the order relates to rights, powers and privileges referred to in *subsection (2)*, those rights, powers and privileges.

(6) An order under this section may contain such incidental, consequential, transitional or supplementary provisions as may appear to the Minister to be necessary or proper for the purpose of, or in consequence of, or to give full effect to, a transfer of the lands, property, rights, powers and privileges effected by the order.

(7) A provision of any enactment, apart from this Act, shall neither be construed as preventing, nor shall it operate to prevent, a transfer of land, property or any other thing by an order under this section.

TABLE

Crawford Art Gallery, Emmet Place in the City of Cork

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

9.—(1) This Act may be cited as the Education (Miscellaneous Provisions) Act 2007. Short title, collective citation and commencement.

(2) The Education Acts 1878 to 2001 and *sections 2 to 5* may be cited together as the Education Acts 1878 to 2007.

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