

Chapter 5: Government and Legislative Requirements

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Chapter 5

Government and Legislative Requirements

It is essential to the good governance of the NCSE that the organisation as a whole – Council, executive and staff – act in compliance with the various legislative and ethical obligations it faces. *The Education for Persons with Special Educational Needs Act, 2004* provides a fundamental legislative base for the NCSE and this chapter outlines the functions of the Council as legislated for in the Act. The chapter also deals with the ethical and legal responsibilities emanating from employer legislation, the *Freedom of Information Acts*, the *Data Protection Act*, the *Official Languages Act*, *Safety, Health and Welfare Acts*, the *Code of Practice for the Governance of State Bodies* and the *Ethics in Public Bodies Acts*. (A more comprehensive listing of some of the legislation governing the work of the NCSE is included in **Appendix 2** at the end of this document.)

In addition to government and legislative requirements which are prescribed, there is an accepted framework of public service values which underpin the work of the NCSE. These are inherent in the work and culture of public service bodies and include the following: commitment, respect, loyalty, selflessness, objectivity; in other words the highest standards of personal and professional integrity.

Where relevant, Notes for Council members are included with the description of the legislative piece or government code. The material is presented under the following headings:

- 1 *Education for Persons with Special Educational Needs Act, 2004*
- 2 *The Council as employer*
- 3 *Freedom of Information Acts, 1997-2003*
- 4 *Data Protection Acts, 1988 and 2003*
- 5 *Official Languages Act, 2003*
- 6 *Safety, Health and Welfare Acts*
- 7 *Ombudsman Acts 1980-2012*
- 8 *The Protected Disclosures Act, 2014*
- 9 *Regulation of Lobbying Act 2015*
- 10 *Code of Practice for the Governance of State Bodies - Code of Conduct*
- 11 *Disability Act, 2005*

1 ***Education for Persons with Special Educational Needs Act, 2004***

- EPSEN is the primary source of legislation for determining NCSE's responsibilities. The functions of the Council are set out in Section 20 of the Act:
 - To disseminate to schools, parents and such other persons as the Council considers appropriate information relating to best practice, nationally and internationally, concerning the education of children with special educational needs.

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- In consultation with schools, health boards and such other persons as the Council considers appropriate, to plan and co-ordinate the provision of education and support services to children.
 - In consultation with schools and with such persons as the Council considers appropriate, to plan for the integration of education for students with special educational needs with education for students generally.
 - To make available to the parents of children with special educational needs information in relation to their entitlements and the entitlements of their children.
 - To ensure that the progress of students with special educational needs is monitored and that it is reviewed at regular intervals.
 - To assess and review the resources required in relation to educational provision for children with special educational needs.
 - To ensure that a continuum of special educational provision is available as required in relation to each type of disability.
 - To review generally the provision made for adults with disabilities to avail of higher education and adult and continuing education, rehabilitation and training and to publish reports on the results of such reviews (which reviews may include recommendations as to the manner in which such provision could be improved).
 - To advise all educational institutions concerning best practice in respect of the education of children and others with disabilities.
 - to advise the Minister in relation to any matter relating to the education of children and others with disabilities.
 - To consult with such voluntary bodies as the Council considers appropriate (being bodies whose objects relate to the promotion of the interests of, or the provision of support services to, persons with disabilities), for the purposes of ensuring that their knowledge and expertise can inform the development of policy by the Council and the planning and provision of support services.
 - To conduct and commission research on matters relevant to the functions of the Council and, as it considers appropriate, to publish in such form and manner as the Council thinks fit the findings out of such research.
- In essence, these paragraphs outline the mission of the Council and so provide a focus for Council activities. The responsibility for carrying out these functions is a collective one – for management and the Council. No hierarchy of importance is established by the legislation and, therefore, it is a matter for the Council to prioritise and make progress on all of the areas outlined in accordance with its strategic plan. The collective and collegiate responsibility as well as confidentiality considerations has been referred to earlier in the guide and the Council must always act to safeguard this collective responsibility.
 - The Minister for Education and Skills has the power to expand the Council’s brief. Section 20(3) of the Act provides that the NCSE shall implement policies formulated from time to time by the Minister and give advice on resourcing and implementation issues.
 - Furthermore, Section 20(4) allows the Minister to expand the functions of the NCSE by order. This facility means that the Minister does not have to change EPSEN if a change in functions is required.

- Section 19 and Schedule 1 of the Act make provision for the establishment of the Council including its membership and meetings including the making of standing orders (Annex A Chapter 1). Section 24 and Schedule 2 make provision in regard to the office of NCSE Chief Executive. It is important that the Council regularly review that it is acting in accordance with Schedule 1 and that the Chief Executive is performing her/his functions in accordance with Schedule 2.
- Section 22 of the Act provides for the Council to appoint a consultative forum.
- Section 26 of the Act provides for the appointment of Special Educational Needs Organisers, who discharge functions under EPSEN and as assigned by NCSE and act under the direction and control of the CEO as staff of the Council.

Notes for Council Members

- From the Council members' viewpoint, it is important that progress is made on all of the NCSE's functions and that all responsibilities under the Act are kept to the fore.
- In carrying out this task, Council members need to keep up-to-date with all developments and engage fully with the Chairperson, the Chief Executive and the other Council members in the work of the Council.
- Where a Council Member is of the opinion that progress is not as it should be, it is entirely proper that the matter is raised with Council, with the Chief Executive, or with both.

2 The Council as an Employer

- The Council is the employer of those who work for the NCSE.
- It must ensure that the NCSE meets its moral and legal responsibilities by having in place a statement of terms and conditions of employment and clear policies on human resource management issues such as promotion, disciplinary and grievance procedures, and staff development, which will allow it to:
 - comply with employment law
 - avoid discrimination of any kind against employees or potential employees
 - observe health and safety requirements.

The staff employed by NCSE are employed as civil servants. Therefore, their terms of employment are governed by the Civil Service Regulations Acts, 1923-2005 and by the provisions of An Cód Pearsanra, the Personnel Code for the civil service, which assembles all relevant Department of Finance circulars and letters to personnel officers on personnel matters.

2 The Freedom of Information Acts, 1997-2014

The Freedom of Information Acts, 1997-2014, (the FOI Acts), established three new statutory rights:

- A legal right for each person to access their personal records held by public bodies

- A legal right for each person to have official information relating to him/herself amended where it is incomplete, inaccurate or misleading
- A legal right to obtain reasons for decisions by public bodies affecting oneself

The Act asserts the right of members of the public to obtain access to official information held by the NCSE to the greatest extent possible consistent with the public interest and the right to privacy of individuals.

The following records come within the scope of the Acts:

- All other records created from commencement date of the FOI Act, i.e., 21 April, 1998

Any records created before commencement of the Act that are necessary to the understanding of a current record

In accordance with the requirements of the FOI Acts, the NCSE has:

- published its Section 15 and 16 Manual to facilitate access to official information held by the organisation, and understanding of how the organisation makes its decisions under enactments and schemes it operates
- delegated FOI decision making functions to appropriate staff and internal review decisions to appropriate executive managers.
- developed an organisational FOI Policy and Standard Operating Procedure for dealing with FOI requests.

Notes for Council members

- The Act will have implications for Council members. Potentially, all records created by the Council could be released in response to an enquiry. In addition, citizens will have the right to seek 'reasons for acts' of the Council. This will place an onus on the Council to record its reasons for a decision.
- Council members should therefore bear the provisions of the Freedom of Information Acts in mind when inputting to decisions and recording those decisions in Council minutes.

3 The Data Protection Acts, 1988 and 2003

- The 1988 Act was passed in order to deal with the privacy issues arising from the increasing amount of personal information kept on computer about individuals. In giving new privacy rights to individuals, the Act also puts responsibilities on those who keep personal information on computers.
- The *Data Protection (Amendment) Act, 2003* extended the scope of the Act to cover manual data, along with expanding upon other provisions.
- NCSE is subject to the provisions of the Data Protection Acts and, as a result, has a responsibility to make sure it is in compliance with the provisions of the legislation.

4 *The Official Languages Act, 2003*

- This provides a statutory framework for the delivery of services through the Irish language. The primary objective of the Act is to ensure better availability and a higher standard of public services through Irish.
- Statutory obligations are placed on public bodies to make specific provision for delivery of such services in a coherent and agreed fashion.
- Public bodies are required to agree language schemes with the Department of Arts, Heritage and Gaeltacht when requested by the Minister and to implement the commitments of such statutory schemes. NCSE has not to date been requested to prepare such a scheme.
- Pending agreement of such a scheme the principal current implications for NCSE of the legislation include:
 - The requirement to ensure that the Irish language only, or the Irish and English languages together, are used, on , on stationery, on signage and on advertisements
 - The duty to reply to correspondence, in writing or by electronic mail, in the language in which that correspondence was written
 - The duty to ensure that any communication providing information to the public, in writing or by electronic mail, is in the Irish language only or in the Irish and English languages
 - The duty to publish certain documents that would be of interest to the public, in Irish and in English simultaneously, for example annual reports and strategic plans
 - The duty to prepare a scheme detailing the services that it will provide through the mediums of both Irish and English and the measures it will adopt to ensure that any service not provided through the medium of the Irish language will be so provided in the future
 - The duty to ensure that an adequate number of staff are competent in the Irish language and that particular Irish language requirements are met regarding the provision of services in Gaeltacht areas.

5 *Safety, Health and Welfare at Work Act, 2005*

The Safety, Health and Welfare at Work Act 2005 (SHWW) represents a modernisation of Irish occupational health and safety laws and has a primary focus on the prevention of workplace accidents, illnesses and dangerous occurrences. It provides also for significantly increased fines and penalties aimed at deterring violations of safety and health laws. The Act has its origins in the Safety, Health and Welfare at Work Act 1989, which applied safety and health laws for the first time to all Irish employments. Key features of the 1989 Act include:

- Requirement of all employers to prepare a Safety Statement and to update the Statement annually
- Requirement to conduct health and safety risk assessments

SHWW 2005 consolidates and updates the 1989 Act and also introduces a number of significant changes, including:

- a definition of competency, linked to a qualifications system;
- the first ever statutory definition of ‘reasonably practicable’;
- an expanded general duty on employers, which now included a duty to manage work activities so that they do not endanger persons at work (whether employees, contractors, contractor’s employees, members of the public, etc.);
- a change in the employers duties to make it an offence to require an employee to work in a situation of serious and imminent danger or to engage in improper conduct or behaviour, which covers bullying and stress;
- a requirement to train employees where a risk assessment states that such training was required;
- a provision that employees, while at work, must not endanger safety arising from being under the influence of ‘an intoxicant’, which includes alcohol and drugs, whether illegal or legal;
- incorporation in the 2005 Act of many provisions in the General Application Regulations, 1993 and 2003, such as the requirement that risk assessments must be in writing and periodically evaluated;
- the Safety Statement must specify how safety is ‘managed and secured’;
- a provision for joint safety and health agreements between social partners;
- a profound change in the way in which dispute resolution about safety and health will be dealt with, so that any penalisation issue can be appealed to a rights commissioner in the Labour Relations Commission and the Labour Court;
- significant new penalties for breach of the duties contained in the 2005 Act;
- provision for fixed charge penalties (on the spot fines) up to €1,000 have also been included in the 2005 Act.

6 *Ombudsman Acts 1980-2012*

Under the Ombudsman (Amendment) Act 2012, NCSE, together with 180 other public bodies, is being brought within the remit of the Ombudsman and the Ombudsman for Children from May 2013. The general function of the Ombudsman is to investigate complaints from members of the public who believe that they have been unfairly treated by public bodies. The Ombudsman for Children has a similar remit in regard to complaints in respect of Children.

7 *The Protected Disclosures Act, 2014*

The Act is intended to provide a robust statutory framework within which workers can raise concerns regarding potential wrongdoing that has come to their attention in the workplace in the knowledge that they can avail of significant employment and other protections if they are penalised by their employer or suffer any detriment for doing so. A good faith reporting charter, was reviewed and agreed by Council in 2012 and is attached at **Appendix 9**. This charter includes compliance with the obligations of the protected disclosures legislation.

8 Regulation of Lobbying Act 2015

The Regulation of Lobbying legislation is designed to provide information to the public about who is lobbying whom about what. People who lobby designated public officials must register and make a return to SIPO every four months. The NCSE Chief Executive is a designated public official under the Regulation of Lobbying Act 2015

9 Code of Practice for the Governance of State Bodies - Code of Conduct and Ethics

The code imposes a range of obligations on the Council and members

- Council to formally confirm compliance with the up to date requirements of the Code. However there may be an adaptation of the Code possible, once agreed with parent Department.
- Council should satisfy itself that all statutory obligations are identified and made known to it. This has obvious implications for the executive and the advice and assurances provided.
- Determination of ethical procedures to be put in place to deal with post resignation/retirement employment, appointment and/or consultancy of directors and employees by the private sector and to ensure these are monitored and enforced. The requirements of the ethics legislation is outlined in detail including disclosures and conflicts of interest issues.
- In relation to travel policy, there is a need to achieve economy and efficiency and compliance with DOF circulars. NCSE has developed a travel policy in this regard.
- NCSE must have of a Corporate Procurement Policy Plan which includes oversight to ensure that the NCSE is adhering to EU and national procurement rules and operating effective VFM practices. NCSE has developed a procurement plan which has been approved by Council.
- Section 5 of the *Code of Practice for the Governance of State Bodies* requires the NCSE to prepare a written code of business conduct for the organisation and that copies be given to Council members and employees. The suggested Framework for a Code of Conduct, for all directors and employees of state bodies, is set out in Appendix II of the *Code*. A code of business conduct for Council Members as agreed by Council is attached at **Appendix 7**. These Corporate Governance Guidelines also form part of the Members' code of business conduct.
- The *Ethics in Public Office Acts, 1995 and 2001*, require public bodies to ensure that all Council members observe the highest standards of business ethics. The NCSE is a prescribed body for the purposes of the Ethics Acts and so Council members are required to make an annual declaration. A summary outline of reporting and other

obligations for Council member and staff under Ethics legislation is attached at **Appendix 8**.

- The Council is responsible for determining specific values and standards for the organisation, building on the core values and standards set out in the suggested Framework for a Code of Business Conduct. Individual Council members are expected to show leadership by promoting these values and standards.

Notes for Council members

- Council members should always act fairly, in good faith and in an impartial way to meet the objectives of the NCSE. They should ensure that nothing they do or say should ever weaken the public's faith in the integrity of the public service and, in particular, of the NCSE and its Council members.
- Council members should avoid publicly criticising the Council and should not take any action (directly or indirectly) against the NCSE.
- Council members should be aware that issues such as the receipt of gifts and hospitality, conflicts of interest and public accountability assume a much greater importance in the public service than in the private sector. Minor breaches can attract significant criticism and adverse press coverage. This is largely due to the sensitivities arising from the fact that state bodies are owned by the State on behalf of the citizens of Ireland.
- Council members have a responsibility to be loyal to the Council and be fully committed to all its business activities. They should be aware of their duty to conform to the highest standards of ethics.
- Council members must respect their fellow Council members and staff of the Council and the role they play, treating them with courtesy at all times.
- They may sometimes be called upon to represent the Council in dealing with the public and/or other external organisations. In these circumstances, it is their duty to maintain the reputation of the organisation by treating people in a helpful and courteous manner; on a timely, reliable and, where appropriate, confidential basis; and in an open and efficient way. Any statements made on behalf of the Council must be made in accordance with arrangements determined by the Council.
- Council members must be (and be seen to be) selfless and objective. They must adhere to the highest standards of personal and professional integrity. Specifically, Council members must:
 - demonstrate *selflessness* by taking decisions solely in terms of public interest and in the interests of the Council. They should not act in order to gain or benefit for themselves, their parent organisation or family or friends
 - demonstrate *integrity* by not placing themselves under any financial or other obligation to an individual or organisation that might reasonably be thought to influence the performance of their duties

- be *objective*: decisions on NCSE business should be taken solely on their merit and not on the basis that they will be beneficial for the representative constituency of Council members
- commit themselves to participate vigorously and energetically in Council discussions but also *ethically* and *honestly* at all times.

