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*Number 22 of 2022*

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**Education (Provision In Respect of Children with Special Educational Needs)  
Act 2022**

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**EDUCATION (PROVISION IN RESPECT OF CHILDREN WITH SPECIAL  
EDUCATIONAL NEEDS) ACT 2022**

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[No. 22.]

*Education (Provision In Respect  
of Children with Special Educational Needs) Act 2022.*

[2022.]

ACTS REFERRED TO

Education (Admission to Schools) Act 2018 (No. 14)

Education Act 1998 (No. 51)

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Education for Persons with Special Educational Needs Act 2004 (No. 30)



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*Number 22 of 2022*

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**EDUCATION (PROVISION IN RESPECT OF CHILDREN WITH SPECIAL  
EDUCATIONAL NEEDS) ACT 2022**

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An Act to make provision in respect of children with special educational needs; and for that purpose to provide for patrons and boards of management of schools to cooperate with the National Council for Special Education in the performance by the Council of its functions under the Education for Persons with Special Educational Needs Act 2004 relating to the provision of education to children with special educational needs, including, in particular, by the provision and operation of a special class or classes when requested to do so by the Council; to provide for the giving of directions by the Minister for Education relating to provision for education for children with special educational needs and to provide for compliance with such directions; for those purposes to amend and extend the Education Act 1998 and to amend the Education for Persons with Special Educational Needs Act 2004; and to provide for related matters. [19th July, 2022]

WHEREAS enrolment in a school setting is highly beneficial for children with special educational needs;

WHEREAS the rights of children with special educational needs to receive an appropriate education and to be included within the mainstream education system should not be denied or delayed;

WHEREAS children with special educational needs have a right to equality of opportunity and to access supports which will enable such children to fulfil their potential;

WHEREAS the adverse consequences of denying children with special educational needs access to the mainstream education system or delaying such access are recognised;

AND WHEREAS it is necessary to make additional provision for ensuring urgent and timely access to the mainstream education system for children with special educational needs;

**Be it enacted by the Oireachtas as follows:**

**Definition**

1. In this Act, “Act of 1998” means the Education Act 1998.

**Amendment of section 2 of Act of 1998**

2. Section 2 of the Act of 1998 is amended, in subsection (1), by the insertion of the following definition:

“ ‘special class’ has the same meaning as it has in Part X (inserted by section 9 of the Education (Admission to Schools) Act 2018);”.

**Amendment of section 8 of Act of 1998**

3. Section 8 of the Act of 1998 is amended by the insertion of the following subsections after subsection (6):

“(6A) The patron of a school shall cooperate, and shall ensure cooperation by the board of the school, with the National Council for Special Education in the performance by the Council of its functions under the Education for Persons with Special Educational Needs Act 2004 relating to the provision of education to children with special educational needs, including, in particular, by the provision and operation of a special class or classes when requested to do so by the Council.

(6B) The patron shall ensure that the admission policy of the school accommodates the admission of children with a disability or other special educational needs.

(6C) The patron shall comply with any direction served on the patron under section 37A.”.

**Amendment of section 9 of Act of 1998**

4. Section 9 of the Act of 1998 is amended—

(a) by the insertion of the following paragraph after paragraph (b):

“(ba) cooperate with the National Council for Special Education in the performance by the Council of its functions under the Education for Persons with Special Educational Needs Act 2004 relating to the provision of education to children with special educational needs, including, in particular, subject to and in accordance with the provisions of this Act and any direction served by the Minister on the patron or the board as the case may be, under section 37A, by the provision and operation of a special class or classes when

requested to do so by the Council, and any direction served by the Council under section 67(4B),”

and

- (b) in paragraph (m), by the insertion of “, including for students with a disability or other special educational needs” after “the school”.

#### **Amendment of section 15 of Act of 1998**

5. Section 15 of the Act of 1998 is amended, in subsection (2), by the insertion of the following paragraphs after paragraph (d):

- “(da) cooperate with the National Council for Special Education in the performance by the Council of its functions under the Education for Persons with Special Educational Needs Act 2004 relating to the provision of education to children with special educational needs, including, in particular, by the provision and operation of a special class or classes when requested to do so by the Council,
- (db) ensure that the admission policy of the school accommodates the admission of children with a disability or other special educational needs,
- (dc) comply with any direction served on the board under section 37A and any direction served on the board under section 67(4B),”.

#### **Amendment of section 37A of Act of 1998**

6. The Act of 1998 is amended by the substitution of the following section for section 37A (inserted by section 8 of the Education (Admission to Schools) Act 2018):

“37A.(1) Where the Council is of the opinion that there is insufficient capacity in an area in relation to the provision of education for children with special educational needs, it shall prepare and submit a report on the matter to the Minister.

(2) A report under subsection (1) shall specify—

- (a) the existing provision of education for children with special educational needs in the area concerned, having regard to the generality of provision of education within the area,
- (b) any proposed or existing building projects which may affect capacity to provide education for children with special educational needs in the area concerned,
- (c) any schools in the area concerned which the Council considers could meet additional demand for education for children with special educational needs,

- (d) which (if any) of the schools referred to in paragraph (c) the Council considers should be requested to make additional provision in respect of children with special educational needs, and
  - (e) such other matters as the Council considers appropriate.
- (3) (a) Where, on receipt of a report submitted under subsection (1), the Minister is of the opinion that a relevant person should make additional provision for children with special educational needs, the Minister shall serve a notice in writing on such relevant person.
- (b) A notice under paragraph (a) shall—
- (i) set out the Minister's opinion that the relevant person referred to in the notice should make additional provision for children with special educational needs and state the reasons for his or her opinion,
  - (ii) include a copy of the report submitted under subsection (1),
  - (iii) specify details of the measures to be taken by the relevant person for the purpose of making additional provision for children with special educational needs,
  - (iv) specify what, if any, resources the Minister considers appropriate to provide to the school in order to assist the school in making additional provision for education for children with special educational needs,
  - (v) set out any proposed property arrangements, including any arrangements in relation to the provision of additional accommodation on the school premises and the funding arrangements the Minister shall provide for that purpose, in order to assist the school in increasing its provision for education for children with special educational needs,
  - (vi) where the identity of any other person or body in whom the ownership of the school premises is vested is not known to the Minister, direct that the patron or board, as the case may be, shall provide a copy of the notice to such person as soon as practicable after receipt of the notice and confirm to the Minister in writing that the copy of the notice has been so provided,
  - (vii) state that the relevant person on whom the notice is served (or, where paragraph (vi) applies, to whom a copy of the notice is provided) may make representations in writing to the Minister on any matter set out or specified in the notice not later than 14 days from the service of the notice.



- (4) The patron or board, as the case may be, shall comply with a direction under paragraph (b)(vi) of subsection (3) in a notice served under that subsection.
- (5) A relevant person on whom a notice is served (or, where subsection (3) (b)(vi) applies, to whom a copy of a notice is provided) under subsection (3) may, not later than 14 days from the service of the notice, make representations in writing to the Minister on any matter set out or specified in the notice.
- (6) Where the Minister, after consideration of the representations (if any) made under subsection (5) and following consultation with such other persons as the Minister considers appropriate, remains of the opinion that a school should make additional provision for children with special educational needs, the Minister may serve notice in writing on the relevant person of his or her intention to give a direction under subsection (8) and the notice shall include a copy of a draft of the direction.
- (7) A relevant person on whom a notice is served under subsection (6) may, not later than 14 days from the service of the notice make representations in writing to the Minister in relation to the draft direction contained in the notice.
- (8) Where the Minister, after consideration of the representations (if any) made under subsection (7), remains of the opinion that a school should make additional provision for children with special educational needs, the Minister shall serve a direction (in this section referred to as a 'Ministerial direction'), including such amendments to the draft direction contained in the notice served under subsection (6) as the Minister considers appropriate having regard to any such further representations, on the relevant person.
- (9) A relevant person on whom a Ministerial direction is served shall comply with the Ministerial direction in accordance with its terms which shall include—
  - (a) the measures to be taken by the relevant person in relation to making additional provision for children with special educational needs, including admission to the school of such children,
  - (b) the period during which such measures shall be taken, and
  - (c) any other matter relevant to the making of additional provision for children with special education needs as the Minister considers appropriate.
- (10) The obligation under subsection (9) to comply with a Ministerial direction shall apply notwithstanding the admission policy of the school concerned.

- (11) (a) The following documents shall be published in accordance with paragraph (b):
- (i) any notices served by the Minister under this section;
  - (ii) any representations received by the Minister under this section;
  - (iii) a draft direction contained in a notice served under subsection (6);
  - (iv) a Ministerial direction.
- (b) The Minister shall publish the documents referred to in paragraph (a) on a website maintained by or on behalf of the Minister not later than 7 days from the date on which he or she serves or receives them.
- (12) Any report prepared, or in the course of preparation, by the Council under this section (being that section in the terms as it stood before the commencement of *section 6* of the *Education (Provision in Respect of Children with Special Educational Needs) Act 2022*), whether or not submitted to the Minister before the said commencement, shall be deemed to be a report prepared or in the course of preparation, as the case may be, for the purposes of subsection (1).
- (13) The Minister shall—
- (a) not later than 3 years after the commencement of *section 6* of the *Education (Provision for Children with Special Educational Needs) Act 2022*, commence a review of the operation of this section, in consultation with bodies representative of patrons, national associations of parents, recognised school management organisations and recognised trade unions and staff associations representing teachers and such other bodies and organisations as the Minister considers appropriate, and
  - (b) not later than 12 months after the end of the period of 3 years referred to in paragraph (a), make a report to each House of the Oireachtas of his or her findings and conclusions resulting from that review.
- (14) In this section—
- ‘Council’ means the National Council for Special Education;
- ‘relevant person’, in relation to a school, means, as the case requires, the patron, the board of management or any other person or body in whom the ownership of the school premises is vested;
- ‘resources’ includes resources made available by the Minister and allocated by the Council.”.

**Amendment of section 61 of Act of 1998**

7. Section 61 (inserted by section 9 of the Education (Admission to Schools) Act 2018) of the Act of 1998 is amended by the insertion of the following subsections after subsection (1):

“(1A) The admission statement of a school shall include a statement that the school shall cooperate with the National Council for Special Education in the performance by the Council of its functions under the Education for Persons with Special Educational Needs Act 2004 relating to the provision of education to children with special educational needs, including in particular by the provision and operation of a special class or classes when requested to do so by the Council.

(1B) The admission statement of a school shall include a statement that the school shall comply with any direction served on the patron or the board, as the case may be, under section 37A and any direction served on the board under section 67(4B).”.

**Amendment of section 67 of Act of 1998**

8. Section 67 (inserted by section 9 of the Education (Admission to Schools) Act 2018) of the Act of 1998 is amended—

(a) in subsection (2)—

(i) in paragraph (f), by the substitution of “the Minister,” for “the Minister.”, and

(ii) by the insertion of the following paragraph after paragraph (f):

“(g) any direction served by the Minister under section 37A.”,

(b) by the insertion of the following subsections after subsection (4):

“(4A) (a) Where a school is designated under subsection (1) or (3), the Council or Agency, as the case may be, shall serve a notice on the board of the school concerned that a designation has been made and that it is proposed to direct the board to admit the child concerned.

(b) A notice under paragraph (a) shall state that the board may make representations in writing to the Council or Agency, as the case may be, in relation to the designation and proposed direction not later than 10 days from the service of the notice.

(c) The board on whom a notice is served under paragraph (a) may, not later than 10 days from the service of the notice, make representations in writing to the Council or Agency, as the case may be, in relation to the designation and proposed direction.

(4B) The Council or Agency, as the case may be, may, after consideration of the representations (if any) made under subsection (4A)(c), serve a direction on the board to admit the child concerned to the school designated under subsection (1) or (3), as the case may be, within such period as may be specified in the direction.

(4C) The board shall comply with a direction served on it under subsection (4B).”,

and

(c) by the repeal of subsections (5) to (19).

#### **Amendment of section 68 of Act of 1998**

9. Section 68 (inserted by section 9 of the Education (Admission to Schools) Act 2018) of the Act of 1998 is amended, in subsection (3)(a)(v), by the substitution of “or 67(4B)” for “, 67(1) or 67(3)”.

#### **Amendment of section 69 of Act of 1998**

10. Section 69 (inserted by section 9 of the Education (Admission to Schools) Act 2018) of the Act of 1998 is amended—

- (a) in subsection (3)(a)(v), by the substitution of “or 67(4B)” for “, 67(1) or 67(3)”, and
- (b) in subsection (8)(e), by the substitution of “or 67(4B)” for “, 67(1) or 67(3)”.

#### **Amendment of Education for Persons with Special Educational Needs Act 2004**

11. The Education for Persons with Special Educational Needs Act 2004 is amended—

- (a) in section 14(1)(c), by the deletion of “to the greatest extent practicable”, and
- (b) in section 20(1), by the insertion of the following paragraph after paragraph (f):

“(fa) to coordinate and manage, having regard, in particular, to section 37A of the Act of 1998, the admission of children to special classes (within the meaning of the Act of 1998) and to schools that provide an education exclusively for children with special educational needs;”.

#### **Short title, collective citation and commencement**

12. (1) This Act may be cited as the Education (Provision in Respect of Children with Special Educational Needs) Act 2022.
- (2) The Education Acts 1878 to 2018 and this Act (other than *section 11*) may be cited together as the Education Acts 1878 to 2022.

[2022.]

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