



**An Bille Oideachais (Socrú i leith Leanaí a bhfuil
Riachtanais Speisialta Oideachais Acu), 2022
Education (Provision In Respect of Children with
Special Educational Needs) Bill 2022**

*Meabhrán Míniúcháin
Explanatory Memorandum*



**AN BILLE OIDEACHAIS (SOCRÚ I LEITH LEANAÍ A BHFUIL
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SPECIAL EDUCATIONAL NEEDS) BILL 2022**

EXPLANATORY MEMORANDUM

Purpose of the Bill

The overall objective of the Bill is to make provision in respect of children with special educational needs. The Bill will apply to recognised schools.

Section 1: Definition

Section 1 provides a definition in the Bill that any reference to the “Act of 1998” means the Education Act, 1998.

Section 2: Amendment of section 2 of Act of 1998

Section 2 defines ‘special class’ for the purposes of Education Act 1998.

Section 3: Amendment of section 8 of Act of 1998

Section 3 provides for an amendment of section 8 of the Education Act 1998 to set out additional functions for school patrons relating to special educational needs. These functions require school patrons to:

- co-operate generally with the NCSE, and in particular by providing and operating special classes when requested to do so by the NCSE;
- ensure that the admission policy of the school accommodates the admission of children with a disability or other special educational needs;
- comply with any direction given under section 37A to make provision for children with special educational needs.

Section 4: Amendment of section 9 of Act of 1998

Section 4 provides for an amendment of section 9 of the Education Act 1998 to set out an additional function of a school and amend an existing function. This function requires schools to co-operate generally with the NCSE, in particular by providing and operating special classes in accordance with any directions given to a patron or a board under section 37A and in accordance with any direction served by the NCSE under section 67(4B) to admit a particular child.

The amendment to the existing function requires schools to establish and maintain an admission policy which provides for maximum accessibility to school, including to students with a disability or other special educational needs.

Section 5: Amendment of section 15 of Act of 1998

Section 5 provides for an amendment of section 15 of the Education Act 1998 to set out additional functions for school boards relating to special educational needs. These functions require school boards to:

- co-operate generally with the NCSE, and in particular by providing and operating special classes when requested to do so by the NCSE;
- ensure that the admission policy of the school accommodates the admission of children with a disability or other special educational needs;
- comply with any direction given under section 37A to make provision for children with special educational needs and any direction served by the NCSE under section 67(4B) to admit a particular child.

Section 6: Amendment of section 37A of Act of 1998

Section 6 provides for the substitution of the current section 37A of the Education Act 1998. The substituted section 37A provides as follows:

- Where the NCSE 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 detailed report on the matter to the Minister;
- The NCSE report shall specify details on the existing provision in the area concerned, any relevant proposed or existing school building projects which may affect capacity, any schools in the area which the NCSE considers could meet additional demand, which schools the NCSE considers should be requested to make additional provision and such other matters as the NCSE considers appropriate.
- On receipt of a report, and where the Minister is of the opinion that a relevant person (defined as a patron, board or any other person with a vested interest in the school premises) should make additional provision for children with special educational needs, the Minister may issue a notice in writing. A notice shall set out the Minister's opinion that the relevant person should make additional provision for children with special educational needs and state the reason for his or her opinion, include a copy of the NCSE report, specify details of the measures to be taken by the relevant person, detail the resources to be provided to the school, detail any property arrangements to be made including any arrangements in relation to the school accommodation and direct the patron or board to share the notice with any other person to whom the ownership of the school premises is vested where that person is not known to the Minister.
- A relevant person on whom a notice is served may make representations on any matter set out or specified in the notice within 14 days.
- After consideration of any representations received, and where the Minister remains of the opinion that a school should make additional provision for children with special educational needs, the Minister may serve a copy of a draft direction on a relevant person.
- A relevant person on whom a copy of a draft direction is served may make representations in relation to the draft direction within 14 days.
- After consideration of any representations received in relation to the draft direction, and where the Minister remains of the opinion that a school should make additional provision for children with special educational needs, the Minister may serve a direction on a

relevant person. The direction shall set out the measures to be taken by the relevant person in relation to making additional provision for children with special educational needs, the period during which such measures shall be taken and any other relevant matters.

- The relevant person shall comply with such a direction.
- All notices issued, representations received, draft directions and Ministerial directions shall be published on a website maintained by or on behalf of the Minister.
- The Minister shall review this provision within 3 years of its commencement and shall furnish a report to each House of the Oireachtas of his or her findings and conclusions resulting from that review.
- A transitional provision is also provided for which allows any work undertaken by the NCSE in preparing a detailed report under the existing section 37A process to be deemed a report for the purposes of section 37A (1) (as amended).

Section 7: Amendment of section 61 of Act of 1998

Section 7 provides for an amendment of section 61 of the Education Act 1998 to require schools to include a further statement in the admission statement which is part of their admission policy setting out that the school shall co-operate with the NCSE (“the NCSE”) generally and in particular in relation to the provision and operation of a special class or classes when requested to do so and a further statement that the school shall co-operate with any Ministerial direction under section 37A and any direction by the NCSE or Tusla under section 67.

Section 8: Amendment of section 67 of Act of 1998

Section 8 provides for the amendment of section 67 of the Education Act 1998 by removing the provision for an appeal by a school board against a decision of the NCSE or Tusla (“the Agency”) to designate a school place for a child.

The provision allowing a parent to appeal a decision of the NCSE or Tusla not to make a decision to designate a school place when requested by a parent to do so is also being removed. It is considered that this provision is not necessary given the option available to a parent to appeal a decision of a school board to refuse to admit under Section 29 of the Education Act 1998 and the fact that it is expected that the NCSE will make a decision to designate a special class or special school place in situations where there are places available. Where there is a lack of places this can be addressed through the section 37A process.

Provision is made to allow a school board to make representations to the NCSE or Tusla where a school is directed to admit a child. Where the NCSE or Tusla, after consideration of any representations, remain of the opinion that the designation is necessary, they shall confirm the direction in writing to the board. A board shall comply with such a direction.

Section 9: Amendment of section 68 of Act of 1998

Section 9 provides for a minor consequential amendment to section 68 of the Education Act 1998 arising from the amendment to section 67.

Section 10: Amendment of section 69 of Act of 1998

Section 10 provides for a minor consequential amendment to section 69 of the Education Act 1998 arising from the amendment to section 67.

Section 11: Amendment of Education for Persons with Special Educational Needs Act 2004

Section 11 provides for two amendments of the EPSEN Act 2004. A minor amendment is made to section 14(1)(c) to ensure consistency between the additional function of a school board being provided for under section 15 of the Education Act 1998 and similar functions of a school board under section 14 of the EPSEN Act 2004.

The second amendment provides for an additional function of the NCSE to co-ordinate and manage, having regard to section 37A and Part X (Admissions) of the Education Act 1998, the admission of children to special classes and to special schools. This will allow the NCSE to play a greater role, where necessary, in supporting parents and schools with admission.

Section 12: Short title and commencement

Section 12 sets out details in relation to the short title and commencement of the Bill.

*An Roinn Oideachais,
Meitheamh, 2022.*