



IPPN Submission to the Department of Education

**New legislation relating to the provision of education to children
with special educational needs**

November 2022

TABLE OF CONTENTS

1	INTRODUCTION	1
2	DRAFT CIRCULAR	2
2.1	COMMENCEMENT OF EDUCATION (PROVISION IN RESPECT OF CHILDREN WITH SPECIAL EDUCATIONAL NEEDS) ACT 2022 2	
2.2	COMMENCEMENT OF REMAINING SECTIONS OF THE EDUCATION (ADMISSION TO SCHOOLS) ACT 2018	4
3	FREQUENTLY-ASKED QUESTIONS	5
3.1.1	<i>Q1. What is the main purpose of the Education (Provision in Respect of Children with Special Educational Needs) Act 2022?</i>	5
3.1.2	<i>Q2 What does the new streamlined section 37A process entail?</i>	5
3.1.3	<i>Q4. Will schools be allowed to make representations under this shorter more streamlined section 37A process?</i>	6
3.1.4	<i>Q5. What new obligations are being placed on schools, boards of management and patrons?</i>	6
3.1.5	<i>Q9. Can a school make representations in relation to a designation?</i>	6
3.1.6	<i>Q11. In what type of situations might the NCSE or TESS make a designation?</i>	7
3.1.7	<i>Q16. When might this new function be used?</i>	7
3.1.8	<i>Q19. When might an independent person be appointed?</i>	7

1 INTRODUCTION

The Irish Primary Principals' Network (IPPN) is the officially-recognised professional body for the leaders of Irish primary schools. Established in 1999, IPPN is an independent, not-for-profit voluntary association with a local, regional and national presence. Recognised by the Minister for Education and Skills as an official Education Partner, IPPN works with the Department of Education (DE), the National Parents' Council, management bodies, unions, education agencies, academic institutions and children's charities towards the advancement of primary education. IPPN articulates the collective knowledge and professional experience of over 6,000 Principals and Deputy Principals, leading Ireland's 3,200+ primary schools.

IPPN has reviewed the proposed legislation relating to the provision of education to children with special educational needs from the perspective of primary school leadership. We specifically refer to the proposals provided by the Department relating to commencement of Education (Provision in Respect of Children with Special Educational Needs) Act 2022 and commencement of remaining sections of the Education (Admission to Schools) Act 2018.

We set out below our feedback, highlighting key questions and points of clarification that schools would ask immediately on receipt of the circular, as well as observations that we hope will inform the final version of the circular and its supporting documents.

We would appreciate an opportunity to review the amended version before it is issued, as it is crucial that absolute clarity is provided to schools in circulars and supporting documentation. This will also avoid unnecessary queries being raised to the Department and to IPPN.

IPPN remains at the disposal of the Department in this regard and would be very happy to discuss the points raised in this submission.

2 DRAFT CIRCULAR

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

With regard to the new streamlined section 37A process, the circular refers to ‘The Department and the National Council for Special Education (NCSE) prefer[ring] to work collaboratively with schools’. IPPN strongly recommends that this collaborative approach referred to in the draft circular and the frequently asked questions (FAQ) document be used with school leaders and their Boards of Management and would be conducted with the greatest respect to schools, taking account of the professionalism of the educators and the Boards of Management.

According to the circular, *‘under the new streamlined section 37A arrangements schools will have two opportunities to make representations before a Ministerial direction is made’*. Further clarity is required as to how the representations referred to in the circular would be made. A number of questions arise, including:

- What form does this take?
- To whom are the representations made?
- What are the relevant deadlines?
- Who makes the final decision?
- What right of reply does a school have if the representations are considered inaccurate or unfair?

These questions are not answered in the circular or in the FAQ.

Further clarity is needed regarding ‘Designation of a school place by the NCSE or Tusla Education Support Service (TESS)’ where it states that *‘A new provision is being made to allow a school to make representations to the NCSE or TESS in relation to a notice of a designation and for these representations to be considered by the NCSE or TESS before a direction is served to admit a child’*.

Transparency in decision-making is key to ensure openness in this process, which is a key learning from recent communications to schools relating to SEN.

Regarding school Admission Statements, there is no mention in the draft documents of what happens when a school simply does not have the accommodation to open special classes following a direction to do so. As IPPN has documented in our submission to the Department in September regarding the review of Section 37A of the Education Act, this cannot happen overnight. From that submission:

'It is IPPN's belief that an amendment to the legislation to allow schools to receive advance applications on behalf of children who have a recommendation for placement in a special class or school - 24 months in advance of their school start date - would alleviate this difficulty. The extended period that would be afforded by an earlier application would allow the school, in consultation with the SENO, to address what needs to be put in place to ensure the child's access to quality inclusive education. In short, it would provide the parents of children with complex additional needs with certainty about school placement, would obviate the need to invoke Section 37A and, most importantly, would ensure that children with complex additional needs will be able to attend the same local national school as their brother or sister, and their friends.'

The FAQ document refers to the fact that all grants and accommodation will be made available to the school. What is not clear is whether the school is then involved in the lengthy process of professional reports, tendering etc. and whether a project manager will be appointed and funded by the Department to oversee and manage this work.

Communication with schools in relation to finding places for children is always welcome, and what is more helpful than communication is *connection*. What needs to be clarified is whether this is to be done through the SENO or by letter /email to the school. A more personal approach would be the way forward and the involvement of the SENO in relationship building would be important.

2.2 COMMENCEMENT OF REMAINING SECTIONS OF THE EDUCATION (ADMISSION TO SCHOOLS) ACT 2018

Patrons and management bodies would need to be fully briefed, and in turn brief their Boards. This should not be left to school leaders.

Section 69 provides the Minister with the authority to nominate an authorised person to prepare a report where the Minister is of the opinion that the board of management has failed to comply with provisions in the Act. Upon consideration of the report, the Minister can issue a direction to the board of management. What is not clear is who this authorised person would be and what right of reply schools would have if they found the report to be inaccurate or unfair in any way.

3 FREQUENTLY-ASKED QUESTIONS

It is helpful to have these FAQs available alongside the circular. However, there are a number of very vague statements that need to be clarified for the FAQ to be of use to schools. Examples of clarifications required are set out below:

3.1.1 Q1. What is the main purpose of the Education (Provision in Respect of Children with Special Educational Needs) Act 2022?

‘The legislation also places additional duties on schools (see Q5 below) and provides for an additional function for the NCSE (see Q15 below) to manage and co-ordinate admission to school in co-operation with parents and schools where necessary.’

What are these additional duties and who is expected to undertake them?

3.1.2 Q2 What does the new streamlined section 37A process entail?

There is reference to a ‘relevant person’. Is this relevant person the same throughout the process?

‘A notice shall set out the Ministers opinion that the relevant personshould 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’

In this case, the ‘relevant person’ should be the Board, which governs the school.

Does the school then still have to put a lot of time and effort into applications for devolved grants or is it fast-tracked in some way?

‘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.’

To whom is this made and in what format?

*‘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**.’*

This must be the Board, not an individual person.

‘In line with the current section 37A process, all notices issued, representations received, draft directions and Ministerial directions shall be published on a website maintained by or on behalf of the Minister.’

Such matters need to be addressed to the chairperson of the Board. It should not be assumed that Principals will undertake this work.

3.1.3 Q4. Will schools be allowed to make representations under this shorter more streamlined section 37A process?

‘The new section 37A process provides two opportunities for schools to make representations to the Minister before a direction can be issued.’

What does this look like in practice?

3.1.4 Q5. What new obligations are being placed on schools, boards of management and patrons?

‘The Department and the NCSE are committed to continuing to work with schools in a collaborative way to provide sufficient special classes and special school places. A range of planning and building supports, grant funding supports and training supports are available for schools opening new special classes.’

These supports should be listed and contact information provided so schools know where to go to access them. We also suggest that a link be provided to the NCSE booklet on opening classes.

3.1.5 Q9. Can a school make representations in relation to a designation?

*‘Yes. Where the NCSE or TESS are deciding to designate a school place for a child, they will serve a notice on the board of the school and the board may make representations in relation to the designation. Any representations made by a school board must be considered by the NCSE or TESS before they proceed to direct a **school board** to admit a child. It is also anticipated that the NCSE or TESS will have engaged with local schools before reaching a decision to consider making a designation.’*

This is not clear earlier in the document, where it mentions “relevant person”.

3.1.6 Q11. In what type of situations might the NCSE or TESS make a designation?

This whole section is confusing. What constitutes 'limited circumstances'? What does 'engage fully with a school' look like? What timescales are involved? It is not clear what '*An appeal under section 29 and a designation under section 67 may not be made in respect of the same student and the same school at the same time*' means. The statement 'Potentially, the option to designate could be used in co-operation with schools' is equally confusing.

3.1.7 Q16. When might this new function be used?

*'This new function could be used to support parents and schools in a specific location where there is a high demand for special class places. The NCSE could engage with schools and parents to agree a process for managing the admission process. This could involve the NCSE establishing an **advisory committee** to review applications and support a number of schools to work together through the admission process for their special class or classes.'*

Who are the 'advisory committee'? What is the role of the SENO?

3.1.8 Q19. When might an independent person be appointed?

*'Where the Patron is of the opinion that the board of management fails to comply with a direction, the Patron shall, following issuance of a further notice and consideration of any representations received in relation to same, and subject to the consent of the Minister, appoint an **independent person** to carry out the direction under sections 68 and 70.'*

Who is the 'independent person'? What is their role?