



**Circular Number: 0075/2022**

**To: The Managerial Authorities of Recognised Primary,  
Secondary, Community and Comprehensive Schools and  
The Chief Executives of Education and Training Boards**

**Commencement of the 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**

**New legislation relating to the provision of education to children with  
special educational needs and designation of school places**

**Purpose of Circular**

The Department of Education wishes to bring to the attention of school authorities the introduction of and commencement of the Education (Provision in Respect of Children with Special Educational Needs) Act 2022 and the commencement of the remaining sections of the Education Act 1998 as introduced by the Education (Admission to Schools) Act 2018. These are sections 67 to 70.

These new arrangements apply with immediate effect.

**1. Commencement of the Education (Provision in Respect of Children  
with Special Educational Needs) Act 2022**

This new legislation was introduced and commenced in July 2022. The main provisions in this new legislation include:

**New streamlined section 37A process**

The main provision in this legislation is to provide for a streamlined section 37A process whereby the Minister can direct a school to make provision for children with special educational needs. The Department and the National Council for Special Education (NCSE) will continue to work collaboratively with schools to



ensure that additional special classes or special school places are provided by schools and this is how the vast majority of new classes and additional places have been provided to date and this is how it is envisaged that the vast majority of new classes and additional places will continue to be provided into the future. The section 37A process is only used as a measure of last resort where additional provision is required in a specific location and efforts to secure that additional provision through engagement with schools have not been successful.

Under the new streamlined section 37A arrangements schools will have two opportunities to make representations in writing before a Ministerial direction is made.

### **Designation of a school place by the NCSE or Tusla Education Support Service (TESS)**

Section 67 of the Education Act 1998 which provides for the NCSE or TESS to designate a school place has been amended under this new legislation. The provision allowing for a school to appeal a decision to designate to an appeals committee has been removed. The provision allowing a parent to appeal a decision not to designate to an appeals committee has also been removed.

A new provision is available to allow a school to make representations to the NCSE or TESS in writing 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. As both the NCSE and TESS must consider school capacity when making a designation, schools that are oversubscribed will not be considered for designation.

### **New obligation for schools, boards of management and patrons to co-operate with the NCSE**

The new legislation provides for an additional function to be placed on schools, patrons and boards of management to co-operate with the NCSE and make provision for children with special educational needs.

### **Complying with directions under Section 37A and section 67**

The new legislation requires school boards of management to comply with any directions served under section 37A by the Minister and section 67 by the NCSE or TESS.

### **New text to be included in school Admission Statements**

The new legislation requires the admission statement of a school to include a statement that the school shall co-operate with the NCSE relating to the provision of education to children with special educational needs, in particular by the provision and operation of a special class or classes when requested to do so by



the Council and a separate statement that the school shall comply with any direction under section 37A or under section 67.

The following text can be added directly to the school's current Admission statement:

*(Insert name of school) will cooperate with the NCSE in the performance by the Council of its functions under the Education for Persons with Special Educational Needs Act 2004 in relation 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.*

*(Insert name of schools) will comply with any direction served on the board or the patron under section 37A and 67(4)(b).*

In accordance with the Education Act, 1998 these additions to the Admission Statement of a school will require the board to seek patron approval. The Department will provide an information note on the required changes to the admissions statement, which will set out a simplified approval process for boards and patrons. The current admissions policy template will be updated to reflect the additional text required in schools policies. These documents will be available at <https://www.gov.ie/en/policy-information/c5bd9f-school-enrolment/>

### **Proposed new function of the NCSE**

The new legislation also provides for a new additional function for the NCSE to coordinate and manage the admission of children with special educational needs to special classes or special schools having regard to section 37A and school admission policies. The NCSE will consult with schools and parents in the performance of this function.

## **2. Commencement of remaining sections of the Education (Admission to Schools) Act 2018**

In addition to Section 67 (as amended) being commenced, Sections 68 to 70 inclusive of the Education Act 1998 as provided for in the Education (Admission to Schools) Act 2018 have also been commenced. These specific provisions provide for the Minister or a Patron to direct a school to take remedial action where the board of management have not been operating in compliance with the Act.

Section 68 is a provision that enables the patron to issue directions to the board of management where they have failed to comply with the admissions legislation, and if the board of management fails to comply, an independent person can be appointed to carry out the action.

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. Section 70 is a provision for the Minister to make a request to a patron to direct the board of management to comply with a direction in accordance with section 68.

### **3. Role of the National Council for Special Education (NCSE) and the Tusla Education Support Services (TESS)**

The commencement of these new legal provisions introduce new functions for the NCSE and TESS, particularly in relation to the designation of a school place. Both the NCSE and TESS have developed procedures to operationalise these new functions.

### **4. Frequently Asked Questions (FAQs)**

A FAQ document to assist school authorities in relation to any queries they might have in relation to the commencement of these new legal provisions has been developed.

### **5. Circulation and Queries**

A copy of this circular should be provided to all members of the board of management/Education and Training Board. A copy should also be made available to the staff of each school and to the parents association.

Enquiries regarding this circular should be emailed to the Department at [special\\_education@education.gov.ie](mailto:special_education@education.gov.ie)

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**Date issued:** 23 November 2022