

Consultation Paper on the Review of the Education for Persons with Special Educational Needs Act 2004

Document summary

This document gives information on the purpose of the review of the EPSEN Act.

It outlines why the review is happening and gives people who are interested some background information on the law and policy in this area.

It explains the law that is in place about providing education to students with special educational needs. It explains how these have changed since the EPSEN Act was passed in 2004.

It explains how special education teachers and special needs assistants are provided in schools.

It provides information on the investment by government to provide for the education of children with special educational needs, and the supports available.

A consultation process is open as part of this review and people can give their views. There is further information in this document.

Purpose:

The Department of Education is undertaking a review of the Education for Persons with Special Educational Needs (EPSEN) Act 2004.

The purpose of this review is to ensure that the law that governs providing education for children with special educational needs (SEN) is adequate. This is important, to protect the interests of children and their families, and ensure that the State can make plans to provide for appropriate education for children with special educational needs.

As part of this review, the language used to describe special educational needs will also be considered.

Education – Legal developments



The Education for Persons with Special Additional Needs (EPSEN) Act 2004.

The EPSEN Act 2004 was a significant progressive step when it was enacted 18 years ago. Since then, there have been important developments in law and policy, both in Ireland and internationally.

After an act is signed into law by the President, it may need a commencement order before it comes into force. This is the case for the EPSEN act. Some sections of the act have been commenced, and some have not. Those sections that have not commenced are not in force. The parts that were commenced include those establishing the National Council for Special Education (NCSE) and those providing for an inclusive approach to the education of children with special educational needs.

Broadly, the sections of the EPSEN Act which have not been commenced, are those which would have conferred a statutory entitlement to:

- an educational assessment for all children with special educational needs
- consequent development of a statutory individual educational plan (IEP)
- the delivery of detailed educational services on foot of the IEP
- an independent appeals process

Special Education Policy – Background

The Department of Education's policy is to enable children and young people to have their needs met in inclusive settings and also to take account of the views of parents. In inclusive settings, children may access additional supports including special education teachers and/or special needs assistants in accordance with their needs. As part of the continuum of provision currently available, special schools also provide for the education of some children with special educational needs.

The NCSE provides evidence-informed policy advice to the Department on special educational matters and the nature and scope of education provision and supports required to meet the needs of children and young people.

It is the policy of the Department of Education to include children with special educational needs in their local schools with additional supports, and/or special classes in mainstream schools. Some children also attend special schools and for a very small number of children alternative education is provided.

Legislative provision for inclusive education is set out in Section 2 of the EPSEN Act 2004 which requires that:

“A child with special educational needs shall be educated in an inclusive environment with children who do not have such needs unless the nature or degree of those needs of the child is such that to do so would be inconsistent with:

- The best interests of the child as determined in accordance with any assessment carried out under this Act
- The effective provision of education for children with whom the child is to be educated.”

Section 1 of the EPSEN Act 2004 defines special educational needs as ‘a restriction in the capacity of the person to participate in and benefit from education on account of an enduring physical, sensory, mental health or learning disability, or any other condition which results in a person learning differently from a person without that condition’;”

As part of this review, the language used to describe special educational needs will also be considered.

Developments since the introduction of the EPSEN Act 2004.

Some important developments since the enactment of EPSEN are outlined below.

1. The United Nations Convention on the Rights of Persons with Disabilities

The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) is an international treaty that was adopted in 2006 at the United Nations Headquarters in New York. Ireland signed the treaty in 2007 and formally ratified the treaty in 2018. This means that Ireland is obliged to not to act in any way that is contrary to the aims and purpose of the treaty. An additional optional convention that allows disabled persons to make individual complaints to the UN has not been ratified by Ireland. Under Article 24 of the UNCRPD, Ireland must ensure people with disabilities have the opportunity to go to mainstream schools as part of an inclusive education system.

Ireland must make sure people with disabilities:

- are able to develop their skills and abilities
- are not excluded from any sort of education have their needs met as far as possible including reasonable accommodation of their requirements
- get proper support to learn, including any necessary individualised supports Ireland must ensure that people with disabilities have the opportunity to learn life and social

development skills so they can fully and equally participate in their communities.

Ireland must support people learning Braille, Irish Sign Language and other ways of communicating.

Ireland must also take steps to employ teachers, including teachers with disabilities, who are qualified in Irish Sign Language and/or Braille.

Training around disability awareness and the use of appropriate means and formats of communication and teaching to support people with disabilities should be provided to education professionals and staff.

2. Allocation of special education teachers to mainstream classes

Following the introduction of a new model of special education teacher allocation (SET model) in 2017, additional supports for children with special educational needs are now embedded in all primary and post-primary schools. Schools allocate their special education teaching based on need in the school setting, so that those with highest level of need can access the highest level of support within the school in a timely manner. This replaced the previous model of support where children required a clinical diagnosis in order to access additional resource teaching hours.

Access to SNA support has also changed and individual applications for SNA support are no longer required. Primary and post-primary schools have a resource of SNAs embedded in the school and schools allocate their SNAs based on the care needs that they identify in the school setting.

These reforms mean that children no longer have to have a psychological assessment, or a diagnosis of a disability, in order to access additional support in school.

Schools provide these supports using the Continuum of Support so that those with highest level of need can access the highest level of support within the school. As part of this model school implement individual Student Support Files and Student Support Plans to identify and record the needs of students over time. It enables schools to document progress and identify needs over time to assist them in providing an appropriate level of additional support teaching.

3. Comprehensive review of the special needs assistant (SNA) Scheme

A comprehensive review of the special needs assistant (SNA) scheme was published by the NCSE on 30 May, 2018 and contains a number of recommendations to improve the provision of supports to schools for children with special educational needs who have additional care needs.

A frontloaded allocation model was included as one stream within the overall model recommendations in the report to ensure that SNA posts are in schools and available to students when they enter the school, reducing delays in accessing support. It eliminates the need for individual applications and professional assessments in order to access resources, which the school determines how to use based on their pupils needs. It moves to a needs-based model of support and ending the requirement for parents to secure a formal diagnosis to gain access to resources.

Work has been ongoing on an appropriate updated SNA model that is fully cognisant of matching SNA resources with the care needs of those children who need it.

The NCSE continue to work with schools to address additional care needs that arise by means of the exceptional review process. This process involves detailed analysis of the care needs in individual schools and ensures that the correct resources are applied to children who need them.

Until a suitable model has been formalised, the Department of Education has secured the level of SNAs needed to meet the additional care needs of children.

4. Education Admission to Schools Act, 2018, as amended

Further work is also being done to support the inclusion of children with special educational needs in schools through the Education Admission to Schools Act, 2018. This is an important piece of legislation which strives to introduce a more parent-friendly, equitable and consistent approach to how school admissions policies operate. Further changes were introduced as a result of the Amendments made to the admissions policy element under the Education (Provision in respect of Children with Special Educational Needs) Act 2022.

5. Investment in special education

The provision of education for children with special needs is an ongoing priority for the Department of Education and the Government. In conjunction with the reforming measures which have been introduced in recent years, significant levels of additional investment has been made in the area of special educational needs. (Further details at Appendix 1).

6. Other Supports

A range of other supports are also provided for children with special educational needs such as special school transport arrangements, assistive technology supports, the Home Tuition scheme, special arrangements for state examinations, modification of school buildings, summer programmes, enhanced capitation levels for special schools and special classes and additional teachers in special schools.

7. Legal Cases

A number of legal cases have been heard in the Irish Courts that have to be considered in the context of this review to ensure the legislation takes account of the amended legal position.

Evidence informed research

The review will also take account of evidence-informed research in relation to inclusive education in Ireland.

The review will also take account of what happens in other countries, to consider how other educational systems have become more inclusive of all children and the timelines and processes in place to do this.

Consultation

To ensure that the experiences of people with special educational needs and their families is fully understood and heard, a wide-ranging public consultation will take place.

Surveys and focus groups will be used as tools to gather data on the lived experience of people who have experienced the education system under the EPSEN act.

The review is being undertaken with the oversight of a steering group, working group and advisory group at all stages.

You can find out more about the consultation here [EPSEN Review Consultation](#)

Report

A report will be prepared for the Minister which will incorporate research, feedback and recommendations to be considered.

Appendix 1

Budget 2023 – Measures for Special Education

Additional provision in Budget 2023 for measures supporting children with special educational needs includes:

- €12 million for additional teachers supporting students with special educational needs
- 686 new teacher posts, as follows:
 - 206 of the new posts will provide additional support for children attending mainstream classes including new and expanding schools
 - 480 posts will facilitate the opening of a further 370 new special classes providing over 2,200 new places in 2023 and 250 new special school places
- 1,194 SNA posts covering primary and post-primary, as follows:
 - 735 to support students in new special classes
 - 124 to support students in new special school places
 - 335 to support students in mainstream classes

As a result, the number of special classes will increase to 2,900 in schools throughout the country.

Further investment in special education will include:

- Additional funding for the National Council for Special Education to enable it to provide additional support to students with special educational needs and their families. An additional 121 frontline and

administrative posts to support families will be recruited. This commitment will rise to a €13 million investment in a full year

- A further 40 new posts will be provided, for a new scheme to support Deaf and Hard of Hearing students for whom Irish Sign Language is their first language
- The National Educational Psychological Service will receive funding for an additional 54 psychologists to provide services to special schools and special classes
- An additional investment of €2 million will be made in the assistive technology in education scheme, to meet the needs of students availing of this scheme

Budget 2022 Provisions for Special Education

Teaching posts

Provision for the creation of an additional 980 new teaching posts in special education.

The new allocation is broken down as follows:

- 620 of the new posts will provide additional support for children attending mainstream classes including new and expanding schools.
- 360 posts will facilitate the opening of 287 new special classes providing over 1,700 new places in 2022 and 140 new special school places

Provision for 14,385 SETs as at 31st December 2022 will represent an increase of 48% since 2011 at which time 9,740 were provided.

Special Needs Assistants (SNAs)

Following Budget 2021, a total of 18,004 special needs assistant (SNA) posts were allocated to primary, post primary and special schools at the end of December 2021.

Budget 2022 included funding for an additional 1,165 additional special needs assistants to provide support to children with special educational needs which will bring the total number of SNAs to 19,169 by the 31st December 2022. This represents an increase of 81% in the number of SNAs provided since 2011 at which point 10,575 SNAs were available.

The allocation of 1,165 SNAs announced in Budget 2022 to meet the care needs of pupils and to enable the establishment of new special classes, creation of new places in special schools, support children in mainstream classes for the 2022/23 school year.

The allocation of the 1,165 SNA posts covered primary and post-primary schools as follows:

- 574 to support students in new special classes
- 46 to support students in new special school places
- 545 to support students in mainstream classes

The special education funding for 2022 was in excess of a quarter of the current expenditure budget for the Department of Education.