

Education (Admission to Schools).

Report stage amendments:

- (c) Providing for the Minister to require a school to open a special class for children with special educational needs.

In page 13, between lines 24 and 25, to insert the following:

**“New Section**

8. Part VI of the Act of 1998 is amended by the insertion of the following section after section 37:

“**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, the Council shall inform the Minister by notice in writing of its opinion and the reasons for its opinion and shall specify the type of provision in respect of which there is insufficient capacity.

(2) Where, following consultation with the Minister and having regard to any information provided to the Council by the Minister in relation to any planned additional provision of education for children with special educational needs and available land and buildings, the Council remains of the opinion that there is insufficient capacity in an area for the provision of education to children with special educational needs, it shall prepare and submit a report on the matter to the Minister.

- (3) A report under subsection (2) 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.

(4) Prior to preparing a report under subsection (2), the Council shall consult with the Minister, bodies representative of patrons, national associations of parents, recognised school management organisations and recognised trade unions and staff associations representing teachers.

(5) (a) Where, on receipt of a report submitted under subsection (2), the Minister is of the opinion that a relevant person in respect of a school referred to in the report should make additional provision for children with special educational needs, he or she may serve a notice in writing on the relevant person.

(b) A notice under paragraph (a) shall -

(i) set out the Minister's opinion that the relevant person named in the report should make additional provision in respect of children with special educational needs and state the reasons for his or her opinion,

(ii) include a copy of the report submitted under subsection (2), and

(iii) confirm that the relevant person may make representations to the Minister in respect of the notice not later than 28 days from the service of the notice.

(c) On receipt of any representations made under paragraph (b)(iii), the Minister may consult the relevant person.

(6) Where -

- (a) on consideration of a report submitted to the Minister under subsection (2),
- (b) after consideration of any representations made under paragraph (b)(iii) of subsection (5), and
- (c) following any consultation with the relevant person under paragraph (c) of subsection (5),

the Minister remains of the opinion that the relevant person should make additional provision in respect of children with special educational needs, the Minister may serve a notice in writing on the relevant person.

- (7) A notice under subsection (6) shall -
  - (a) set out the Minister's opinion that the relevant person should make additional provision in respect of children with special educational needs and state the reasons for his or her opinion,
  - (b) specify details of the measures to be taken by the relevant person,
  - (c) specify what, if any, resources the Minister considers appropriate to provide to the school in order to assist the school

in increasing its provision of education for children with special educational needs, and

- (d) 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 of education for children with special educational needs.

(8) On receipt of a notice under subsection (6) the patron or any other person or body in relation to whom the ownership of the school premises is vested may, in respect of the matters referred to in subsection (7)(d), not later than 21 days from the service of the notice, make representations to the Minister.

(9) Where, following any representations under subsection (8), and such further consultation as the Minister considers appropriate, the Minister and the patron or any other person or body in relation to whom the ownership of the school premises is vested fail to agree arrangements in relation to the matters referred to in subsection (7)(d), the Minister may refer the matter to arbitration and, subject to section 29 of the Arbitration Act 2010, that Act shall apply to an arbitration under this section.

(10) On receipt of a notice under subsection (6) a board of management may, in respect of the matters referred to in paragraph (a), (b) or (c) of subsection (7),

not later than 21 days from the service of the notice, make representations to the Minister.

(11) Where, after consideration of any representations made under subsections (8) and (10) and, where the Minister has referred the matter to arbitration under subsection (9), following the conclusion of the arbitration process, the Minister remains of the opinion that a school should make additional provision in respect of children with special educational needs, he or she may by notice in writing request the board of management to agree to increasing such provision and such notice shall specify -

- (a) the measures the Minister considers the board of management shall take in relation to increasing such provision,
- (b) the resources the Minister shall make available to the school, in order to assist the school in increasing such provision, and
- (c) any other matter the Minister considers appropriate.

(12) (a) The board of management shall, not later than 21 days from the service of a notice under subsection (11), by notice in writing to the Minister -

(i) agree to increasing its provision for children with special educational needs in accordance with the terms of the notice under subsection (11), or

(ii) refuse to increase such provision.

(b) Where a board of management fails by notice in writing to agree to increasing its provision for children with special educational needs in accordance with the terms of a notice under subsection (11), within 21 days from the service of a notice under that subsection, the board of management shall, for the purposes of this section, be regarded as having refused to increase such provision.

(13) Where, pursuant to subsection (12), a board of management refuses to increase its provision for children with special educational needs, and the Minister remains of the opinion that the school should make additional provision in respect of children with special educational needs, the Minister may by notice in writing -

(a) inform the patron of his or her opinion that such school should make such additional provision, and state the reasons for that opinion,

(b) furnish the patron with a copy of the report prepared under subsection (2) , and

(c) furnish the patron with a copy of the notice given to the board of management under subsection (11) and, where applicable, a copy of the refusal by the board of management provided under subsection (12).

(14) The patron may make representations to the Minister in respect of a notice under subsection (13) not later than 21 days from the service of a notice under that subsection.

(15) Where the Minister, after consideration of any representations made under subsection (14), remains of the opinion that a school should make additional provision in respect of children with special educational needs, he or she may inform the patron and the board of management of his or her intention to give a direction under subsection (17) and shall serve a copy of a draft of the direction on the patron and the board of management.

(16) The patron and the board of management may, within 21 days from the service of the copy of the draft direction, make representations in writing to the Minister in relation to the draft direction.

(17) Where the Minister, after consideration of any representations made under subsection (16), remains of the opinion that a school should make additional provision in respect of children with special educational needs, the Minister may serve a direction (in this section referred to as a “Ministerial direction”) on the patron.



(18) A Ministerial direction may include such amendments to the draft direction served under subsection (15) as the Minister considers appropriate having regard to any representations made under subsection (16) and shall specify that the patron shall, within 10 days, direct the board to comply with the terms of the Ministerial direction, which terms shall include:

- (a) the measures to be taken by the board in relation to making additional provision for children with special educational needs,
- (b) the period during which such measures shall be taken, and
- (c) any other matter the Minister considers appropriate.

(19) The patron and, following a direction by the patron in accordance with subsection (18), the board of management shall comply with a Ministerial direction.

(20) (a) The following documents shall be published in accordance with paragraph (b):

- (i) any notices issued by the Minister under this section;
- (ii) any representations received by the Minister under this section;

(iii) a draft direction served under subsection (15);

(iv) a Ministerial direction.

(b) The Minister shall publish the documents referred to in paragraph (a) on the website of the Department of Education and Skills not later than 7 days from the date on which he or she receives them, or, in the case of a draft direction referred to in paragraph (a)(iii) or a Ministerial direction, not later than 7 days from the date he or she serves the draft direction or direction concerned.

(21) In this section -

“Council” means the National Council for Special Education;

“relevant person”, in relation to a school, means the patron, the board of management or any other person or body in relation to whom the ownership of the school premises is vested;

“resources” includes resources made available by the Minister and allocated by the Council.”.