

**Re: Review of Section 37A of the Education Act
1998**

**(as inserted by Section 8 of the Education
(Admission to Schools) Act 2018)**

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Introduction

The Irish National Teachers' Organisation (INTO) represents over 43,000 teachers in primary and special schools in the Republic of Ireland.

The INTO welcomes the opportunity to feedback in to the review of Section 37A of the Education Act (as inserted by Section 8 of the Education (Admission to Schools) Act 2018).

As requested, we respond to the points raised as follows:

1. What if any steps could be removed from the current Section 37(A) process?

The INTO recognised that there were a considerable number of steps in the Section 37 (A) process. We submit that a number of these steps were required to ensure a fairness and transparency in the process. A number of the steps provided for the relevant person to make representations in relation to any notice served upon them. Notwithstanding the provision to make representations throughout the process, it appeared that there was repetition in some of the steps. While some of these steps could be removed to ensure a more efficient process, we would caution against the removal of any steps where the relevant person is not provided with the necessary and requisite information and documentation prior to making representations to the Minister. We specifically refer to Sections 37 (A) (5), 37 (A) (8), 37 (A) (10), 37 (A) (14) and 37 (A) (16). We strongly believe that all documentation should be furnished to the relevant person in advance of making representations including the Architects' reports, technical reports, notes from site visits by the DE or Council, correspondence between the relevant person and the DE, Council and any other body or agency in connection with the matter. The timely provision and furnishing of all information and documentation could allow for the removal of some steps.

We are of the view that Section 37 (A) (9) which provides for arbitration should not be removed as a step as there may be circumstances beyond the relevant person's control in relation to the ownership of the school premises which would require a resolution or determination.

We believe that there should be transparency in the Section 37 (A) process. However, in order to provide for a more open, direct and honest exchange of views and dialogue that the step/section requiring the publication of all notices, directions, representations and documents on the Department of Education website could be removed.

2. If such step(s) were removed what impact would this have had on the processes you were engaged in (if any)?

We are strongly of the view that the removal of section 37 (A) (4) which provides for consultation with stakeholders would be a retrograde step. For its part, the INTO attended three consultations convened by the Council with stakeholders pursuant to this section. We found these to be an extremely important step in the process and are of the view that it was mutually beneficial. These consultations provided an overview to the current situation. The stakeholders were made aware of the areas which were identified where there was insufficient capacity. The outlining of the engagement



with schools and statistics during the consultation was very informative. The consultation provided and opportunity for stakeholders to input and offer possible solutions as to the next steps.

We submit that the removal of Section 37(A) (21) which provides for a review of the operation of the section would also be a retrograde step. The collaborative approach in education has served and continues to serve the system very well. We submit that it would be important for stakeholders including INTO to be provided with the opportunity to input in to any review of the section based on the experience of and the feedback received from our members in schools in relation to the operation of the process.

3. *What other changes, if any, would you recommend to the current Section 37A process?*

One important change we recommend is in relation to Section 37 (A) (5) and the issuing of notices by the Minister. We strongly recommend that the notices being served by the Minister pursuant to that section should issue no later than the end of March preceding the school year to allow schools sufficient time to prepare for the establishment of additional special classes. In addition, site visits to schools should take place prior to the issuing of any notices by the Minister.

Having regard to the foregoing recommendation, we strongly submit that the Council engage with schools sooner rather than later and submit its report to the Minister pursuant to Section 37 (A) (2) at a much earlier stage in the school year. We submit that there should also be meaningful engagement and discussion with schools regarding their facilities and capabilities prior to the drafting of and preparing a report under this section.

4. *What consultations, if any, did your school (if applicable) hold with your school community in relation to the Section 37A process?*

This question is not applicable to INTO.

5. *Did the guidance available from PBU on planning and building works support the school where building works were required? And if so, can you outline any additional supports that would assist with same.*

The first part of this question is not directly relevant to the INTO.

In relation to the second part, from engagement with our members a number of difficulties were highlighted and amongst them was procuring tradespeople to make the adaptations to the school building, the space identified for the special class and/or to the outdoor space. In relation to the challenges identified and highlighted, we submit that there should be:

- a centralised system for procurement to be established by the Department of Education for building work, health and safety matters and for setting up special classes;
- an overseer appointed by the Department of Education for all building projects in schools;
- assistance provided to schools by the Department of Education in procuring qualified and registered tradespeople;
- access by schools to the fast-track programme;

- a designated person/liaison person in the Department of Education and Council to deal with queries from schools;
- provision of substitute cover to enable site visits to take place to other schools to be made by Principals and teachers.

6. *What impact did the Section 37A process have on your school/ school community (if applicable)?*

The utilisation of the Section 37 (A) process created a perception that schools were reluctant to open special class(es) when this was clearly not the case. Schools require sufficient time in order to plan, prepare and to conclude any building works in advance of opening a class. A number of issues which emerged for schools and which were highlighted included:

- having special class(es) already;
- ongoing engagement with the DE and/or the NCSE regarding the opening of a class;
- inaccuracies in the report from the Council;
- inaccurate information about the context of the school;
- attempts made to appoint an architect;
- procurement issues;
- a commitment made to the DE and/or NCSE to open a special class at a future date;
- being wrongly included on the list;
- the school not being the first language of the child.

Notwithstanding the foregoing issues, when the process was initiated, an impression was created - albeit wrongly- that schools were not being inclusive with the potential for reputational damage as a result. We submit that every effort should be made to ensure that all information is accurate and appropriate before being put in to the public domain.

7. *How much time (approximately) was spent in engaging in communications in relation to Section 37A process by your school/ members? (if applicable)?*

Once the first notice was served and the names of the schools were made known publicly on the Department's website an expectation was created that the class would be opened imminently or in the very near future. As a consequence of this, an increased amount of time was spent dealing with prospective parents and with school principals having to manage those expectations in the intervening period.

The amount of time spent engaging in communications varied from school to school. Members reported increased engagement in communications in dealing with the Architect, NCSE, SENO, Department of Education, teachers and the school community. There was also increased Board meetings and time spent on making representations pursuant to the legislation. It was also reported that a considerable amount of time was spent in July and August on communications.



8. *If all communications were not required to be published would this allow more open communication between the school and the Department of Education?*

We agree that it would provide for more direct and open communication between the school and the Department of Education. There may be issues or matters relevant to a particular school that they are reluctant to share or impart due to the requirement to publish communications on the Department of Education's website. The removal of the requirement to publish all communications would be a positive step.

9. *Is there any additional feedback on the legislative process in relation to Section 37A?*

We wish to submit the following:

- that the Section 37 (A) is an established legal process which is transparent and upon which the delivery of special education is based. Notwithstanding the points we have made and views we have articulated earlier in this submission, we are firmly of the view that acting outside of this process risks eroding trust with the people who are working hard to deliver quality special education;
- that for the inclusion of pupils with special educational needs the appropriate resources, training and facilities must be in place to enable such inclusion within the local school community;
- that the actions a school needs to take to open a special class include:
 - Making adaptations to their school building, playground and classroom space. Securing the provision of specialist indoor and outdoor play areas (e.g., nurture rooms);
 - Purchasing sensory equipment, furniture, protective mats and assistive technology (such as touch screens, voice recognition software and visual displays);
 - Recruiting teachers, special needs assistants and bus escorts;
 - Engaging with children's multi-disciplinary teams (including Speech and Language Therapists, Occupational Therapists, Psychiatrists and Nursing Staff) prior to the arrival of new students;
 - Delivering training and professional development for newly-recruited staff;
 - Amending the school enrolment and admission policies.
- that the following key resources must be made available to schools, including:
 - Adequate SNA support to reflect the increasing complexity of enrolments;
 - Multi-disciplinary teams (including Speech and Language Therapists, Occupational Therapists, Psychiatrists and Nursing Staff) to be made available to all schools;
 - Mental health supports for pupils in schools and CAMHS fully staffed to meet the needs of all children with emotional and behavioural disorders;
 - Provision of play, art and music therapy where such therapies are of benefit to pupils;

- Full-time qualified school secretaries in all schools;
- Full-time caretakers in all schools.

- that given the complexity of special educational needs presenting in schools, we strongly insist that training and support should be provided prior to and following the opening of a special class, and this must include ongoing support from NCSE and NEPS.

Concluding Comments

The INTO strongly believes that proper forward planning for inclusive education by the Department of Education and NCSE would negate the requirement for this section of the legislation to be utilised. We remain firmly of the view that when planning inclusive education, the long-standing collaborative approach with stakeholders which has served the system so well should continue. Should the Section 37 (A) process be required to be initiated, it should be as a last resort. Throughout the process including prior to the initiation of Section 37 (A), there must be meaningful engagement with and supports for schools put in place by the Department of Education and NCSE. Inclusive education works best when it is supported and resourced properly.