



# Discussion paper on the review of the Education of Persons with Special Educational Needs ('EPSEN') Act 2004

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## Introduction

This discussion paper provides information on the Commission's planned engagement with the Government's upcoming public consultation on the review of the Education of Persons with Special Educational Needs ('EPSEN') Act 2004. The paper outlines key issues discussed previously by the DAC on CRPD Article 24 right to education. The paper provides an overview of the EPSEN Act 2004, the Government's review of the EPSEN Act, the Commission's previous recommendations on the EPSEN Act and the Commission's planned areas of focus in its submission to the consultation.

Questions for discussion are presented at the end of the paper for members' consideration.



## DAC discussion on CRPD Article 24 and inclusive education

The DAC had a discussion on CRPD Article 24 on 11 December 2019. Dr [Shivaun Quinlivan](#), a lecturer from University of Galway, gave a presentation on Article 24.

The DAC had a discussion on the implementation Article 24 and on inclusive education in Ireland, and identified a number of areas of concern, including:

- Much of the Irish legislation that provides for the right to inclusive education for persons with disabilities pre-dates the CRPD.
- The non-commencement of parts of the EPSEN Act 2004 and the need for the EPSEN Act to be amended to respond to the needs of disabled students.
- Individual Education Plans ('IEP's') have yet to have any statutory footing, as the section of EPSEN 2004 that legislates for them has yet to commence.
- The need for a policy of inclusion not integration. Disabled students are often segregated in schools.
- Inclusive education requires the right supports be available to all students in order to ensure their effective participation in the education system.
- An inclusive school system will have to include wrap around health and rehabilitative supports for people with disabilities with complex medical and support requirements.
- Lack of training and resources for teachers and schools to support disabled students.



- Significant gaps in the provision of supports for Deaf people at primary and secondary level.
- The need for awareness raising at all levels, including children.

## Education of Persons with Special Educational Needs Act 2004

The Education of Persons with Special Educational Needs Act 2004 became law in 2004, which pre-dates the CRPD. The EPSEN Act provides for the education of children aged under 18 years with special educational needs in an inclusive environment with students who do not have such needs.

A number of provisions of the Act have been commenced including 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.

However, almost 20 years later, many of the Act's provisions have not yet been commenced, including provisions, which would confer a statutory entitlement to:

- An educational assessment for all children with special educational needs.
- The development of an individual educational plan ('IEP'). Which parents and pupils have a right to contribute to and participate in evaluating, and the delivery of detailed educational services on foot of this plan.
- An independent appeals process.

Cost has been cited as a primary obstacle to commencing the Act in full. As the relevant sections of the EPSEN Act have not yet been commenced,



assessments of educational needs ('AON's') are currently provided for under Part 2 of the Disability Act 2005.

## Review of the EPSEN Act 2004

In December 2021, Josepha Madigan TD, the Minister of State with responsibility for Special Education and Inclusion, announced a full review of the EPSEN Act.<sup>1</sup> The purpose of the review is to ensure that legislation on education for students with additional needs is up-to-date, fully operational, and reflective of the lived experiences of students and families.

The Department has established a Steering Group, a Working Group and an Advisory Group (including stakeholders representing various groups) to oversee the review. The Commission understands that there will be a public consultation in the coming months. The Commission plans to make a submission to the consultation. The Department has advised IHREC that the full review is expected to be completed in mid-2023 with the delivery of a report including full analysis of the stakeholder and public engagement, focus groups feedback and the evidence-based research.

## The Commission's views on the EPSEN Act 2004

The Commission has made a number of comments on the EPSEN Act,<sup>2</sup> including:

- The non-commencement of provisions of the EPSEN Act has led to significant barriers to education for disabled children. The

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<sup>1</sup> See Department of Education press release launching the review: <https://www.gov.ie/en/press-release/69020-minister-josepha-madigan-launches-review-of-the-education-for-persons-with-special-educational-needs-epsen-act-2004/>

<sup>2</sup> The Commission most recently discussed the EPSEN Act in its August 2022 submission to the United Nations Committee on the Rights of the Child. See pages 63-65 <https://www.ihrec.ie/app/uploads/2022/09/Ireland-and-the-Rights-of-the-Child-Final.pdf>



Commission has recommended the EPSEN Act be fully commenced.

- Society's understanding of disability has changed since 2004. The Commission has observed there is a need for the EPSEN Act to reflect the standards of CRPD and the Convention on the Rights of the Child.

The Commission plans to discuss these concerns and recommendations in its submission to the Government's consultation on the EPSEN Act 2004.

The Commission also plans to address a number of other issues including:

- The changes in education provision since 2004.
- The meaning of inclusive education.
- The vision for inclusive education and its impact.
- Resources for supports in school.
- Ableism in school communities.
- The differential impact across the impairment and equality groups of a lack of inclusive education.
- The relationship between Article 24 and other CRPD rights including the impact of a lack of inclusive education on employment, adequate standard of living and poverty, living conditions and other areas.

## Questions for the DAC

- Do the concerns raised by the DAC in December 2019 still stand? Are there additional concerns and issues you would like to raise?



- Do you have any examples of issues or concerns with the EPSEN Act 2004?
- Do you agree with the issues the Commission plan to include in its submission on the EPSEN? Are there are other areas or issues you would like us to include? Are there other CRPD rights that the Commission should refer to in its submission?
- Do you have any evidence or report to share with us to help us to draft a submission to the consultation on the review of the EPSEN Act 2004?