March 2026

General Scheme of the Disability (Amendment) Bill 2025

Observations by the Ombudsman for Children's Office

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Contents

Introduction

The Ombudsman for Children's Office (OCO) is an independent statutory body established in 2004 under the Ombudsman for Children Act 2002. Under the 2002 Act, the OCO has two core statutory functions: (i) to promote the rights and welfare of children up to 18 years of age; and (ii) to examine and investigate complaints made by or for children about the administrative actions of public bodies, schools and voluntary hospitals that have, or may have, adversely affected a child.

The OCO welcomes the opportunity to provide observations to the Oireachtas Committee on Disability Matters in respect of the General Scheme of the Disability (Amendment) Bill 2025 (the "General Scheme"). These observations are prepared pursuant to section 7(4) of the Ombudsman for Children Act 2002, which provides for the Ombudsman for Children to advise on any matter concerning the rights and welfare of children, including proposals for legislation.

The main purpose of these observations is to:

- set out the relevant rights framework for children with disabilities.
- analyse how the proposals align with, or fall short of, OCO's longstanding commentary on the assessment of need (AON) system, including as set out in our 2020 Unmet Needs report; and
- provide recommendations to assist the Committee in pre-legislative scrutiny of the General Scheme.

The Annex provides a summary of how the General Scheme proposes to amend Part 2 of the Disability Act 2005 ("the 2005 Act") and the additional reforms announced by Government.

The Rights of Children with Disabilities

Core Rights and State Obligations

In accordance with the United Nations Convention on the Rights of the Child (UNCRC), children with disabilities are entitled to enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance, and facilitate the child's active participation in the community. In recognition of the right of the child with a disability to special care, the State must extend such assistance as appropriate to the child's condition, subject to available resources. Such assistance must be designed to ensure effective access to, and receipt of, education, training, health care services, rehabilitation services, preparation for employment, and recreation opportunities, in a manner conducive to achieving the fullest possible social integration and individual development (Article 23, UNCRC).

The UN Committee on the Rights of the Child has emphasised that States should adopt an appropriate and inclusive definition of disability that ensures all children with disabilities can benefit from special protection and programmes developed for them; and that health policies should be comprehensive, including early identification and early intervention, to minimise and prevent further disabilities (CRC General Comment No. 9 (2006), including paras. 19, 51 and 56). The right to the enjoyment of the highest attainable standard of health (Article 24 UNCRC), read together with the obligation to ensure children's survival and development (Article 6 UNCRC), requires timely, accessible and appropriate services that support children's development in its broadest, holistic sense

The State's obligations are also informed by the UN Convention on the Rights of Persons with Disabilities (UNCRPD), including obligations to ensure equality and non-discrimination, accessibility, and effective participation and inclusion in society. In the context of health, see Article 25 UNCRPD; in the context of education, see Article 24 UNCRPD.

Reasonable Accommodation

Children with disabilities should be provided with reasonable accommodation and effective individualised support measures in educational environments that maximise academic and social development, consistent with the goal of full inclusion. The denial of reasonable accommodation constitutes discrimination under the UNCRPD, and the duty to provide reasonable accommodation is immediately applicable and not subject to progressive realisation. While the UNCRC does not use the term "reasonable accommodation", its guarantees of non-discrimination (Article 2), the right to education (Article 28), and the aims of education (Article 29), as interpreted in General Comment No. 1 (2001), require education systems to adapt to children's individual needs and promote full inclusion.

A Child-Centred, Rights-Based Approach

In its 2023 Concluding Observations, the UN Committee on the Rights of the Child recommended that Ireland review relevant legislation, including the Equality Acts, the Disability Act and the Education for Persons with Special Educational Needs Act (EPSEN), to bring them in line with a human rights-based approach to disability, particularly regarding the definition of disability; and also recommended that Ireland revise the HSE's standard operating procedure for AONs to include diagnoses, in line with the Disability Act, reduce waiting times, and urgently address staff shortages.

These recommendations are directly relevant to the General Scheme, given that it proposes changes to the legislative framework that governs statutory AONs under Part 2 of the 2005 Act.

OCO Observations on the General Scheme

In our 2020 Unmet Needs report, the OCO expressed concern that reforms to the AON process should not dilute or undermine children's statutory rights. The report emphasised the importance of a child-centred, rights-based approach to disability law, grounded in a holistic and multidisciplinary understanding of children's development and needs. It recommended structural reform of the 2005 Act to ensure that the statutory framework aligns with Ireland's obligations under the UNCRC and the UNCRPD.

The current General Scheme introduces targeted amendments intended to clarify and streamline elements of the AON process. However, it does not address the broader structural reforms identified by the OCO in Unmet Needs. In particular, the Scheme does not provide for the insertion of guiding principles to inform interpretation and implementation of the Act; does not amend the statutory definition of disability in section 2 to make it rights-based and child-centred; does not embed an explicit best interests, holistic and multidisciplinary approach to assessment under section 7; and does not strengthen enforcement mechanisms, including by expanding the remedial powers of the Disability Appeals Officer under section 18. These omissions are significant, as they leave unresolved core issues relating to rights alignment, statutory coherence and effective accountability within the framework of the 2005 Act.

In information provided to the Joint Committee on Children, Equality, Disability, Integration and Youth in 2022, the Ombudsman cautioned that any review or amendment of the 2005 Act must not result in the weakening of existing protections and emphasised that reform should be undertaken by an independent expert group with clearly defined, child-rights-focused terms of reference. In light of the current proposals, that concern assumes renewed relevance. The absence of broader structural reform, coupled with amendments that recalibrate key aspects of the assessment process, underscores the importance of ensuring that efficiency-driven changes, such as these, do not dilute the statutory entitlements of children with disabilities.

Diagnosis-led Gateway vs Needs-led Model

The OCO has consistently stated that, as enacted, Part 2 of the 2005 Act provides an assessment of the need for services, rather than an assessment of the child's holistic health and development needs. The gateway to service identification under Part 2 is a finding of "disability" under an adult-centred definition. OCO has described this as a diagnosis-led rather than needs-led model and highlighted that it is at odds with more recent policy directions toward needs-led models and early intervention.

Against this backdrop, the OCO acknowledges that the General Scheme is presented as shifting focus toward needs and away from overly resource-intensive diagnostic reporting. However, the OCO's central concern is that legislative amendments designed to reduce burdens on resources must not erode children's statutory rights, including the right to a comprehensive assessment process that can lawfully and effectively identify the child's needs and the services required.

Head 3 (Section 7) – Interpretation

(a) Explicit Inclusion of Disability Determination in "Assessment"

The OCO notes that Head 3 proposes to clarify that an assessment includes an initial determination of disability. In principle, this reflects what the courts have already underscored: that Part 2 requires both an assessment of whether a disability exists and an assessment of need arising from the disability, conducted by an independent assessment officer.

However, the practical effect of emphasising "disability-first" sequencing requires close scrutiny. Significantly, Head 4 (section 8) also proposes to postpone mandatory engagement with the education sector until after a disability determination is made (see below). The OCO considers that legislative change should not inadvertently narrow the range of expert inputs that are practically available to ensure a fair and accurate disability determination for children, particularly in cases where educational functioning and access barriers are central.

It is important to recall that disability is not solely a medical or diagnostic concept, but a social and relational one. Under contemporary human rights principles - reflected in the UNCRPD - disability arises from the interaction between an individual's impairment and the environmental, attitudinal and systemic barriers that hinder full and effective participation in society on an equal basis with others. For children, those barriers are often most visible within educational settings, where curriculum design, classroom supports, school culture and resource allocation can either mitigate or exacerbate functional difficulties.

A determination of disability that does not adequately consider these contextual and environmental factors risks reducing the assessment to a narrow inquiry into impairment, rather than an examination of how the child experiences restriction in real-world settings. In this regard, timely engagement with educational and other expertise may be essential not only to identify needs, but to properly understand whether and how a child's capacity to participate is substantially restricted. A rights-based approach therefore requires that disability determinations remain informed by a holistic appraisal of the child's lived experience, including the barriers that impede participation and the supports that may remove them.

(b) Replacement of “Disability” with “Restriction”

The OCO understands the rationale advanced in the explanatory note: to avoid a circular framing and ensure focus on restrictions and barriers rather than impairment. This aligns, at a high level, with human rights-based approaches to disability emphasised by the UNCRPD.

Nevertheless, the OCO emphasises that a rights-based approach requires more than replacing a single term. The 2005 Act definition is longstanding, adult-centred, and differs from definitions across Irish legislation, creating confusion and inconsistency. The OCO notes the UN Committee on the Rights of the Child’s recommendation that Ireland review relevant legislation (including the 2005 Act, the Equality Acts and EPSEN) to bring them in line with a human rights-based approach, particularly regarding the definition of disability. Such consistency across legislation would be a huge step forward.

The OCO is concerned that the General Scheme proceeds with significant operationally oriented amendments while leaving the broader, child-centred, rights-based definition question to future processes. In the OCO’s view, this increases the risk of partial reforms that alter the practical meaning of entitlements without addressing underlying definitional misalignment.

Head 4 (Section 8) – Independent Assessment of Need

(a) Education Expertise After Disability Determination

The General Scheme proposes to amend section 8(3) to require the assessment officer to request a nomination from the Council only after the applicant has been determined to have a disability. The rationale is that the existing text has been treated as a low threshold that triggers routine requests to the Council for children prior to disability determination.

OCO recognises the objective of improving efficiency and reducing unnecessary procedural steps. However, the question is whether the amendment risks excluding or delaying necessary educational expertise that is material to determining disability and/or needs.

Children’s entitlements under Part 2 expressly include an assessment of education needs and education services (where applicable). In practice, children’s needs frequently manifest across home, school and community contexts, and educational functioning is often intertwined with health and developmental needs. The OCO is therefore concerned that a strict sequencing approach - where formal NCSE involvement is deferred until after disability determination - could lead to inconsistent, or no, access to education expertise at the disability determination stage, depending on local availability of educational specialists and how section 8(2) is operationalised.

In addition, the OCO notes that one of the major drivers of pressure on the AON system has been the non-commencement of core EPSEN provisions, which means that families may rely on the AON process to access educational assessments and supports. This broader systems issue cannot be resolved through procedural narrowing within section 8(3) alone (see further below).

(b) "Nature and Extent of Disability" Replacement

The proposed change to section 8(7) from a statement of "the nature and extent of the disability" to a statement of "the significant difficulty in communication, learning or mobility or significantly disordered cognitive processes … which gives rise to the need for services" is one of the most consequential aspects of the General Scheme.

The OCO recognises that the explanatory note suggests that diagnostic approaches may still be required when necessary to determine needs; but the intention is to reduce pressure for exhaustive diagnostic assessments where they are not necessary.

The OCO's concern is that, without clear statutory safeguards and enforceable standards, this change may be interpreted and applied in a manner that reduces the comprehensiveness of assessments, particularly for children with complex or evolving presentations, co-occurring conditions, or needs that do not map neatly onto a single functional domain at a point in time.

The High Court in CTM[1] made clear that Part 2 does not require a definitive diagnosis in every case, but requires that, to the extent practicable at that time, the nature and extent of disability should be fully assessed in the Part 2 process. The Court of Appeal in AB[2] also criticised the "superficial" approach of deeming disability based on desktop review, and stressed compliance with the statutory requirements and the independence of assessment officers.

OCO is concerned that the proposed amendment to section 8(7) may be perceived (and potentially used) as a legislative route to lowering the "gold standard" of statutory AON content solely in response to resource constraints - i.e., to address therapeutic time spent on assessments - rather than as a child-centred, rights-based reform grounded in an inclusive, holistic needs assessment model.

[1] CTM (A Minor) & JA v The Assessment Officer & HSE [2022] IEHC 131 (Phelan J, 11 March 2022)

[2] AB v HSE [2023] IECA 275 (Court of Appeal, 10 November 2023)

Head 6 (Section 21) – Statutory Guidelines and Closure of Applications

(a) Statutory Guidelines

The OCO recognises that the proposal to require statutory guidelines has the potential to improve consistency and legal compliance nationally. Government has stated that the guidelines are intended to support assessment officers to understand the legal framework and meet obligations, consistent with HIQA standards.

However, OCO emphasises that guidelines cannot substitute for statutory rights. In particular, where guidelines are intended to emphasise a "high threshold" for entitlement to a statutory assessment (as described in the explanatory note), OCO considers it essential that:

- the legal status of the guidelines is clear (including how they interact with statutory duties and rights).
- guidelines do not operate to narrow entitlements beyond what the primary legislation provides; and
- implementation is subject to effective oversight and accessible complaint/appeal mechanisms.

The OCO has previously highlighted that, in the absence of a robust statutory underpinning and oversight, operational approaches (such as SOPs) may drift into practices that are inconsistent with statutory requirements - an issue that has been borne out in subsequent litigation regarding the 2020 SOP.

Further, while section 10 of the 2005 Act (as referenced in the explanatory note) requires that AONs be carried out in conformity with standards set by HIQA, the 2007 Standards for the Assessment of Need have not been subject to formal monitoring or inspection to date, and services have not been assessed against them. An amended 2005 Act that does not address this gap risks leaving children with a statutory entitlement that lacks effective oversight and enforcement.

(b) Closure of Applications

The OCO recognises that there may be circumstances where it becomes impracticable to progress an application due to lack of engagement or withdrawal. However, any new closure power must include safeguards appropriate to children's rights, including:

- clear notice requirements.
- child-appropriate communication (including direct communication with children where appropriate, not only with parents/guardians).
- an accessible mechanism to challenge closure decisions; and

- clarity on the effect of closure on re-application, and whether time on waiting lists is "lost" or reset.

Given the levels of delay reported publicly regarding AON waiting times, the OCO considers that application closure processes must not create new barriers or hidden forms of exclusion, particularly for families in vulnerable situations. Importantly, lack of resources cannot be a reason for closure.

Head 7 – Transitional Provisions

The Department intends the amendments to apply to applications where the assessment process has not yet commenced at the time the Act comes into operation.

The OCO notes that transitional provisions can have significant practical effects for children who have been waiting long periods for an assessment to commence. The OCO considers it essential that transitional arrangements are assessed through a child rights lens, including non-retrogression and equality considerations. Where children have already waited extended periods for commencement, the State should avoid changes that could:

- reduce the scope or quality of the eventual assessment they receive; or
- introduce additional procedural hurdles that further delay effective identification of needs and access to supports.

OCO Observations on System-Wide Alignment

A consistent theme in OCO commentary is that reform of the 2005 Act cannot be considered in isolation from education legislation and other access pathways.

The EPSEN Act 2004

The Education for Persons with Special Educational Needs Act 2004 (EPSEN Act) was enacted to provide a statutory framework for the education of children with special educational needs (SEN). While certain sections - including those promoting inclusive education and establishing the National Council for Special Education (NCSE) - have been commenced, key provisions have yet to be commenced more than two decades later.

In particular, the following statutory provisions have not been brought into force:

- an individual right to assessment of special educational needs.
- the preparation of a statutory Individual Education Plan (IEP).
- a legal entitlement to the services specified in such plans.
- defined timelines for assessment and review; and
- an independent, specialised appeals mechanism.

As previously documented in Unmet Needs (2020) and reiterated in Plan for Places (2022), the absence of these commenced provisions has resulted in a situation where educational supports are delivered largely through policy and administrative arrangements rather than enforceable statutory rights. This creates legal uncertainty, regional inconsistency, and reliance on litigation where disputes arise. It has also placed undue pressure on the AON pathway.

Inclusive Education

Section 2 of the EPSEN Act provides that a child with SEN shall be educated in an inclusive environment with children who do not have such needs, unless this would be inconsistent with:

- the best interests of the child; or
- the effective provision of education for other children.

While this provision reflects an aspiration towards inclusion, concerns have been raised by advocacy organisations that the qualification in section 2(b) may operate in practice as a limitation on inclusive education and may not fully align with Article 24 of the UNCRPD and the CRPD Committee's interpretation of inclusive education in General Comment No. 4 (2016).

In particular, the CRPD Committee distinguishes "integration" - where a child must adapt to the existing system - from "inclusion", which requires the education system to adapt to the child.

The EPSEN Act does not define "inclusive environment", and policy development in the education system has evolved considerably since 2004. The Government's review process acknowledged that legal and educational contexts have changed significantly since enactment.

Non-Commencement and Systemic Consequences

The OCO's previous reports identified several practical consequences arising from the failure to commence core EPSEN provisions:

- Schools rely heavily on NEPS assessments, with limited annual allocation capacity.
- There is no statutory timeline for SEN assessments.
- There is no statutory obligation to implement an IEP.
- There is no specialised, accessible appeals mechanism.
- Children's views are not structurally embedded in assessment and planning processes in line with Article 12 UNCRC.

The NCSE's own longitudinal IRIS Project (2015) highlighted inconsistent development and application of individual plans and uneven policy development regarding inclusive schooling - issues linked to the non-implementation of EPSEN's statutory planning provisions.

Professor Conor O'Mahony and other commentators have noted that the core strength of the EPSEN framework - the structured process around assessment, planning, review and appeal - has never been operationalised in law.

As a result, additional supports such as SETs and SNAs are allocated on a policy basis rather than through a rights-based statutory mechanism.

Review Process

In December 2021, the Department of Education commenced a full review of the EPSEN Act, establishing a Steering Group and Advisory Group. The review concluded that simple commencement of the Act as originally enacted would not be viable given developments in inclusive education and disability law since 2004.

Consultations during the review indicated support for a single, rights-based legislative framework for inclusive education that aligns with contemporary human rights standards and brings coherence to special educational provision.

The review also acknowledged the need to consider alignment between the EPSEN framework and the 2005 Act, particularly regarding assessment pathways and transfer of responsibilities between health and education systems.

The OCO's consistent position, reflected in Unmet Needs and Plan for Places, is that legislative underpinning for children's special educational needs is essential to ensure:

- timely identification of need.
- clarity of responsibility between health and education systems.
- enforceable entitlements.
- consistency of provision nationally; and
- reduced reliance on High Court litigation.

The 2005 Act and EPSEN Act were originally designed to operate in tandem. However, the partial commencement of EPSEN has resulted in disproportionate reliance on the AON process for education-related needs. This has contributed to pressure on the AON system and blurred the boundaries between health and education responsibilities. Reform of the 2005 Act without parallel reform of the EPSEN framework risks perpetuating systemic fragmentation.

A coherent, rights-based approach requires that:

- educational planning mechanisms are statutory, enforceable and time bound.
- inclusive education is clearly defined in accordance with Article 24 CRPD.
- children's participation rights under Article 12 UNCRC are embedded in assessment and planning processes; and
- coordination between the Department of Education and Youth, the HSE, and the Department of Children, Disability and Equality is formalised and structured.

The Committee should press for clear parallel commitments/timelines regarding SEN assessment and planning mechanisms (whether through EPSEN commencement/amendment or new legislation), to reduce systemic reliance on AON as the default educational assessment route.

Autism Assessment & Intervention Pathway Protocol

The OCO notes that, alongside the proposed legislative amendments to Part 2 of the 2005 Act, the Department has introduced the Autism Assessment & Intervention Pathway Protocol (February 2026). The Protocol is presented as an operational reform intended to provide families with a faster route to autism assessment and diagnosis, supported by eleven new autism in-reach teams (comprising psychologists, speech and language therapists, occupational therapists and administrative support) to assist assessment officers during the AON process.

The OCO recognises the urgent need to reduce waiting times and acknowledges that a significant proportion of children accessing the AON pathway are identified as autistic. Measures aimed at improving timeliness and consistency in autism assessment are therefore of considerable importance. However, the Protocol operates as a clinical and operational pathway rather than a statutory entitlement, and its relationship to the legal rights framework under the 2005 Act requires careful scrutiny.

It should be made explicit how assessment under the Autism Protocol interacts with a child's statutory entitlement to an AON under Part 2 of the 2005 Act. Safeguards are required to ensure that:

- participation in the Protocol does not limit, delay or condition a child's statutory right to apply for and receive an AON.
- information generated through the Protocol can be seamlessly incorporated into a statutory AON process, where applicable; and
- children are not effectively required to undergo duplicative assessments or re-enter waiting lists for statutory processes.

Further, while the introduction of eleven autism in-reach teams is a positive development; clarity is required as to whether these posts represent net additional capacity or redeployment from existing services. Sustainable workforce planning is critical to ensuring that the Protocol results in genuine reductions in waiting times across the system, rather than redistributing existing pressures.

Recommendations

The OCO's recommendations below are framed to assist the Committee in pre-legislative scrutiny of the General Scheme. They draw on OCO's established recommendations in Unmet Needs and subsequent OCO reports and representations.

Preserve Children's Statutory Rights

- Amend the Bill to ensure that reforms intended to improve efficiency do not reduce the substantive scope, quality or multidisciplinary nature of statutory AON assessments for children, including in complex presentations, with particular regard to the proposed amendment to section 8(7).
- Provide an explicit statutory statement of purpose and guiding principles for Part 2 as it applies to children, including recognition of children as rights holders; best interests; non-discrimination; survival and development; participation; timely decision-making and accountability; and the entitlement of children with disabilities to a full and decent life and active participation.

Ensure that Education Expertise is Available when Needed

- If section 8(3) is amended as proposed, ensure in primary legislation — or in statutory guidance with clear legal status — that assessment officers can obtain timely education expertise where necessary to determine disability and/or needs.

Statutory Guidelines Safeguards

- Require that statutory guidelines:
    - expressly confirm they cannot narrow statutory rights.
    - are developed with meaningful consultation, including disabled persons organisations and children/families; and
    - are published and accessible in child-friendly formats.

Closure Provisions

- Ensure that any regulations permitting closure of applications include minimum statutory safeguards: written notice, clear reasons, a defined opportunity to re-engage, and access to appeal or complaint mechanisms, framed and communicated in a child-appropriate and accessible manner. Lack of resources cannot be a reason for closure.

National Standards

- Seek clarity on how compliance with HIQA standards under section 10 will be monitored in practice, including whether audits are conducted and whether findings are published.
- Examine and address the structural disconnect between identifying needs in assessment reports and delivering services in practice, recognising that persistent unmet needs raise concerns about the effectiveness of the statutory framework.
- Consider whether an enhanced independent oversight mechanism is required - whether through HIQA, the Ombudsman system, or another statutory body - to ensure that reforms to the AON process translate into measurable improvements in children's access to appropriate supports.

EPSEN

- Seek clarity on the outcome and legislative follow-through of the EPSEN review, including timelines for legislative reform or replacement legislation.
- Ensure alignment between 2005 Act reform and EPSEN reform, so that health and education assessment pathways are coherent and do not duplicate or undermine one another.
- Consider whether sections 3–13 of the EPSEN Act should be commenced, amended or replaced to provide:
    - a statutory right to SEN assessment.
    - a legally binding Individual Education Plan process.
    - defined timelines; and
    - an accessible, independent appeals mechanism.
- Review section 2 of EPSEN to:
    - clarify and strengthen the concept of "inclusive learning environment" in line with Article 24 CRPD and General Comment No. 4.
    - reconsider the qualification in section 2(b) to ensure it does not operate as a structural barrier to inclusion.

- Embed children's participation rights explicitly, ensuring that children can:
    - request assessment.
    - meaningfully participate in planning.
    - receive copies of plans and reviews; and
    - access appeals mechanisms directly where appropriate.

- Consider the development of a consolidated, rights-based inclusive education framework, whether through amendment of EPSEN, reform of the Education Act 1998, or new legislation, to ensure that inclusive education is legally guaranteed rather than policy-dependent.

Autism Protocol

- Seek explicit confirmation that participation in the Autism Protocol does not dilute or defer statutory entitlements under Part 2 of the 2005 Act.
- Consider publication of clear guidance on how Protocol assessments will interface with statutory AON processes.

Whole-of-Government Approach and Resourcing

- Consistent with OCO's position and the Oireachtas Joint Committee on Children, Equality, Disability, Integration and Youth (February 2023) report, consider whether 2005 Act reform should be undertaken through an independent expert group and in tandem with EPSEN, ensuring child-centred, UNCRPD-compliant, needs-led reform, without the dilution of rights.
- Seek publication of a workforce plan (targets and timelines) to recruit, train and retain staff required to meet statutory obligations in practice, and clarity on how initiatives (Targeted Waitlist Initiative, Single Point of Access, Autism Pathway) interact with statutory AON rights.
- Reinforce the need for a central AON dataset and transparent reporting (disaggregated and outcome-focused), consistent with OCO recommendations and the 2023 Joint Committee report.

Annex: Summary of Proposed Amendments to the Disability Act 2005

This section summarises the key proposed amendments to Part 2 of the 2005 Act as set out in the General Scheme.

Head 3 – Amendment to Section 7 (Interpretation)

(a) Definition of "Assessment" (Section 7(1))

The General Scheme proposes to amend the definition of "assessment" so that it explicitly includes an initial disability determination, in respect of a person for whom an application is made.

Existing text:

*""assessment" means an assessment undertaken or arranged by the Executive to determine, in respect of a person **with a disability**, the health and education needs (if any) occasioned by the disability and the health services or education services (if any) required to meet those needs"*

To be substituted with:

*""assessment" means an assessment undertaken or arranged by the Executive to determine, in respect of a person **for whom an application is made under s.9(1):***
(a) Whether that person has a disability as defined by sections 2(1) and 7(2) of the Act, and
***(b) Where that person has a disability**, the health and education needs (if any) occasioned by the disability and the health services or education services (if any) required to meet those needs"*

The stated purpose, per the explanatory note, is to clarify explicitly that the assessment process includes the initial determination of whether the applicant has a disability, as defined.

(b) Definition of "Substantial Restriction" (Section 7(2))

The General Scheme proposes to amend the definition of "substantial restriction", so that the section refers to the need for services early in life to "ameliorate the restriction" rather than "ameliorate the disability".

Existing text:

"(2) In the definition of "disability" in section 2, "substantial restriction" shall be construed for the purposes of this Part as meaning a restriction which—
(a) is permanent or likely to be permanent, results in a significant difficulty in communication, learning or mobility or in significantly disordered cognitive processes, and
(b) gives rise to the need for services to be provided continually to the person whether or not a child or, if the person is a child, to the need for services to be provided early in life to ***ameliorate the disability."***

To be substituted with:

"(2) In the definition of "disability" in section 2, "substantial restriction" shall be construed for the purposes of this Part as meaning a restriction which—
(a) is permanent or likely to be permanent, results in a significant difficulty in communication, learning or mobility or in significantly disordered cognitive processes, and
(b) gives rise to the need for services to be provided continually to the person whether or not a child or, if the person is a child, to the need for services to be provided early in life to ***ameliorate the restriction****"*

The stated purpose is to avoid a "circular" definition and refocus attention on restrictions and barriers that hinder participation, rather than the impairment itself.

Head 4 – Amendment to Section 8 (Independent Assessment of Need)

(a) Amendment to Section 8(3)

The General Scheme proposes to amend section 8(3) such that the mandatory request to the Council (NCSE) to nominate a person with appropriate expertise applies only where the applicant has first been determined by the assessment officer to have a disability, and the assessment officer is of the opinion that there may be a need for an education service to be provided.

Existing Text:

"(3) Where an assessment officer is of opinion that there may be a need for an education service to be provided to an applicant, he or she shall, as soon as may be, request the Council in writing to nominate a person with appropriate expertise to assist in the carrying out of the assessment under this section in relation to the applicant and the Council shall comply with the request."

To be substituted with:

"(3) Where, ***in respect of an applicant who has been determined by an assessment officer to have a disability in accordance with this Part,*** *the assessment officer is of opinion that there may be a need for an education service to be provided to that applicant, he or she shall, as soon as may be, request the Council in writing to nominate a person with appropriate expertise to assist in the carrying out of* ***part (b) of the assessment, as defined under Section 7(1),*** *under this section in relation to the applicant and the Council shall comply with the request."*

The explanatory note states that the current text has resulted in a "low threshold" being inferred, with routine/automatic requests for educational input for children prior to any disability determination. It is further proposed that, where educational expertise is required for the purposes of determining whether the applicant has a qualifying disability, an assessment officer may arrange assessment by an educational specialist (e.g., educational psychologist) instead of requesting a nomination from the Council.

(b) Amendment to Section 8(7)

The General Scheme proposes to amend the contents of the assessment report such that, where a disability is established, the report would include a statement of the significant difficulty in communication, learning or mobility or the significantly disordered cognitive processes giving rise to the need for services, rather than a statement of the nature and extent of the disability.

Existing text:

"(7) A report under subsection (6) (referred to in this Act as "an assessment report") shall set out the findings of the assessment officer concerned together with determinations in relation to the following—

(a) *whether the applicant has a disability,*
(b) *in case the determination is that the applicant has a disability—*
- ***(i) a statement of the nature and extent of the disability,***
- *(ii) a statement of the health and education needs (if any) occasioned to the person by the disability,*
- *(iii) a statement of the services considered appropriate by the person or persons referred to in subsection (2) to meet the needs of the applicant and the period of time ideally required by the person or persons for the provision of those services and the order of such provision,*
- *(iv) a statement of the period within which a review of the assessment should be carried out."*

To be substituted with:

"(7) A report under subsection (6) (referred to in this Act as "an assessment report") shall set out the findings of the assessment officer concerned together with determinations in relation to the following—

(a) whether the applicant has a disability,

(b) in case the determination is that the applicant has a disability—

(i) a statement of the significant difficulty in communication, learning or mobility or the significantly disordered cognitive processes, as the case may be, which gives rise to the need for services,

(ii) a statement of the health and education needs (if any) occasioned to the person by the disability,

(iii) a statement of the services considered appropriate by the person or persons referred to in subsection (2) to meet the needs of the applicant and the period of time ideally required by the person or persons for the provision of those services and the order of such provision,

(iv) a statement of the period within which a review of the assessment should be carried out."

The explanatory note indicates that diagnostic approaches may still be required where necessary to determine needs; however, the intention is to reduce pressure for exhaustive diagnostic assessments where this is not necessary to determine needs.

Head 6 – Amendment to Section 21 (Regulations)

The General Scheme proposes amendments to section 21(1) to permit the Minister to require the Executive (HSE) to issue, within 6 months of enactment (with Ministerial consent), guidelines providing practical guidance on the assessment process under Part 2, and to make regulations relating to the closure of applications (where it is impracticable to progress due to lack of engagement or withdrawal).

Existing text:

"*The Minister may make regulations for the purpose of enabling this Part to have full effect and, in particular, but without prejudice to the generality of the foregoing, regulations under this section may make provision in relation to any or all of the following:*

(a) *applications for assessments and the procedure for and in relation to such assessments including—*
(i) different periods within which an assessment is to be carried out or subsequently reviewed,
(ii) different such periods in respect of—

(I) different categories of disability, or

(II) persons of different ages,

(iii) the categories of skills and expertise required to carry out an assessment,

(iv) matters relating to the determination and approval of standards to be applied in relation to the carrying out of an assessment,

(v) matters relating to the nomination by the Council of a person or persons with appropriate expertise to assist in carrying out an assessment in relation to educational services,"

To be amended as follows:

"1) By the insertion of a subparagraph to permit the Minister to ***require the Executive to issue, within 6 months of the enactment of this Bill****, with the consent of the Minister,* ***guidelines for the purpose of providing practical guidance in respect of the assessment process*** *under Part 2 of the Principal Act, such guidance to relate to the following matters*

a. ***The interpretation of legal definitions*** *in the Principal Act, including the* ***definition of 'disability',*** *and the application of those definitions in the context of an assessment.*
b. *The* ***process of determining whether an applicant has a disability*** *within the meaning of the Principal Act.*
c. *The* ***requirement to carry out assessments of health and education needs*** *in accordance with the legal framework established by the Principal Act and informed by best practice and applicable standards.*
d. ***Operational matters*** *arising in the conduct of the assessment process; and*
e. ***The preparation of reports*** *under section 8(6) of the Principal Act.*

2) By the insertion of a subparagraph to ***permit the Minister to make regulations in relation to the closure of applications under Head 5****. The regulations may set out the circumstances in which an application can be closed and the procedures associated with that process.*

The explanatory note states that the guidelines are intended to assist assessment officers in understanding the legal framework and meeting obligations under the Act and Regulations, consistent with standards set by HIQA under section 10. The guidance will integrate relevant elements of the Standard Operating Procedure ("SOP") that currently exists.

The contents of the guidelines will include a statement of the legal status of the guidelines and their purpose; an emphasis on the 'high threshold' for entitlement to a statutory assessment (while acknowledging that applicants who do not meet the threshold may still have needs and service requirements); information to assist assessment officers in understanding and applying key terms, including the component parts of the definition of "disability"; examples to illustrate the interpretation and application of the definition; an outline of the legal framework, and the requirement for a determination of "disability" to be

made before an assessment of health and/or education needs is carried out; and the process for seeking specialist input under section 8(2).

The guidance will also include a checklist for determining whether an applicant has a disability i.e.:

(i) Is there a substantial restriction in capacity to carry on a profession/ business/occupation or to participate in social/cultural life?
(ii) Is the restriction caused by an enduring impairment?
(iii) Is the restriction permanent or likely to be permanent?
(iv) Does the restriction result in:
A significant difficulty in communication/learning/mobility, or
Significantly disordered cognitive process?
(v) Does the restriction give rise to:
A need for continual services (adult/child), or (child only)
A need for services early in life to ameliorate the restriction.

In addition, the guidelines will provide guidance on preparing an assessment report where a determination of no disability has been made, including information regarding the complaint procedure; the processes to be followed in carrying out assessments and preparing assessment reports where a disability is established, and deciding what forms of assessment are appropriate.

The addition of s21(2) is intended to address a procedural omission that currently exists where it has become impracticable to progress applications because of lack of engagement and/or because the applicant has indicated a wish to withdraw the application.

Head 7 – Transitional provisions

The General Scheme proposes that the amendments apply to any application received by the Executive where the assessment process has not commenced on or before commencement of the Bill.

Proposed text:

*"The proposed amendments shall **apply** to any application received by the Executive where **the assessment process has not commenced** on or before the coming into operation of this Bill."*

Policy Objectives and Additional Reforms

The Department has framed the General Scheme as part of an urgent reform programme to ensure that AON reports are produced more quickly and consistently, and to reduce the

extent to which therapists' time is tied up producing assessments and reports. The Department has stated that reforms are intended to move toward more assessments being delivered within the statutory timeframe, and to ensure the AON process focuses on identifying needs in a timelier way, with clinical assessments used only when necessary to establish needs, supported by statutory guidelines.

Alongside the General Scheme, Government has announced additional reforms intended to improve pathways and reduce delays, including:

- Autism Assessment and Intervention Protocol (rollout February 2026), intended to provide a consistent approach to autism assessments across Primary Care, CAMHS and CDNTs; and the introduction of 11 "expert in-reach" teams (44 staff across psychology, SLT, OT and administration) to provide clinical guidance and support during the AON process.
- Targeted Waitlist Initiative (commissioning private clinical assessments): parliamentary material indicates that over 6,300 clinical assessments have been commissioned since the initiative began in June 2024, and that Budget 2026 provides €20 million for continuation to deliver some 6,000 clinical assessments.
- Single Point of Access: The HSE has announced that, from next year, it will introduce a Single Point of Access system intended to streamline referrals by directing families to the most appropriate service pathway at an earlier stage. Families will retain the ability to contact services directly or be referred by GPs, paediatricians, public health nurses and other professionals.
- Education Admissions Reform (special schools/special classes): As Minister for Education, Norma Foley announced a new process to remove the requirement for professional reports (including AON reports) as entry requirements for special schools and special classes. This new process is unlikely to be in place until September 2027.