

LEGISLATIVE DEFINITIONS AROUND LEARNERS VULNERABLE TO EXCLUSION

**Country Report:
United Kingdom (Northern Ireland)**



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See the [Legislative Definitions around Learners Vulnerable to Exclusion web area](#) for further information about this activity.



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INTRODUCTION

Since the foundation of the European Agency for Special Needs and Inclusive Education (the Agency) in 1996, there have been key conceptual changes in the thinking behind and policy priorities for developments on the journey towards inclusive education.

A first shift was from the concept of special educational needs (SEN) to special needs education (SNE). This represented a move away from focusing on the learner (special educational needs), towards a focus on the provision that learners who experience difficulties at school may need (special needs education). The term '**special needs education**' widened the focus beyond learners with disabilities to include learners who appeared to be failing in school for a wide variety of reasons – for example, children living in poverty or those from different linguistic or cultural backgrounds. Special needs education, however, continued the deficit or medical model that still saw the problems as being within the learner.

There has never been an agreed definition of SEN or SNE that could be used across countries. The groups of learners considered to have **special needs** requiring additional provision largely differ across countries.

Inclusion requires a move away from a concern with the categories a learner may or may not fall into, to focus on the barriers some learners experience that lead to marginalisation and exclusion. This leads to an overall focus on **learners vulnerable to exclusion** by the education system. Agency work focuses on supporting the development of **inclusive education** systems in its member countries to ensure every learner's right to inclusive and equitable educational opportunities. This aim is directed at **all learners**, while recognising the need to specifically address specific **learners vulnerable to exclusion**.

Agency work acknowledges that every learner has their own unique experiences of discrimination and/or barriers to learning. All aspects of Agency work aim to consider everything and anything that can marginalise learners and increase their chances of exclusion (European Agency, 2021¹). This requires a move away from a medical approach and labelling with separate provision for different groups, towards a rights-based approach that focuses on the barriers within the system ([European Agency, 2022a](#)).

Central to this commitment and understanding of inclusive education are the legal definitions or descriptions in policy that Agency member countries use to identify and potentially label learners to make additional provision and resources available for them based on their needs.

The Agency also acknowledges the growing need to take account of **intersectionality** – the interconnected nature of all social categorisations – when considering the needs of all learners. Intersectionality is the understanding that a person, group of people,

¹ European Agency for Special Needs and Inclusive Education, 2021. *Multi-Annual Work Programme 2021–2027 Parameters*. Odense, Denmark. Unpublished



organisation or social problem is affected and impacted upon by a number of pressures, forces, levers, discriminations and disadvantages. It considers everything and anything that can marginalise learners and increase their chances of exclusion. This includes, but is not limited to:

... gender, remoteness, wealth, disability, ethnicity, language, migration, displacement, incarceration, sexual orientation, gender identity and expression, religion and other beliefs and attitudes ([UNESCO, 2020](#), p. 4).

The Agency's current [Multi-Annual Work Programme](#) (2021–2027) highlights the concept of intersectionality.

The Legislative Definitions around Learners Vulnerable to Exclusion activity

[Legislative Definitions around Learners Vulnerable to Exclusion](#) aimed to collect information from Agency member countries focusing on legislative definitions around learners vulnerable to exclusion in education systems. It collected evidence to indicate where countries currently stand regarding the **definition of** and **approach to** learner groups and risk factors within inclusive education systems. There was a particular focus on legislative definitions and descriptions around a broad vision of inclusive education for **all learners**.

Specifically, the activity examined how Agency member countries legally define and describe learners' needs in terms of considering them as groups of **learners with special needs** or **learners vulnerable to exclusion**. It also considered how **anti-discrimination legislation** and **legislation for inclusive education** define and/or describe learners' needs, and explored the concept of **intersectionality**.

In the activity, the term '**learners' needs**' is understood as a way to highlight a requirement for educational provision and/or support without applying a label based on an external factor that in some way describes or impacts upon an individual or group of learners. Using the non-categorical term 'learners' needs' would be an **ideal** approach for countries to take and is in line with the Agency position on inclusive education systems ([European Agency, 2022b](#)).

The **reality** – as evidenced by analysing countries' legislative definitions or descriptions in policy around learners' needs – clearly indicates that legislation and policy documents describe learners' needs with less of a focus on learner requirements for provision and support, and more on externally generated labels that identify groups of learner characteristics.

The activity uses the terms '**categories of groups of learners**' and '**groups of learners**'. They refer to the groups of learners identified through the analysis conducted in this activity. However, it must be made clear that references to categories of groups of learners do not in any way endorse or promote the labelling of learners. The term 'groups of learners' has been applied as a way of investigating where and how country legislation and policy make distinctions between different groups of learners who may be vulnerable to exclusion.



As with the journey towards inclusive education, legal definitions may be developing towards **learners vulnerable to exclusion** and the consideration of **intersectionality**. Therefore, to respect the context of all countries, information on **special needs** categories is considered, as well as definitions considering **all learners**.

Please refer to the [Legislative Definitions around Learners' Needs – Policy Brief](#) for more information about the activity.

How the country reports were prepared

Agency team members compiled evidence from 35 Agency member countries.

Agency team members collected the information in this country report from Agency reports, the [country information pages](#) and [Eurydice](#) sources. The extracts focus on identifying **legal definitions** around learners vulnerable to exclusion. They do not cover the different forms of provision for these learners. However, it is recognised that in some cases there may be *operational* definitions rather than *legal* definitions.

The extracts are considered evidence of a *legal definition* and are included if they explain how a term is understood within legislation and policy. In some cases, there may not be an extract that provides this information; however, the legal documents provide indirect evidence that a legal definition may exist. Where this indirect evidence was found, it has been included.

It is to be expected that there may not be information available in response to every question, as country contexts differ and each country is at a different stage on the journey to develop inclusive education. Therefore, a wide range of questions was selected to allow evidence to be collected from every Agency member country.

Each of the first three sections begins by clarifying key terminology.

This report includes three sections with information that the Agency team compiled:

1. [Legal definitions of special needs](#)
2. [Legal definitions of learners vulnerable to exclusion](#)
3. [Legal definitions of inclusive education](#).

Section 4 contains [additional questions](#) that country representatives could choose to answer. Country representatives also had the option to review and amend sections 1–3.

The completed country reports served to identify trends within and across countries on legal definitions related to learners vulnerable to exclusion. The activity report, [Legislative Definitions around Learners' Needs: A snapshot of European country approaches](#), explains how the country reports were used for the analysis and presents the findings.



LEGISLATIVE DEFINITIONS AROUND LEARNERS' NEEDS IN UNITED KINGDOM (NORTHERN IRELAND)

1. Legal definition of special needs

A learner with special needs is understood as a learner who:

... for a wide variety of reasons, require[s] additional support and adaptive pedagogical methods in order to participate and meet learning objectives in an education programme. Reasons may include (but are not limited to) disadvantages in physical, behavioural, intellectual, emotional and social capacities ([UNESCO Institute for Statistics, 2012](#), p. 83).

1.1 There is a legal definition of special needs

Evidence

The legislative definition of SEN is 'a learning difficulty which calls for special educational provision to be made' ([The Education \(Northern Ireland\) Order 1996](#)).

1.2 The legal definition of special needs is found in laws and policies

Evidence

The SEN Framework comprises:

- [The Education \(Northern Ireland – NI\) Order 1996](#)
- [The 1998 Code of Practice on the Identification and Assessment of Special Educational Needs and the 2005 Supplement to the Code.](#)
- [The Special Educational Needs and Disability Order \(NI\) 2005](#)
- [The Special Educational Needs and Disability \(NI\) Act 2016](#)
- the Education (Special Educational Needs) Regulations (NI) 2005.

([Country information](#))

1.3 The legal definition of special needs is found in strategies and programmes

Evidence

- [SEN and Medical Categories Guidance](#)
- [SEN Code of Practice 2001](#)

([Eurydice](#))

1.4a Does your country's legal definition of special needs specify particular groups of learners?

Yes.



1.4b Which specific learner groups does the legal definition of special needs address?

Specific learner groups	Evidence
<p>Cognition and learning:</p> <ul style="list-style-type: none">• dyslexia or specific learning difficulty – language / literacy• dyscalculia or specific learning difficulty – mathematics / numeracy• moderate learning difficulties• severe learning difficulties• profound and multiple learning difficulties. <p>Social, behavioural, emotional and well-being:</p> <ul style="list-style-type: none">• social and behavioural difficulties• emotional and well-being difficulties• severe challenging behaviour associated with severe learning difficulties or profound and multiple learning difficulties. <p>Speech, language and communication needs:</p> <ul style="list-style-type: none">• developmental language disorder• language disorder associated with a differentiating biomedical condition• communication and social interaction difficulties. <p>Sensory:</p> <ul style="list-style-type: none">• blind• partially sighted• severe / profound hearing impairment• mild / moderate hearing impairment• multi-sensory impairment. <p>Physical needs</p>	<p>Following a review of the categories in 2017/18, the Department of Education published a new list for schools' use from January 2019. The new SEN and Medical Categories Guidance identifies five main categories of SEN or difficulty, each of which are broken down into more specific areas.</p> <p>(Eurydice)</p>



Specific learner groups	Evidence
<p>They cater for pupils with a range of SEN and include schools for pupils with:</p> <ul style="list-style-type: none"> • moderate learning difficulties (MLD) • severe learning difficulties (SLD) • social, emotional, and behavioural difficulties (SEBD) • behavioural difficulties • physical difficulties • physical and medical difficulties • hearing and visual impairment • speech and language difficulties. 	<p>SEN Code of Practice 2001</p>
<p>The legislative definition of SEN is ‘a learning difficulty which calls for special educational provision to be made’.</p> <p>A learner has a learning difficulty if:</p> <ul style="list-style-type: none"> • they have a significantly greater difficulty in learning than the majority of learners of their age; • they have a disability which either prevents or hinders them from making use of educational facilities of a kind generally provided for learners of their age in mainstream schools; • they have not attained the lower limit of compulsory school age and are, or would be, if special educational provision were not made for them, likely to fall into the two categories above when they are of compulsory school age. 	<p>Special Educational Needs and Disability (NI) Act 2016</p> <p>Education (Special Educational Needs) Regulations (NI) 2005</p> <p>(Country information)</p>

2. Learners legally considered vulnerable to exclusion from education

Within this document, the term **learners vulnerable to exclusion** encompasses all learners whose educational experience is ‘impacted upon by a number of pressures, forces, levers, discriminations and disadvantages’ (European Agency, 2021, p. 6). These learners may or



may not fall into categories of special needs and a special type of provision may or may not be available to support them.

Although there may not be an official definition of learners vulnerable to exclusion, learner groups which are addressed in different legal documents as receiving support and not identified as learners with special needs are listed here.

2.1 There is a legal definition of learners vulnerable to exclusion from education

Evidence

No information found.

2.2 The legal definition of learners vulnerable to exclusion from education is found in laws and policies

Evidence

No information found.

2.3 The legal definition of learners vulnerable to exclusion from education is found in strategies and programmes

Evidence

No information found.

2.4a Do your country's legislation, policies or strategies specify particular groups of learners?

Yes.

2.4b Which specific learner groups are legally considered to be vulnerable to exclusion from education across legislation, policies or strategies?

Specific learner groups	Evidence
<ul style="list-style-type: none">• responsibilities for looked after children• support for other children and young people who may experience barriers to learning, including:<ul style="list-style-type: none">- disadvantaged pupils- pupils whose first language is not English, known as 'newcomer pupils'- pupils from Traveller and Roma communities.	<p>This is a legal duty (under Article 86(1) of the Education (Northern Ireland) Order 1998)</p>



Specific learner groups	Evidence
<ul style="list-style-type: none">• children from Traveller and Roma communities;• looked after children;• newcomer pupils;• children of armed services personnel.	Through the Common Funding Scheme (Eurydice)

2.5a Does anti-discrimination and equal rights legislation address different learner groups in the education system?

Yes.



2.5b Which specific learner groups are listed in anti-discrimination and equal rights legislation?

Specific learner groups	Evidence
<p>Definition of a disabled person/pupil according to the Disability Discrimination Code of Practice for Schools (SENDO) and which pupils have rights under this Code:</p> <ul style="list-style-type: none"> • Physical or mental impairment • Substantial adverse effect • Long-term effect of impairment is one which: <ul style="list-style-type: none"> - has lasted at least 12 months; - is likely to last at least 12 months; - is likely to last for the rest of the person’s life. • Effects that change over time • Past disabilities • Normal day-to-day activities • Effects of treatment • Pupils who wear spectacles • Pupils who have severe disfigurements • Progressive conditions • Genetic conditions • Pupils with a Statement of special educational needs. 	<p>Disability Discrimination Code of Practice for Schools (SENDO)</p>
<p>... makes it unlawful to discriminate against an individual on the grounds of his or her sex in a number of broad areas, including employment, training and education.</p>	<p>Sex Discrimination (Northern Ireland) Order 1976 (as amended) (Eurydice)</p>
<p>... the main areas of inequality in the education system were found to be ethnicity, disability and gender, and the impact of these key inequalities on children is lifelong.</p>	<p>Key Inequalities in Education 2017 (Eurydice)</p>



3. Legal definition of inclusive education

The Agency views **inclusive education** as:

... a systemic approach to providing high quality education in mainstream schools that effectively meets the academic and social learning needs of all the learners from the school's local community ([European Agency, 2015](#), p. 2).

In inclusive education:

Learners are placed at the centre of a system that needs to be able to recognise, accept and respond to learner diversity. Inclusive education aims to respond to the principles of efficiency, equality and equity, where diversity is perceived as an asset. Learners also need to be prepared to engage in society, to access meaningful citizenship and to acknowledge the values of human rights, freedom, tolerance and non-discrimination ([Soriano, Watkins and Ebersold, 2017](#), p. 6).

3.1 There is a legal definition of inclusive education

Evidence

No information found.

3.2 The legal definition of inclusive education is found in laws and policies

Evidence

No information found.

3.3 The legal definition of inclusive education is found in strategies and programmes

Evidence

No information found.

3.4 Do legal documents related to inclusive education refer to all learners, specific learner groups, or both all learners and specific learner groups?

Legal documents refer to specific learner groups.

4. Additional questions

4.1 Are there other specific learner groups that receive additional support within the education system that have not been accounted for in this document? If yes, which legal documents (legislation, policies or strategies) address them?

Children in receipt of free school meals – Policy Documents:

- Common Funding Formula includes a Targeting Social Need element of approximately GBP 77 million per year in Northern Ireland



- Extended Schools policy – GBP 9.1 million per year. Eligibility criteria includes free school meal entitlement (FSME) and Northern Ireland Multiple Deprivation Measure
- Geographical interventions based on need e.g. FSME percentage; SEN percentage

[A Fair Start](#) report, published on 1 June 2021.

4.2a Is the term or concept of ‘intersectionality’ mentioned in legislation?

Yes.

4.2b Share details on how the concept is mentioned in the legislation

Equality Legislation – [Section 75 of the NI Act 1998](#)

4.3a Are there any proposals/plans for changes in legislation focused on learners vulnerable to exclusion?

No.

4.3b What proposals or plans exist for changes in legislation focused on learners vulnerable to exclusion?

None at this time.

4.4 Do you have any further comments?

Whilst the Department for Education (Northern Ireland) has no formal definition of learners vulnerable to exclusion, during the COVID-19 response a cross-departmental definition was agreed for ‘vulnerable children and young people’. This included:

- A child who has an assigned social worker because they are a child in need, in need of protection (or on the child protection register) or a child who is looked after
- A child who is in need, including in need of protection, but whose need is not known to statutory services
- A child who is ‘on-the-edge’ of receiving support from children’s social services
- A child who is receiving support from or has been referred to Child and Adolescent Mental Health Services (CAMHS)
- A child who has a statement of Special Educational Needs (SEN), a child who is accessing Education Other Than At School (EOTAS), or a child who normally accesses Nurture Groups
- A young person who was previously a ‘child looked after’, whether or not they are receiving support from statutory services
- A child/young person who has been placed for adoption
- Asylum seeking and refugee children, and children whose parents have no recourse to public funds
- A child/young person identified as from the Traveller or Roma community.