NASUWT
The Teachers' Union
NORTHERN IRELAND

EVIDENCE

Northern Ireland Assembly Committee for Education
Written Evidence on the Special Educational Needs and Disability (SEND) Bill

The NASUWT's submission sets out the Union's views on the Special Educational Needs and Disability (SEND) Bill published on 2 March 2015.

The NASUWT is the largest union in Northern Ireland representing teachers and school leaders.

For further information, Assembly Members may contact:

Ms Chris Keates
General Secretary
chris.keates@mail.nasuwt.org.uk
www.nasuwt.org.uk

Executive Summary

- The Bill should not be progressed until a full draft Code of Practice and details of subordinate legislation have been published. The Department of Education Northern Ireland (DENI) must also provide a more detailed explanation for the exclusion from the Bill of key legislative actions described in the summary of revised proposals.
- It is appropriate that relevant authorities seek to give practical effect to the United National Convention on the Rights of the Child (UNCRC) in the development and implementation of public policy relating to the rights and entitlements of children and young people.
- However, this must be secured through approaches that recognise the importance of sustaining appropriate relationships between pupils and teachers and that prevent children and young people being used inappropriately to advance the interests of adults.
- The provisions in the Bill to allow children below compulsory school age to exercise rights to appeal SEN-related decisions could have serious adverse consequences and are unnecessary to secure compliance with Article 12 of the UNCRC.
- The Education Authority should produce a plan on the basis established in the Bill. However, it is important that the plan is developed on the basis of clear and specific criteria that establish the roles and responsibilities of all those involved in the provision of SEN-related services. These criteria should be developed in collaboration with all relevant stakeholders, including the NASUWT.
- The Committee should press the DENI to set out the evidence base upon which it has reached its view that Boards of Governors in all circumstances have the capacity and expertise to discharge proposed extended responsibilities effectively.
- DENI should work with the NASUWT and other relevant stakeholders to develop effective proposals for personal learning plans (PLPs) and to

establish clarity about the ways in which they would address the shortcomings inherent in the Individual Education Plan (IEP) system.

- In merely placing a requirement on the Education Authority to request help from health and social care bodies, the Bill fails to identify the barriers to enhancing multidisciplinary working and how these barriers might best be addressed. In particular, without a concomitant requirement on these bodies to co-operate, there could be no assurance that the Education Authority would receive positive responses to its requests for help.

Introduction

1. The NASUWT welcomes the opportunity to submit evidence to the Northern Ireland Assembly Committee for Education on the Special Educational Needs and Disability (SEND) Bill published on 2 March 2015.

2. The NASUWT's evidence seeks to place issues relating to the development of SEN policy into their appropriate recent context. It also sets out the Union's views on the key provisions contained within the Bill.

Background and context

3. It is important to recognise at the outset that the Bill relates to policy themes identified following a major review of SEN provision commissioned in 2006. This review was prompted by concerns that the SEN system had become excessively bureaucratic and was characterised by unacceptable inconsistencies and delays in securing effective provision for children and young people.

4. This review led in 2009 to the publication by the Department of Education Northern Ireland (DENI) of *Every School a Good School: The Way Forward for Special Educational Needs and Inclusion*, in which the DENI set out its proposals for reform of the SEN system to address the concerns identified by the 2006 review.[1]

5. In its response to the consultation, the NASUWT made clear its view that the proposals advanced by the DENI were poorly thought through in many key respects and would, if implemented, have been unlikely to secure the

[1] Department of Education Northern Ireland (DENI) (2009). *Every School a Good School: The Way Forward for Special Educational Needs and Inclusion.* Available at: http://www.deni.gov.uk/review_of_special_educational_needs_and_inclusion.htm, accessed on 08.04.15.

commitment and support of teachers, school leaders and members of the wider school workforce.

6. These concerns were echoed in many of the responses to the consultation exercise submitted by other interested parties and were also recognised by the previous Committee for Education.

7. Issues raised by the NASUWT about *Every School a Good School* included:

    - its incoherent conceptualisation of inclusion, particularly in relation to the way it was proposed that decisions should be made about the settings in which pupils with SEN should be educated;

    - its failure to recognise that arrangements relating to SEN should be manageable and non-bureaucratic and allow teachers and school leaders to concentrate on their core responsibilities for teaching and leading teaching and learning, despite the explicit acknowledgement of this concern in the 2006 review;

    - the lack of detail about the ways in which any reforms would be funded;

    - its inadequate strategy for workforce training and development;

    - the clear and entirely unsubstantiated implication throughout the document that the inadequacies of teachers and school leaders were largely responsible for shortcomings in the SEN system;

    - its ill-considered proposals for transferring greater responsibility for SEN-related funding decisions to individual schools;

- plans for the replacement of statutory statements of special educational needs with co-ordinated support plans (CSPs) that may have resulted in a reduction in support for children and young people with SEN; and

- a wholly unrealistic timescale within which the proposals were due to be implemented.

8. The NASUWT therefore welcomed the decision by the Minister of Education to revisit the DENI's proposals in light of these concerns. The Union notes that the summary of revised proposals published subsequently by the DENI in July 2012 and agreed by the Executive appears to respond positively to some of the issues raised by the NASUWT.[2]

9. Nevertheless, the Union remains concerned that the introduction of CSPs continues to be referenced in the summary with no indication that the limitations of the original proposals highlighted by the NASUWT and other stakeholders will be addressed.

10. More broadly, notwithstanding the merits or otherwise of these revised proposals, the Bill Paper published by the Assembly's Research and Information Service confirms that key legislative actions set out in the DENI's summary document have not been included in the Bill.[3] In addition to those relating to CSPs, the Bill Paper notes that the Bill is silent on actions set out in the summary on mechanisms for placing children with SEN in pre-school settings and reducing the five stages of the SEN

[2] DENI (2012). *Summary of Key Policy Proposals.* Available at: http://www.deni.gov.uk/review_of_special_educational_needs_and_inclusion.htm, accessed on 08.04.15.
[3] Northern Ireland Assembly (2015). *Research and Information Service Bill Paper: Special Educational Needs and Disability (SEND) Bill.* Available at: http://www.niassembly.gov.uk/assembly-business/committees/education/legislation---committee-stage-of-bills/special-educational-needs-and-disability-send-bill/, accessed on 07.04.15.

framework to three levels of support. The reasons for these omissions from the Bill have not been explained satisfactorily to date.

11. It should also be recognised that effective introduction of the reforms described in the summary of revised proposals would require not only the amendments to existing legislation set out in the Bill, but also changes to the accompanying statutory Code of Practice that provides guidance to relevant bodies on the implementation of this legislation.

12. The NASUWT therefore notes with concern that proposed amendments to the Code of Practice referenced by the DENI in the summary have yet to be published. It further notes that detailed information about intended changes to subordinate legislation has also not been made available. The NASUWT is clear that the DENI's letter to the Committee of 23 March on these issues, published on the Assembly website, fails to provide the level of detail required to place the provisions in the Bill into their appropriate broader policy context. Without this information, it is difficult for consultees to conduct a full evaluation of the Bill.

13. The concerns highlighted above confirm that the DENI has failed to adopt an acceptable approach to the development of a critical area of public policy. It is therefore important that the Bill is not progressed until a full draft Code of Practice and details of subordinate legislation have been published. The DENI must also provide a more detailed explanation for the exclusion from the Bill of key legislative actions described in the summary of revised proposals.

14. The comments below on the specific clauses in the Bill can only be submitted on the basis that they may be revised subsequently following the provision by the DENI of this additional information.

Clause 1: Duty on the Education Authority to have regard to the views of the child

15. The NASUWT notes that Clause 1 requires the Education Authority to seek and have regard to the views of the child in decisions affecting them in relation to their SEN, reflecting the provisions of Article 12 of the United Nations Convention on the Rights of the Child (UNCRC).[4]

16. The NASUWT is clear that it is appropriate that relevant authorities seek to give practical effect to the UNCRC in the development and implementation of public policy relating to the rights and entitlements of children and young people.

17. However, it is important to note that the UNCRC makes clear that the application of Article 12 is contingent on the age and maturity of the child concerned. Assessing the extent to which children and young people are able to participate in decisions that affect them requires careful and informed judgements to be made by professionals within the education and children's services sectors. A key function of the Code of Practice is to provide advice and guidance on ways in which children's rights under Article 12 are best secured in practice. This serves to emphasise the importance of publication by the DENI of a draft Code of Practice in order to allow consultees to assess the extent to which Clause 1 would be implemented appropriately.

18. In its consideration of this issue, the Committee should take account of three key concerns in relation to the effective implementation of Article 12 in education-related public policy.

[4] Office of the High Commissioner for Human Rights (OHCHR) (1989). *United Nations Convention on the Rights of the Child.* Available at: http://www.ohchr.org/en/professionalinterest/pages/crc.aspx, accessed on 10.04.15.

19. First, while recognising the importance of Article 12, it is critical that it is considered in the context of other important components of the Convention. Specifically, Articles 28 and 29 of the UNCRC confer on all children a right to access educational provision that develops their personality, talents and mental and physical abilities to the fullest possible extent.[5] Securing this universal entitlement creates complex and wide-ranging responsibilities for schools and other educational authorities for which they are legally accountable.

20. In particular, if pupils' educational rights and entitlements under the UNCRC are to be upheld in practice, the ways in which relationships between teachers and pupils are established and sustained are of critical importance.

21. The authority of teachers is an important dimension of this relationship. For example, powers given to teachers and schools to discipline, detain, restrain and exclude pupils are founded on the concept of professional and institutional authority. Similarly, the responsibility of teachers and school leaders to design curricula that enable pupils to progress and achieve their potential necessitates that professionals are accountable for the decisions they make. In this context, teachers must exercise their authority to teach and to lead teaching and learning.

22. It is well-established that the authority of teachers is important '*for the purpose of securing (pupils') education and wellbeing and that of other pupils in the school and ensuring that they abide by the rules and conduct set by the school.*'[6] Approaches that seek to reflect the provisions of Article 12 that undermine the professional and institutional authority that underpins purposeful relationships between pupils and teachers are therefore unacceptable. Explicit guidance to this effect would need to be

[5] *ibid.*
[6] The Elton Report (1989). *Enquiry into Discipline in Schools.* Her Majesty's Stationery Office; London.

incorporated into the Code of Practice if the provisions of Clause 1 were to be given statutory effect.

23. Second, it is important to recognise that the development of effective and manageable systems for pupil engagement can have significant resource implications. It is clear that teachers, school leaders and other members of the wider children's workforce need time and support if they are to sustain these systems and ensure that they make a positive difference to the education and wellbeing of children and young people with SEN. These considerations would need to be taken into full account by the DENI before any attempt to implement Clause 1.

24. Third, it is essential that arrangements established to give children and young people the ability to engage with decisions that affect their lives are not used as a means by which the interests of adults, including parents, are advanced inappropriately.

25. It is important to recognise that, in some circumstances, the views of children can be manipulated to serve and add legitimacy to arguments supportive of the interests of particular groups of adults within schools. This is of particular concern in the context of some children and young people with SEN who may be less able to articulate their own views or to resist manipulation. In light of their position as the most powerful and influential group of adults within school communities, the relationship between senior management teams and activities established to promote pupil participation are particularly important.

26. The NASUWT is concerned that pupil engagement activities, in some instances, can be exploited to reflect the concerns and interests of school managers to the exclusion or detriment of other members of staff. For example, the Union is aware of instances where activities have been initiated to seek the views of pupils about issues for which teachers have

particular responsibility and for which they are accountable to other senior managers, such as the quality of teaching. However, pupils' views are not sought on issues that remain the prerogative of school leaders. In this way, pupils' views are sought for managerial rather than educational purposes and are used as a basis for legitimising management perspectives.

27. Practices of this nature are not only contrary to the intentions of Article 12, but they also constitute an abuse of children and young people and are opposed strongly by the NASUWT. A key feature, therefore, of effective pupil participation practice at school level is that issues should not be excluded as areas with which pupils may become involved simply on the grounds that they may involve pupil comment or criticism of issues that are exclusively within the remit of school senior management teams. In discharging the responsibilities that it would acquire under Clause 1, the Education Authority would need to ensure that it took effective steps to prevent the development of inappropriate practices in this respect. This consideration would need to be reflected directly in the Code of Practice.

28. Similarly, as referenced in the Bill Paper, concerns have been expressed by SEN specialists that the articulation by parents of the views of their children may not always lead to these views being related accurately or fully.[7] This has particular implications for the proposals in the Bill to give children and young people with SEN rights that currently can only be exercised by their parents. These issues are considered in further detail below.

[7] Northern Ireland Assembly (2015). *op. cit.*

Clause 9: Right of child over compulsory school age in relation to special educational provision

Clause 10: Rights of child over compulsory school age in relation to disability discrimination claims

Clause 11: Appeals and claims by children: pilot scheme

Clause 12: Appeals and claims by children: follow-up provision

29. The NASUWT notes that Clause 11 would give the DENI the power to establish and conduct a pilot scheme to enable children of compulsory school age to make, in their own right, a special educational needs appeal against a decision of the Education Authority or a disability discrimination claim to the Special Educational Needs and Disability Tribunal (SENDIST). Clause 12 confirms that this pilot would be held over a two-year period.

30. The NASUWT believes that listening to and considering the views and opinions of children and young people is an important means by which practical effect can be given to the provisions of Article 12. Pupils with SEN should play an active, constructive and appropriate role in their own learning as well as in that of their peers and in the development of their school communities. Protecting and enhancing the right of children and young people to be heard and to participate meaningfully in decisions that affect their lives is a key responsibility of the state in a democratic society and is therefore a particularly important principle of public education policy.

31. At the outset, it is important to recognise that significant provision is already made to ensure that children and young people with SEN have the right to express their views on issues that can have an impact on their education. For example, children already have a right to attend and participate in SENDIST hearings.

32. In the context of the UNCRC, it is by no means clear that compliance with Article 12 requires giving children of compulsory school age the right to appeal directly to the SENDIST. Article 12 requires that children and young people should have a right to express their views in all matters that affect them. It is therefore apparent that this provision of the UNCRC is met currently through arrangements that ensure that children and young people with SEND are able to attend SENDIST hearings and express their views about factors that impact upon them directly.

33. Enactment of Clause 11 is not only unnecessary to secure compliance with Article 12 but could also lead to the establishment of practices that undermine the effectiveness and integrity of the SEND appeals system.

34. As noted above, it is essential that arrangements to allow children and young people to articulate their views in matters that affect are not used to advance the interests or views of adults. In circumstances where children and young people of compulsory school age would have a right to appeal directly to the SENDIST, this would include ensuring that they were not inveigled into exercising this right against their wishes.

35. The Union is concerned that enactment of Clause 11 could lead to circumstances in which a parent could put pressure on their child to conduct an appeal directly in the expectation that this would enhance the prospects of a more successful outcome than if the appeal were to be taken forward by the parent. It is conceivable that cases of this nature may occur when it might not be the child's wish that an appeal is made or when his or her views on the merits of an appeal cannot be established with any reasonable degree of certainty or clarity. This would represent unacceptable manipulation of children and young people with SEN.

36. It may also be the case that circumstances arise where a child or young person with SEN holds a different view on the merits of appealing to the

SENDIST than their parents. Assuming that only one appeal per case would be permitted, this would create a highly anomalous situation wherein an appeal made by a child is contested by his or her parents, or vice versa. Giving children and young people a right to appeal against their parents' stated wishes could also exacerbate tensions within families in a way that could be detrimental to the education and wider wellbeing of children and young people with SEN.

37. The NASUWT notes that there is no provision in Clause 11 to ensure that an assessment would be made of the capability of children to form their own views in relation to an appeal to the SENDIST as required by Article 12 of the UNCRC. This is difficult to comprehend given that the rationale for the introduction of Clause 11 is based on the stated intention of the DENI to reflect the provisions of Article 12.

38. On balance, the NASUWT therefore believes that Clauses 11 and 12 are inappropriate and should be withdrawn.

39. The NASUWT notes that Clause 9 would give children over compulsory school age specific rights to request a statutory assessment of special educational needs and to appeal to the SENDIST in relation to decisions taken by the Education Authority about their special educational needs. The Union further notes that Clause 10 would give children over compulsory school age the additional right to appeal to the SENDIST directly on the grounds that schools or the Education Authority had discriminated against them on grounds of their disability. Previously, both these rights were only exercisable by parents on behalf of their children.

40. The reservations in respect of Clause 11 set out above are also clearly pertinent in respect of children over compulsory school age. However, the Union acknowledges that there is a well-established legal principle that children aged 16 and 17 should be given greater scope to make decisions

of this importance for themselves than that given to younger children. For example, children aged 16 and 17 are able to consent to medical treatment to an extent that is not permitted for children below these ages.[8]

41. On this basis and notwithstanding the NASUWT's concerns about extending comparable rights to young children, it is evident that there is a defendable rationale for the introduction of the rights provided for in Clauses 9 and 10.

42. The Union welcomes the fact that in seeking to introduce these rights, the DENI has recognised that effective assessments would need to be made of the capacity of children to exercise them effectively. This serves to emphasise the incongruousness of excluding comparable provisions in respect of Clause 11.

43. It is important to recognise that children with the capacity to exercise rights under Clauses 9 and 10 would require advice and support to make informed choices that would reflect their best interests. In light of the considerations set out in this evidence in relation to Clause 11, the NASUWT shares the opinion, referenced in the Bill Paper, that support and advocacy independent of the child's parents or wider family would need to be made available.

Clause 2: Duty of the Education Authority to publish plans relating to its arrangements for special educational needs provision

44. The NASUWT notes that Clause 2 would place a requirement on the Education Authority to develop and publish a plan detailing the arrangements to be made for SEN provision. This plan would include the resources and advisory and support services made available by the

[8] Age of Maturity Act (Northern Ireland) 1969.

Authority in fulfilling its SEN-related duties as well as its arrangements for training.

45. The NASUWT agrees in principle that the relevant authority should produce a plan on the basis established by Clause 2. However, it is important that such plans are developed on the basis of clear and specific criteria that establish the roles and responsibilities of all those involved in the provision of SEN-related services. These criteria should be developed in collaboration with all relevant stakeholders, including the NASUWT, and should be finalised before Clause 2 is enacted.

46. The Committee will also recognise that the production of a coherent and effective plan requires sufficient time and resources being made available to all those with responsibility for its development. It will therefore be important for it to secure assurances from the Minister and DENI officials that these resources will be made available prior to enactment of the provisions described in Clause 2.

Clause 3: Duties of Boards of Governors in relation to pupils with special educational needs

47. The Committee will note that the *Every School a Good School* proposals were developed prior to the establishment of the Education Authority and in circumstances where key SEN-related responsibilities were allocated to Education and Library Boards (ELBs). The NASUWT is not yet clear that the terms on which the Authority has been established mean that it will be able to operate in a way analogous in this context with the former ELBs.

48. This is particularly important in relation to the role of Boards of Governors in SEN provision. As the Bill Paper makes clear, the majority of respondents to the DENI's 2009 consultation on *Every School a Good School* were not of the view that Boards of Governors were well placed to take on additional responsibilities for SEND, particularly in relation to small

schools and to schools in rural contexts. The NASUWT continues to share these concerns given that Clause 3 of the Bill envisages a range of new duties for Boards of Governors related, for example, to the production of personal learning plans (PLPs), the designation of specialist SEND-focused teachers and a responsibility to inform all those involved in a pupil's education of their SEND. The Committee should therefore press the DENI to set out the evidence base upon which it has reached its view that Boards of Governors in all circumstances have the capacity and expertise to discharge these responsibilities effectively.

49. Notwithstanding these concerns, the DENI's proposals in this regard were based originally on support being provided to Boards of Governors by ELBs rather than by a single Education Authority. The Committee will therefore wish to satisfy itself that the Education Authority as currently constituted will be able to provide support to Boards of Governors of a comparable nature and to the same extent as envisaged originally in relation to the ELBs. It will also be important to confirm that the relationship between the Education Authority and Boards of Governors will be established on a clear and consistent basis across the education system, including the precise way in which responsibilities will be distributed between the Authority and the Boards it oversees on SEN-related provision.

Clauses 3 (2) (a), 3 (3) and 3 (4): Duty to maintain a personal learning plan for each pupil with SEND and to designate a learning support co-ordinator

50. The NASUWT notes that Clauses 3(2)(a) and 3(4) would require Boards of Governors of ordinary schools and corresponding bodies in special schools to prepare and keep under review PLP for each registered pupil with SEN. The Union further notes that it is intended that PLPs will replace the current system of individual education plans (IEPs).

51. In setting out this proposal in the *Every School a Good School* consultation document, the DENI stated that PLPs would detail specific outcomes to be achieved and the necessary adjustments and interventions required to ensure that children and young people with PLPs made appropriate progress.

52. The NASUWT welcomed the intended focus in PLPs on outcomes and stressed that moves to replace IEPs would provide an opportunity to ensure that systems for documenting, monitoring and reviewing actions could be streamlined so that they would minimise bureaucracy and workload for teachers and other members of the school workforce involved in meeting the needs of pupils with SEN. In emphasising these points, the Union recognised that the existing IEP framework was frequently cited by teachers as a key driver of excessive workload burdens.

53. Therefore, the DENI should work with the Union and other relevant stakeholders to develop effective proposals for PLPs and to establish clarity about the ways in which it would address the shortcomings inherent in the IEP system. This should include effective consideration of the extent to which dedicated PLPs would be required for pupils at the lower stages of the SEN framework or whether schools' existing planning systems could be used to assist teachers in meeting the needs of these pupils. These proposals should also include a clear IEP-to-PLP transition plan.

54. Clauses 3(2)(a) and 3(4) also establish a requirement for schools to designate a teacher as a learning support co-ordinator (LSC). This role would replace that of special educational needs co-ordinator (SENCO) that must be incorporated into the staffing structure of every school.

55. It is evident that the SENCO role currently faces many challenges. These include a lack of appropriate training, insufficient time to carry out the role effectively and low status within the school. The Union is clear that, to a large extent, these issues arise because SENCOs are required to

undertake tasks that do not make the best possible use of the skills, talents and expertise of qualified teachers. In particular, SENCOs are often obliged to undertake administrative tasks related to preparing and monitoring IEPs that could be undertaken by appropriate support staff, releasing SENCOs to focus on those tasks that require the expertise and professional judgement of a qualified teacher.

56. The NASUWT is concerned that the replacement of SENCOs with LSCs will fail to address these concerns. The Union notes in particular that Clause 3 (3) would give the DENI the power to confer on Boards of Governors *'other functions'* related to LSCs, leaving open the prospect that additional tasks and responsibilities will be placed on these staff, compounding the workload issues they face currently. The NASUWT notes that, for example, the *Every School a Good School* proposals indicated that LSCs should carry out additional tasks, such as administering low-level diagnostic tests.

57. The Committee should therefore challenge the DENI on this proposal in terms of its sustainability and the extent to which it will support teachers and school leaders in meeting the needs of pupils with SEN. The Committee should recommend that the SENCO role is remodelled so that post-holders are more able to focus on their core professional responsibilities and that the workload issues they face currently are addressed. Deploying appropriately qualified support staff to work alongside SENCOs would have a potentially powerful contribution to make in this respect.

58. Reforms should also be implemented that make clear that SEN-related issues are addressed at strategic management level within schools and that SENCOs are able to gain access to effective training and professional development opportunities. As part of this approach, it is essential that policy development recognises at the outset the ways in which staff in schools will be expected to meet the needs of all learners, including those

with SEN to ensure that a consistent and coherent approach is adopted across the education system. It is not acceptable to develop policy on the basis that these issues can be addressed once policy has been implemented.

Clause 4: Duty of the Education Authority to request help from health and social care bodies

59. Clause 4 of the Bill would place a duty on the Education Authority to request help in all cases where it considers that the Regional Health and Social Care Board or a health and social care trust could help in the exercise of its functions.

60. The NASUWT maintains that the development of more effective arrangements for multidisciplinary planning and working is central to the successful delivery of a holistic service focused on promoting the educational and wider wellbeing of children and young people with SEN.

61. However, in merely placing a requirement on the Education Authority to request help from health and social care bodies, the Bill fails to identify the barriers to enhancing multidisciplinary working and how these barriers might best be addressed. In particular, without a concomitant requirement on these bodies to co-operate, there could be no assurance that the Education Authority would receive positive responses to its requests for help.

62. This dimension of policy development will need to consider the extent to which policy priorities established for different services for children with SEN are coherent. Addressing policy, process and cultural dissonances between the health, education and social care sectors has been identified as a key objective in attempts elsewhere in the UK to develop more effective multi-agency approaches in the context of SEN.

63. Multi-agency working requires a clear framework that sets out the respective duties of the bodies involved in such arrangements and the ways in which collaboration should be undertaken in practice. These frameworks should be based on a recognition of the related but distinct roles of individual children's services and how effective collaboration can be secured in ways that do not add to the workload burdens of staff within the children's services sector and that avoid unnecessary bureaucracy.

64. The lack of any meaningful consideration of these issues by the DENI is a matter of serious and legitimate concern. The provisions of Clause 4 should therefore not be implemented until the DENI has developed an effective strategy for multi-agency working, developed in full consultation with the NASUWT and other relevant stakeholders.

Clause 5: Assessment of needs: reduction of time limits

65. The NASUWT notes that the effect of Clause 5 would be to reduce the time from 29 to 22 days that parents have to make representations to the Education Authority in respect of its consideration of statutory assessments of children with SEN. The Clause would also give children over statutory school age the right to make these representations directly.

66. The rationale underpinning this proposed reduction in the timescale is not clear. The Union is concerned that it could make the preparation of representations, including the gathering and collation of evidence, more challenging for parents, particularly if they do not have access to specialised support. These problems are likely to be even more acute in circumstances where children over statutory school age elect to make representations on their own behalf.

67. The Committee should therefore seek additional evidence from the DENI on the reasons for this proposed reform and how the barriers to making

representations it might otherwise create for parents and children would be addressed.

Clause 6: Appeal following decision not to amend a statement following a review

68. Clause 6 would provide a right of appeal to the SENDIST in circumstances where the Education Authority elects not to make any changes to a statement following an annual review. Given that decisions not to amend a statement can have effects equally as profound as changes to statements in other circumstances, the exclusion of such decisions as a ground for appeal to the SENDIST is anomalous. The NASUWT therefore has no objection in principle to extending grounds for appeal on the basis set out in Clause 6.

Clause 8: Mediation in connection with appeals

69. The NASUWT notes that Clause 8 would place a requirement on the Education Authority to make arrangements for the provision of an independent mediation service for any person appealing to the SENDIST and to participate in such mediation where it has been requested. The Union further notes that any person appealing to the SENDIST must first seek and obtain independent advice and information about mediation. This reflects arrangements for appeals established elsewhere in the UK.

70. The NASUWT does not oppose requirements on prospective appellants to consider mediation prior to proceeding with an appeal. However, it is critical that the DENI provides greater clarity on the way in which it intends to take forward this proposal before the relevant provisions in the Bill are implemented.

71. In particular, it is essential that DE confirms the arrangements it would put in place to secure confidence in the effectiveness and impartiality of the

mediation service, given that its credibility would depend critically on its expertise in addressing SEN-related issues, the timeliness of its responses to requests for mediation, its accessibility to service users and the independence of its interventions. The NASUWT also shares the concern referenced in the Bill Paper in relation to the current availability of staff able to engage effectively with the complex educational and legal issues associated with cases that would typically be presented to the mediation service.

Clause 15: Commencement and transitional provisions

72. As noted elsewhere in this evidence, the NASUWT's view is that the Bill in its current form should not be progressed until a draft Code of Practice and details of subordinate legislation have been made available for public consultation, alongside an assessment of the funding and workforce implications of the DENI's intended reforms.

73. However, notwithstanding these concerns, the Union notes that the Bill as drafted would give the DENI significant discretion over the commencement dates of its substantive provisions. This cannot be regarded as acceptable. Meaningful consideration of the merits of the Bill and associated provisions by the Committee and other key stakeholders requires a reasonable indication of the dates on which these reforms are intended to come into effect.

74. It is also necessary to support effective consideration of these proposals for further detail to be provided in respect of the DENI's intended approach to securing effective transition to reformed arrangements across the education system.