



Department of  
**Education**

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Your Ref: PMcC/KM/1981

23 March 2015

Dear Peter

### **Special Educational Needs and Disability (SEND) Bill**

Thank you for your letter of 20 February 2015. I would like to apologise for the delay in responding.

Departmental officials welcomed the opportunity to provide the Committee with a pre-introductory briefing on the SEND Bill on 18 February.

As outlined at the briefing and during the Second Stage debate, the revised SEN framework will be delivered through a combination of provisions in the existing SEN legislation (Education (NI) Order 1996 as amended by the Special Educational Needs and Disability (NI) Order 2005), the proposals in the SEND Bill, revised SEN Regulations and a SEN Code of Practice. We look forward to future engagement with the Education Committee, not only on the Bill, but also on the draft SEN regulations and the statutory code of practice.

Annex A, attached, sets out an indication of those areas within the revised SEN framework, which are proposed to be taken forward through regulations. Taking the existing Education (Special Educational Needs) Regulations (Northern Ireland) 2005 as the starting point, it is anticipated that the revised regulations will comprise of some regulations being carried forward, others being amended and new regulations based on the delegated powers proposed through the SEND Bill. I have provided a link below to the current SEN regulations.

<http://www.legislation.gov.uk/nisr/2005/384/contents/made>

Once the extent of the changes to the existing regulations is determined, a decision will be taken on whether to make an amendment to, or entirely revoke, the 2005 Regulations.

Annex B sets out those new areas, which would be progressed through a new code of practice. The practical arrangements for schools and the Education Authority that are to be set out in the new code of practice will be an outworking of the SEN provisions in the Education (Northern Ireland) Order 1996, the Special Educational Needs and Disability (Northern Ireland) Order 2005, the SEND Bill and the new SEN Regulations.

The specific content of the regulations and the code of practice have yet to be developed and will be driven by the content of the finally agreed SEND Bill and through discussion with key stakeholders.

The Committee specifically referred to information regarding a number of areas.

- **SEN Children in Early Years**

The Minister's 2012 policy proposals highlighted that the Boards would retain the existing power to name a non-statutory DE-funded pre-school early years setting in a statement where the child's needs require such placement to be made. It was not proposed to place a statutory duty on the boards to treat the non-statutory De-funded early years settings in exactly the same way as statutory school setting when considering the educational placement in a SEN statement. A commitment was, however, given to consider further the implications of non-statutory settings being on the same footing as statutory settings. Following consideration it has been determined that a statutory duty cannot be placed on a voluntary or private setting and that the existing mechanism would continue to apply. Statutory guidance will apply to statutory settings and it is anticipated that separate guidance will be developed for all non statutory settings.

In relation to the arrangements for the placing of a preschool child with a statement in an early years setting, the Board has both a power and duty in this regard. The power allows the Board to name a private or voluntary early years setting in a statement where both the Board and the Department are satisfied that the interests of the child require such arrangements to be made. Regardless of whether the placement name in a statement is in a voluntary or a statutory setting, the Board's duty to arrange the provision outlined in the statement is the same.

For a non-statemented SEN child, the normal process for admission applies. This process is preference based and enables parents and guardians to nominate settings they would wish their children to attend. The Board of Governors / Management Committees of all pre-school settings are required to publish admissions criteria which are capable of selecting children down to the final place, in the event of over subscription. Legislation requires that the top criterion for each provider prioritises children from socially disadvantaged backgrounds. The inclusion of further criteria is a matter for individual settings and may include the attendance of older siblings, distance of the setting from the home address, or SEN factors.

New arrangements have been in place on a pilot basis to provide Board supports to SEN children in statutory and voluntary early years settings. Importantly, this has provided capacity building training for staff in the pilot settings to enable them to better support the children. Further funding has been made available in the 2015/16 year and work is underway with the Boards to develop SEN early years capacity and support arrangements.

- **Three Levels of Support**

In the same way that the current code of practice sets out the operational arrangements for the existing 5-stage approach, the revised code will set out the 3 levels of support within the revised framework and how these are to be applied by schools and the Authority. Annex B set out these levels. The code of practice will also be used to set out the expected timescales for the delivery of the school-based levels.

- **Statements in the form of a coordinated support plan**

The statutory basis for statements for children for whom the Authority is responsible remains unchanged. If it is necessary following a statutory assessment, a statement in the form of a coordinated support plan will be made at level 3 of the revised framework. A statement would be made for children whose needs require external supports from the Authority that are not ordinarily available at the school-based levels of the new framework. The format of the statement will be set out in the revised SEN regulations. The current format of the statement is set out in Schedule 2 of the current SEN Regulations.

- **Statutory Assessment within 20 weeks**

The current time limits, from request for statutory assessment through to the issue of a final statement, are set out in the SEN Regulations. The revised SEN regulations will be used in the same way to set out the reduction in the time frame to 20 weeks. The regulation-making powers for these can be found in Schedule 1 (making of assessments under Article 15) and Schedule 2 (making and maintenance of statements under Article 16) of the 1996 Order. The current timescales can be found under Regulations 11, 16 and 17 of the current SEN Regulations.

- **Full reviews of SEN at transitions stages**

Full reviews will continue to take place at transition stages for post 14 statemented pupils. The existing arrangements for the annual review are set out in Regulations 18 and 19 of the current SEN Regulations. The Minister's proposals require that all annual reviews of statements will continue to have a statutory basis. Revisions will be made to the current regulations to allow flexibility in years other than at transfer phases of education, at Key Stages and at transitions points in advance of leaving school. These revisions will allow a parent and a school to consider if the child's SEN provision is meeting his or her needs. If both parent and school agree that the SEN provision set out in the statement continues to be appropriate, the Authority may determine that the further process to seek input from a range of advice givers is not

necessary and the Authority will advise that the annual review has been completed resulting in no change to the SEN provision.

I trust this information helps to clarify the issues raised by the Committee. Officials will be happy to provide the Committee with further verbal or written briefing as may be required.

Yours sincerely

**Russell Welsh**  
**Departmental Assembly Liaison Officer**

## **Revised SEN Regulations to support and reflect the revised SEN framework**

The existing enabling powers to make subordinate legislation in the area of special educational needs are set out in the Education (NI) Order 1996 (as amended by the Special Educational Needs and Disability (NI) Order 2005).

The SEND Bill, now at Committee Stage, includes proposals for a number of proposed new regulation making powers to support the Minister's plans for the revised SEN and Inclusion Framework. These new powers are included in the list below.

The existing regulations set out the detailed processes to be followed by the boards and schools. Historically these processes have been contained in subordinate legislation as, by their very nature, they are too detailed to be suitable for consideration in primary legislation.

The existing regulations, the Education (Special Educational Needs) Regulations (Northern Ireland) 2005 will be amended to refer to the Education Authority and also to reflect the proposed new rights within the SEN framework for the child who is over compulsory school age.

The specific content of the new SEN regulations has yet to be developed. As indicated in the covering letter, once the extent of the changes to the existing regulations is determined, a decision will be taken on whether to make an amendment to, or entirely revoke, the 2005 Regulations

The revised SEN regulations will be developed by the Department driven by the content of the agreed SEND Bill (following the Assembly stages), by discussion with key stakeholders and will be subject to formal consultation.

The following provides an indicative list of the areas, as a result of the Minister's proposals, which will be taken forward through additions and revisions to the existing regulations.

### **Education Authority's Plan <sup>1</sup>**

- Outline the content and form of the Education Authority's plan, setting out arrangements to be made or proposed to be made or proposed to be made in relation to special education provision.
- Set out procedures to be followed by the Authority in preparing, reviewing or revising the plan and the persons to be consulted.

### **Board of Governor duties in relation to pupils with special educational needs<sup>2</sup>**

- Set out the circumstances and manner in which the BoG of an ordinary school must notify a board of changes regarding a child for whom a board is making special educational provision.

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<sup>1</sup> New regulation-making power proposed in clause 2 (Duty of Authority to publish plans relating to its arrangements for special educational provision) of the SEND Bill

<sup>2</sup> New regulation-making power proposed in clause 3 (Duties on BoGs in relation to pupils with special educational needs) of the SEND Bill

- Set out qualifications or experience or both and, as appropriate, any other school functions of the learning support co-ordinator (LSC).

### **Reduction in time limits<sup>3</sup>**

- Amend from 26 to 20 weeks the statutory time-limit for the Authority to conduct the statutory assessment process through to the issue of a final statement. (The SEND Bill, at clause 5 provides for 1 week of the reduction; this relates to the time that parent provides advice. The remaining 5-week reduction will be achieved by amendments to the time available to the Authority conduct the statutory assessment and issue a final statement.)
- These time frames are contained within the existing SEN regulations given their procedural nature.

### **Statement in the form of a co-ordinated support plan<sup>4</sup>**

- Using existing power under Article 16 (2) of the 1996 Order, amend the regulations to prescribe the form that the statement will take (in the form of a co-ordinated support plan) to facilitate input by a parent and proposed outcomes for the child.
- Include learning targets/ outcomes to be achieved by the first review of the statement.

### **Annual review of a statement<sup>5</sup>**

- Other than at key stages, transfer between phases of education and transitions points post age 14, an opportunity to provide flexibility for a two-step process for annual reviews will be taken. This is aimed at reducing the bureaucracy in the annual review process.
- Amendment to set out the process in the statutory annual review to obtain the views of the child.

### **Annual review (right of appeal about Authority's decision not to amend a statement)<sup>6</sup>**

- Set out the information to be contained in a notice following a decision of the Education Authority not to amend a statement following annual review.
- Provide the timescales for the issue of a notice by the Education Authority of its decision not to amend a statement following annual review.

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<sup>3</sup> Existing regulation-making power in the Education (NI) Order 1996, Schedule 1 paragraph 3 (manner, and timing, of assessments and Schedule 2 paragraph 8 (making a statement)

<sup>4</sup> Existing regulation-making power in Article 16 (2) (statement of SEN)

<sup>5</sup> Existing regulation-making power in Article 19 of 1996 Order

<sup>6</sup> New regulation-making power proposed in clause 6 (Appeal following decision not to amend statement following annual review) of the SEND Bill

### **Child under 2: right of appeal**<sup>7</sup>

- Set out the information to be contained in a notice to the parent of a child under 2 following a decision by the Education Authority not to make a statement.
- Set out the timescales in which the notice above is to be issued.

### **Mediation in connection with appeals**<sup>8</sup>

- Set out the arrangements for the provision of independent mediation services by the Education Authority.
- The SEND Bill (clause 8) sets out the procedures for obtaining advice about mediation and that the service will be independent of the Authority.
- The regulations may in particular include: about the issue of notices; imposing time limits; about who may attend mediation; where the child's parent is a party to the mediations requiring a mediator to take reasonable steps to ascertain the views of the child; about provision of advocacy and support services; enabling the Authority to take prescribed steps following the conclusion of mediation; and about training, qualifications and experience of mediation advisors and mediators.

### **SEN Child over compulsory school age**<sup>9</sup>

- Set out arrangements for assistance and support for a SEN child over compulsory school age to exercise his/her rights within the SEN framework, if that child wants such support.
- Set out the arrangements for cases where a SEN child over compulsory school age, lacks or may lack capacity, to exercise the new rights within the SEN framework. Note: this relates to capacity only within the scope of the SEN framework.
- With regard to the exercising of a right to SEN appeal by a child over compulsory school age, DE will work with DoJ, who have responsibility for Tribunal regulations, regarding the matter of the lack of capacity.

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<sup>7</sup> New regulation-making power proposed in clause 7 (Children under 2: appeals against contents of statement or failure to make statement) of the SEND Bill

<sup>8</sup> New regulation-making power in clause 8 (Mediation in connection with appeals) of the SEND Bill

<sup>9</sup> New regulation-making power in clause 9 (Rights of child over compulsory school age in relation to special educational provision) of the Bill

### **Disability discrimination claims for a disabled person over compulsory school age<sup>10</sup>**

- Set out arrangements for assistance and support to enable a person, over compulsory school age, to exercise the right to make a claim of disability discrimination, if the person wants such support.
- Set out the arrangements for cases where a person over compulsory school age, lacks or may lack capacity, to exercise their right to make a claim of disability discrimination.
- With regard to the person over compulsory school age exercising a right to make a disability discrimination claim, DE will work with DoJ (who have responsibility for Tribunal regulations) regarding the matter of lack of capacity.

### **Pilot scheme for SEN children<sup>11</sup>**

- Set out the pilot scheme arrangements for children, who have not reached the upper limit of compulsory school age, to make a SEN appeal or a disability discrimination claim to the Tribunal.
- **Note:** these regulations will be developed separately from the main SEN regulations.

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<sup>10</sup> New regulation-making power in clause 10 (Rights of child over compulsory school age in relation to disability discrimination claims) of the Bill

<sup>11</sup> New regulation making power in Clauses 10 and 11 (Appeals and claims by children: pilot scheme and follow-up provision)



## **SEN and Inclusion Framework - Code of Practice**

The code of practice is issued by the Department of Education under Article 4 of the Education (NI) Order 1996.

The existing Code can be accessed at:

[http://www.deni.gov.uk/the\\_code\\_of\\_practice.pdf](http://www.deni.gov.uk/the_code_of_practice.pdf)

A supplement to the Code was issued in 2005 and can be accessed at

<http://www.deni.gov.uk/supplement.pdf>

The 1996 Order provides that it shall be the duty of the Boards of Governors of grant aided schools and the Authority to have regard for the provision in the Code. The 1996 Order also provides that the Special Educational Needs and Disability Tribunal shall have regard to any provisions of the code which appears to the Tribunal to be relevant to any question arising on the appeal.

It is anticipated that the new code of practice, developed in the context of the Education Authority, will broadly follow the similar structures of the existing Code and Supplement, but will be set out in a more user-friendly manner and take the form of a single consolidated document.

The specific content of the new code has yet to be developed. As required under Article 5 (making and amendment of code) the Department will develop a draft code informed by discussions with key stakeholders and it will be subject to formal consultation. The aim of the new code of practice is to provide a clear understanding and consistency of approach for the Authority, schools and others on the steps to be taken in carrying out their statutory functions.

The indicative areas that will be covered in the code to reflect the revised SEN framework are as follows:

### **Broad principles of framework / Legislative base**

- Set out what the revised SEN framework aims to achieve and key principles underpinning it.
- Emphasise that mainstream classes, learning support centres in mainstream schools and special schools will each have an important role in the mix of provision required to meet the needs of children with SEN.
- Emphasise the importance to Education Authority and schools of collaboration and sharing of good practice across school sectors and learning communities.

### **Board of Governors**

- Drawing from existing duties as well as new and amended duties within the SEN Bill, set out the range duties applicable to Boards of Governors.

### **Education Authority**

- Setting out existing duties and powers of the Authority and, drawing from the SEN Bill, set out amended or additional duties and powers of the Authority.
- Drawing from new SEN regulations - set out the content and form of the Education Authority's plan for arrangements to be made or proposed to be made in relation to special education provision.
- Drawing from the new SEN regulations - set out procedures to be followed by the Authority in preparing, reviewing or revising the plan and the persons to be consulted.

### **Role of Learning Support Co-ordinator (LSC)**

- Drawing from the SEN Bill - set out the statutory basis for the LSC and the LSC role in the co-ordination of teaching and learning for SEN pupils.
- In light of strengthened BoG duties in the SEN Bill, emphasise the Senior Management Team's (SMT's) responsibility for SEN pupils and to ensure that the LSC has an opportunity to provide a SEN report to SMT meetings.
- Set out the approach and good practice of using school data and information gleaned from educational testing in order to make arrangements for early identification and assessment.
- Emphasise the importance of the role of the LSC for coordinating provision for SEN children who also have additional needs such as children who are newcomer, children who are looked after (LAC).
- Drawing from new SEN regulations, highlight the qualifications and experience expected for the LSC and emphasise to SMTs the need to consider the training needs of the LSC and to plan accordingly.

### **Views of the child**

- Drawing from the SEN Bill, set out the statutory duty for the Authority in relation to seeking and having regard to the views of the child.
- Drawing from the SEN Bill and revised SEN regulations, set out practical approaches to the Authority seeking the views.
- Re-emphasise the importance of the school in seeking and considering the views of the child and giving these due weight according to the age, maturity and understanding and capability of the child.

### **Inclusion**

- Restate the principles and approach to inclusion (as currently set out in the Supplement to the Code of Practice 2005).
- Promote increased awareness of disability and a culture of raised expectations for children with SEN across schools, which includes increased accountability for the in-school education of children with SEN or disability.
- Emphasise the rights of the child, for example, within the context of UNCRC and UNCRPD and the child's centrality within the new SEN framework.

### **Three levels of SEN Support**

- Set out the arrangements for the proposed three levels of support within the revised framework in order to meet the needs of children with SEN.
  - Level 1 (school led) - the support that most SEN children in a mainstream classroom can normally expect to receive from their school.
  - Level 2 (school led) - the support that some children in a mainstream class will require to be provided by school staff with additional short- or medium-term external, specialist support or guidance from the Authority or from other services.
  - Level 3 (Authority led) - the support that some children in mainstream classes, all children in learning support centres attached to a mainstream school and all children in special schools would receive through a statement.
- Set out the practical arrangements for schools and the Authority in their delivery of each of the new levels of support through identification, assessment and intervention including processes for review and for moving between levels.
- Set out the expected timescale for the delivery of the school based levels and what schools will be expected to deliver at school based levels.
- Drawing on new SEN regulations, set out the links to the Authority's plan at level 2 and the arrangements regarding support at level 2.

### **Personal Learning Plans (PLPs)**

- Drawing on the new duty on Boards of Governor in the SEN Bill, set out the requirement on schools to put in place a personal learning plan for each SEN pupil.
- Set out the format, content, management and review arrangements of a PLP, providing for improvements in consistency of approach
- Set out the arrangements for partnership with parents and pupils in the development, review etc of the plan.
- In keeping with the statutory guidance for schools to seek the views of the child, as contained within the current Code of Practice and Supplement, re-emphasise the importance of schools seeking the views of the child when developing and reviewing the PLP targets and outcomes.
- Indicate that schools may wish to use the PLP framework for other non-SEN Additional Educational Needs pupils in order to manage their teaching and learning.

### **Statutory assessment /statementing**

- Drawing on Authority timescales in the SEN Bill and new SEN regulations (reduction to 20 weeks), set out the arrangements and timescales for statutory assessment /statementing.

- Drawing on the SEN Bill and new SEN regulations, set out the criteria and arrangements for statutory assessment of children under compulsory school age, children of compulsory school age and children over the upper limit of compulsory school age.

### **Pre-school Settings**

- Drawing on existing arrangements, set out the duties of the Authority regarding the placement of a statemented child and the power to place a statemented child in a setting other than an ordinary school (including placement in a non statutory DE-funded early years setting).
- Reference any guidance on pre-school provision and associated Education Authority supports.

### **Annual review arrangements**

- Drawing on the continued statutory basis for annual reviews of a statement and new SEN regulations, set out the full review arrangements for all children at transfer phases of education, at Key Stages and at transitions points in advance of leaving school.
- Drawing on the new SEN regulations, set out the flexible arrangements for a two step process for the new annual review arrangements for statemented children (other than at transfer phases of education, at Key Stages and at transitions points in advance of leaving school).
- Emphasise the need for ongoing liaison between the school, the child and the parent or in the case of a SEN child over compulsory school age.
- Drawing on the duty on the Authority to take the views of the child and the new SEN regulations, highlight the importance of the child's views within the annual review process.

### **Appeal following decision not to amend statement following annual review**

- Drawing on the SEN Bill and the new SEN regulations, set out the arrangements for the Authority's decision not to amend a statement following annual review and the timescales for the issue of relevant notices;
- Drawing on the SEN Bill and the new SEN regulations, reflect the new arrangements for a right of appeal by a parent or by a child over compulsory school age, where the Authority does not propose to amend a statement following an annual review of a statement.

### **Child under 2: Right of appeal**

- Drawing on the SEN Bill and new SEN regulations, set out the Authority's arrangements surrounding the parent's new right of appeal where the Authority does not propose to make a statement for a child under 2 or about the content of the statement.

### **Transition planning**

- Drawing on the new SEN regulations, include guidance for schools and the Education Authority on transitions planning.
- As within the current Code of Practice, emphasise that schools, when undertaking transition planning for non-statemented pupils, may make arrangements similar to the statutory arrangements.

### **Health and Social Care Trusts – advice and provision**

- Drawing on the SEN Bill and new SEN regulations, emphasise that the advice sought from a HSC Trust should extend to making recommendations about the HSC Trust provision to be included in a statement.
- Clarify that HSC Trusts would not be required to recommend educational provision to be made by the Education Authority or by the school.
- Encourage more consistent and stronger partnership arrangements between parents, schools, the Education Authority and other professionals working in schools.

### **Dispute Avoidance and Resolution (DARS)**

- Drawing on the SEN Bill and the existing Supplement to the Code of Practice – highlight the independence of the DARS as a means of resolving disagreements between parents or children over compulsory school age and schools.
- Drawing on the SEN Bill, set out the new duty on BoGs to make parents and children over compulsory school age aware of the DARS and any associated practical arrangements.
- Drawing on the SEN Bill, set out the statutory duty on the Education Authority to arrange the DARS service and any associated practical arrangements.
- Emphasise to schools their duty to advise parents and children over compulsory school age of the DARS service;

### **Mediation**

- Drawing from the SEN Bill and new SEN regulations surrounding mediation, set out the practical arrangements for the delivery of, and participation in, mediation including: about the issue of notices; imposing time limits; about who may attend mediation; where the child's parent is a party to the mediations requiring a mediator to take reasonable steps to ascertain the views of the child; about provision of advocacy and support services; enabling the Authority to take prescribed steps following the conclusion of mediation; and about training, qualifications and experience of mediation advisors and mediators.

### **New rights for child over compulsory school age**

- Drawing from the SEN Bill and new SEN regulations, set out the rights for the child over compulsory school age within the revised SEN framework, including

the right to request a statutory assessment and to make representations to the Education Authority and right of appeal to SENDIST.

- Drawing on the SEN Bill and new SEN regulations, set out the arrangements for assistance and support for a child over compulsory school age to exercise their rights within the SEN framework and to make appeal to SENDIST, if the child wants such support.
- Drawing on the SEN Bill and new SEN regulations, set out the arrangements for circumstances where a child over compulsory school age, lacks or may lack capacity (within the scope of the SEN framework only), to exercise the new rights within the SEN framework.

**Definition of SEN - 19 year olds**

- Drawing from the SEN Bill - reflect the change to the SEN definition to allow the Authority to maintain a SEN statement to the end of the school year following the child's 19<sup>th</sup> birthday.



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20 February 2015  
**Our Ref:** PMcC/KM/1981

Dear Russell

**Special Educational Need and Disability (SEND) Bill**

Please pass on the Committee's thanks to officials for the Departmental briefing on the SEN and Disability Bill provided at the meeting on Wednesday 18 February 2015.

The Committee agreed to write to the Department requesting a fuller explanation in respect of those matters which are to be dealt with in associated secondary legislation and those which are to be the subject of changes to the Code of Practice on the Identification and Assessment of Special Education Needs. In particular, the Committee seeks clarity on those matters about which it was briefed in June 2012 including:

- new mechanisms for placing SEN children in Early Years settings and new requirements to make appropriate provision for SEN children in those settings;

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- the 5 stage SEN identification and assessment process reducing to 3 stages so as to reduce bureaucracy and waiting times for assessment at the current Stage 4;
- SEN statements to be in the form of Co-ordinated Support Plans (CSPs) for children with complex needs;
- Stage 4 assessments of SEN to be made within 20 weeks (not 6 months); and
- full reviews of SEN to be undertaken when children are at educational transition stages.

A response at your earliest convenience and certainly before 6 March 2015 would be very much appreciated.

Yours sincerely

*Signed Peter McCallion*

**Peter McCallion**  
**Clerk**  
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