



Department of  
**Education**

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Dear Peter

**SEND BILL – CLAUSE BY CLAUSE CONSIDERATION – OLC DRAFT AMENDMENTS**

Thank you for your email 6 October to Caroline Gillan regarding the Committee's clause by clause consideration of the SEND Bill and for sight of the Bill Office draft amendments which the Committee asked the Bill Office to draft.

My reply earlier today informed you of those amendments to regulation-making powers which the Minister is content to accept.

I can advise that the Minister is minded to accept the following amendments proposed by the Committee regarding:

**Clause 3 (Duties of Board of Governors in relation to pupils with special educational needs)**

- Clause 3(2)(b) (your ref. 3.1 and 3.2) – amend 'take reasonable steps' to 'take all reasonable steps'.
- Clause 3(3) and 3(4) (your ref. 3.3, 3.4, 3.5 and 3.6) – amend to place a duty on a Board of Governors to transfer a child's PLP, subject to the child or parent's agreement as appropriate, to the next school at which they are a registered pupil.
- Clause 3(3) and 3(4) (your ref. 3.17) – amendment to make regulations made under these clauses subject to affirmative resolution.

Caroline Gillan previously discussed an approach whereby OLC would be asked to draft any amendments which the Minister was minded to accept, and on this basis, I

now attach an OLC draft of the Committee's proposed amendments regarding clause 3 above and also the proposed amendments to reflect the Minister's agreed position on changing the regulation making powers from "may" to "shall".

The Minister will wish to take these OLC drafted amendments to the Executive in due course.

A number of the Committee's proposed amendments are cross-cutting in nature. Namely:

**Clause 4 (Duty of Authority to request help from health and social care bodies)**

The Committee's proposed amendment relates to placing a duty on the HSCTs to provide therapeutic or other provision; a duty to co-operate between health and education (including joint planning, sharing of information, pooling of budgets etc); and establishment of an oversight mechanism to review co-operation. Whilst the Minister supports the principle of co-operation, the workability of the Committee's proposed draft amendments would require careful consideration. Furthermore, these health related amendments are cross-cutting matters with DHSSPS, and the Minister is writing to his Health counterpart seeking views on the relevant amendments. The Committee will also be aware that the Children's Services Cooperation Bill may overtake the Committee's proposed amendments in this area and this will also be a consideration.

**Clause 6 - Child under compulsory school age – right to speak at SENDIST**

The Minister is supportive of seeking and having regard to the views of the child, as evidenced by many of the provisions in the Bill. However, SENDIST procedures are a matter for DOJ and he is writing to the DOJ Minister for his views.

Officials will talk to the remaining suggested amendments at tomorrow's session.

Yours sincerely

*Russell*

**RUSSELL WELSH**  
**Departmental Assembly Liaison Officer**

**Clause 3**, page 2, line 18

Leave out 'may' and insert 'shall'

**Clause 3**, page 2, line 33

After 'take' insert 'all'

**Clause 3**, page 3, line 3

At end insert—

'(2A) In Article 8 after paragraph (1) insert—

“(1A) Paragraph (1B) applies where—

- (a) the Board of Governors of a grant-aided school (school A) has prepared a personal learning plan in respect of a registered pupil at the school, and
- (b) that pupil ceases to be a registered pupil at school A and becomes a registered pupil at another grant-aided school (school B).

(1B) The Board of Governors of school A shall—

- (a) seek to obtain the consent of the pupil concerned (if the pupil is over compulsory school age) or of the pupil's parent (in any other case) to a copy of the personal learning plan being sent to the Board of Governors of school B; and
- (b) if it obtains that consent, send a copy of the plan to the Board of Governors of school B.

(1C) Nothing in paragraph (1A) or (1B) affects any duty of the Board of Governors of school B to prepare a personal learning plan in respect of the pupil under paragraph (1)(d) or (as the case may be) under Article 8ZA(1)(a).”.

**Clause 3**, page 3, line 29

At end insert—

'(3) Paragraph (4) applies where—

- (a) the Board of Governors of a special school (school A) has prepared a personal learning plan in respect of a registered pupil at the school, and
- (b) that pupil ceases to be a registered pupil at school A and becomes a registered pupil at another grant-aided school (school B).

(4) The Board of Governors of school A shall—

- (a) seek to obtain the consent of the pupil concerned (if the pupil is over compulsory school age) or of the pupil's parent (in any other case) to a copy of the personal learning plan being sent to the Board of Governors of school B; and
- (b) if it obtains that consent, send a copy of the plan to the Board of Governors of school B.

(5) Nothing in paragraph (3) or (4) affects any duty of the Board of Governors of school B to prepare a personal learning plan in respect of the pupil under paragraph (1)(a) or (as the case may be) under Article 8(1)(d).”.’

**Clause 7**, page 5, line 18

Leave out ‘may’ and insert ‘shall’

**Clause 9**, page 7, line 34

Leave out ‘may’ and insert ‘shall’

**Clause 9**, page 7, line 36

Leave out ‘may’ and insert ‘shall’

#### **New Clause**

After clause 14 insert—

#### **‘Orders and regulations under Part 2 of the 1996 Order**

14A. For Article 28 of the 1996 Order substitute—

##### **“Orders and regulations under this Part**

28.—(1) Orders made by the Department under this Part (other than orders under Article 5(3)) shall be subject to negative resolution.

(2) Regulations shall not be made under Article 8 or 8A unless a draft of the regulations has been laid before, and approved by resolution of, the Assembly.

(3) Subject to paragraph (4), all other regulations under this Part shall be subject to negative resolution.

(4) Regulations made under this Part which—

(a) would otherwise be subject to negative resolution, but

(b) are combined with regulations subject to the procedure mentioned in paragraph (2),

shall also be subject to that procedure.

(5) Regulations and orders made under this Part by a Northern Ireland department may contain such incidental, supplementary and transitional provisions as that department thinks fit.”.’