



**NORTHERN IRELAND
ASSEMBLY
COMMITTEE FOR JUSTICE**

**Mr Alastair Ross MLA
Chairman, Committee for Justice**

Miss Michelle McIlveen MLA.
Chairperson
Committee for Education
Room 376
Parliament Buildings

29 April 2015

Dear Miss McIlveen

Special Educational Needs and Disability Bill

The Committee for Justice considered your letter dated 18 March 2015 requesting views / comments on the clauses and schedules of the Bill relating to justice matters.

The Committee for Justice wrote to the Department of Justice to seek its views and considered the Department's response at the meeting on 23 April 2015. The Committee agreed at this meeting to write to you to advise that it would endorse the proposals in the Bill that are relevant to the Department of Justice. The Committee would like to highlight the possible increased costs and advise that the Department has supported the proposals in the Bill on the basis that the Department of Education will fund any increased costs in relation to the SEND Tribunal.

I have enclosed the Department of Justice's response for your information.

Yours sincerely

**Alastair Ross MLA
Chairman, Committee for Justice**

FROM THE OFFICE OF THE JUSTICE MINISTER



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Our ref SUB/507/2015

Christine Darrah
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21 April 2015

Dear Christine,

SPECIAL EDUCATIONAL NEEDS AND DISABILITY BILL

Thank you for your letter of 30 March 2015 on the Special Educational Needs and Disability (SEND) Bill. DOJ officials have been working closely with officials in the Department of Education (DE) on the impact of proposals in the Bill on the SEND Tribunal ('the Tribunal') which is administered by the Northern Ireland Courts and Tribunals Service.

The Bill aims to improve long term outcomes for children with special educational needs by ensuring early access to assessment and services. Provision in the Bill will therefore impact upon the Tribunal which hears appeals from parents against certain decisions by the Education Authority in the assessment and 'statementing' process. Proposals to enhance the use of mediation services, extend parents' rights of appeal and to introduce new rights of appeal for children are of particular interest.

In general, the Department welcomes the proposals. In particular, the Department recognises the value of proposals to introduce independent mediation services and to commit the Education Authority to participate in mediation in cases where parents or children are willing to engage.

Resolution through the court or tribunal process should be a matter of last resort and the Department is supportive of efforts to encourage agreed settlement. We understand DE is hopeful these provisions will motivate parties hitherto deterred from mediation because of concerns about the relative independence of mediators and who would, under the current regime, have recourse to the Tribunal without having attempted to mediate with the Education Authority.

The requirement that applicants to the Tribunal be required to verify that they have sought information on mediation when lodging an appeal does not give rise to any particular concerns. The mechanism has been used effectively to encourage the use of mediation in other jurisdictions (there is, for example, a requirement to attend a mediation information session in private family law disputes in England and Wales) without detracting from access to justice. The proposal is not expected to have significant impact on the Department save for agreeing the necessary procedural arrangements and amending procedural regulations, but may benefit tribunal users by ensuring they have considered all options for resolution of their dispute.

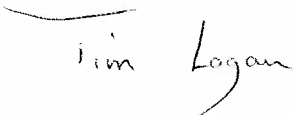
The Department also welcomes proposals in the Bill to enhance access to justice by extending rights of appeal.

Parents of children with special educational needs may currently challenge decisions made by the Education Authority during the assessment and statementing process. The Bill provides parents with an additional right to challenge a decision not to amend a statement following annual review and extends the right to challenge the content of a statement to parents of children under the

age of two. The Bill also allows children to appeal to the Tribunal in their own right for the first time. Currently only a parent may make an application but the Bill extends that right to children over compulsory school age. It also allows DE to establish a pilot scheme to allow children who have not reached the upper limit of compulsory school age to appeal to the Tribunal (with a view to wider roll out at least two years after the pilot). The impetus for these proposals is a recommendation of the UN Committee on the Rights of the Child that children with capacity should have a right of appeal to Special Educational Needs and Disability Tribunals in the UK. Provision to that effect has already been introduced in Wales and the necessary statutory framework has been enacted in England. DOJ welcomes the introduction of an equivalent right for children in Northern Ireland.

The extension of rights of appeal does of course have the potential to increase the number of appeals coming before the Tribunal and the Department does have some concerns about costs associated with an increase in business levels (e.g. additional judicial and administrative resource, child-friendly literature, staff and judicial training and environmental adaptations). Although the Department accepts any increase in business arising from new appeal rights may be offset, to some degree, by an increased use of mediation from the creation of the independent service, we will need to monitor impact of the proposals closely. We would expect that any costs arising would be met by the Department of Education and have supported the policy proposals in the Bill on that basis.

I hope this provides the necessary framework to inform a response to the Committee for Education. Officials will of course continue to liaise closely to with counterparts in DE on the Bill and implementation of the policy.



**TIM LOGAN
DALO**



**NORTHERN IRELAND
ASSEMBLY
COMMITTEE FOR JUSTICE**

Tim Logan
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Department of Justice
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30 March 2015

Dear Tim

Special Educational Needs and Disability Bill

At the meeting on 25 March 2015 the Committee for Justice considered correspondence from the Committee for Education requesting its views/comments on the Special Educational Needs and Disability (SEND) Bill which commenced Committee Stage on 11 March 2015.

The Committee agreed to forward the correspondence to the Department of Justice and request information/comments on the Bill from the justice perspective and in particular the provision relating to appeals to the SEN and Disability Tribunal and the requirement in Clause 8 for would-be appellants to obtain advice about mediation and obtain a certificate to this effect prior to appeal to the Tribunal.

I would appreciate a response by Friday 17 April 2015 to enable the Committee to consider the information provided and respond to the Committee for Education by its deadline of 24 April 2015.

Yours sincerely

Christine Darragh

**Christine Darragh
Clerk, Committee for Justice**

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