

Further evidence to the Northern Ireland Assembly Education Committee on the proposed Special Educational Needs and Disability Bill (SEND)

1. Following the briefing on the proposed Special Educational Needs and Disability Bill (the Bill) provided by the Commission for the Committee on 24 June 2015, Members sought our views on whether and how the Bill should be amended in order to specify: the principles that the Department is to apply in framing subordinate legislation and the key matters that may or may not be included in that legislation. We welcome the opportunity to present further evidence to the Education Committee.

We have set out below our advice on a number of key issues which we consider should be addressed in the Bill, the regulations and the Code of Practice respectively.

The Bill

Principles

2. The Commission welcomes the stronger emphasis given in the Bill to the rights of children. We believe that adopting underpinning principles drawn from the United Nations Convention on the Rights of the Child (UNCRC)¹ and the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)² should both shape and inform the future of the Special Education Needs (SEN) framework. We recommend that these principles:
 - Voice of the child;
 - Equality and non-discrimination; and
 - Participation and inclusion

¹ Available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

² Available at: www.un.org/disabilities/documents/convention/convoptprot-e.pdf

should be set out on the face of the legislation by way of a paragraph inserted into the Bill in order to provide interpretative guidance to the rights and entitlement laid out therein.

We have set out below the relevant Convention Articles associated with each of these principles.

3. ***The Voice of the Child***

Article 3 UNCRPD: General principles

(a) Respect for the inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons.

(h) Respect for the evolving capacities of children with disabilities and respect for the right of children to preserve their identities.

Article 4 UNCRPD: General obligations

3. In the development of legislation and policies to implement the present Convention and in other decision making processes concerning issues relating to persons with disabilities, State Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organisations.

Article 7 UNCRPD: Children with disabilities

1. States Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.

2. In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration.

3. States Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right.

Article 12 UNCRC

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters

affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 13 UNCRPD: Access to justice

1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.

4. ***Equality and non-discrimination***

Article 2 UNCRC

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

Article 4 UNCRPD: General obligations

1. States Parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability. To this end, States Parties undertake:

- d. To refrain from engaging in any act or practice that is inconsistent with the present Convention and to ensure that public authorities and institutions act in conformity with the present Convention;
- e. To take all appropriate measures to eliminate discrimination on the basis of disability by any person, organization or private enterprise;

- h. To provide accessible information to persons with disabilities about mobility aids, devices and assistive technologies, including new technologies, as well as other forms of assistance, support services and facilities;
- i. To promote the training of professionals and staff working with persons with disabilities in the rights recognised in the present Convention so as to better provide the assistance and services guaranteed by those rights.

Article 5 UNCRPD: Equality and non-discrimination

3. In order to promote equality and eliminate discrimination, State Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.

5. *Participation and inclusion*

Article 18 UNCRC

2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

Article 23 UNCRC

3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.

Article 3 UNCRPD: General Principles

The principles of the present Convention shall be:

- a. Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;
- b. Non-discrimination;
- c. Full and effective participation and inclusion in society;
- d. Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- e. Equality of opportunity;
- f. Accessibility;
- h. Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

Article 4 UNCRPD: General obligations

3. In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organisations.

Article 8 UNCRPD: Awareness-raising

1. States Parties undertake to adopt immediate, effective and appropriate measures:

- a. To raise awareness throughout society, including at the family level, regarding persons with disabilities, and to foster respect for the rights and dignity of persons with disabilities;
- b. To combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas of life;
- c. To promote awareness of the capabilities and contributions of persons with disabilities.

Measures to this end include:

- a. Initiating and maintaining effective public awareness campaigns designed:
 - i. To nurture receptiveness to the rights of persons with disabilities;
 - ii. To promote positive perceptions and greater social awareness towards persons with disabilities;
- b. Fostering at all levels of the education system, including in all children from an early age, an attitude of respect for the rights of persons with disabilities;
- d. Promoting awareness-training programmes regarding persons with disabilities and the rights of persons with disabilities.

Article 23 UNCRC

2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.

Article 9 UNCRPD: Accessibility

1. To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to

information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia:

- a. Buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces;
- b. Information, communications and other services, including electronic services and emergency services.

2. States Parties shall also take appropriate measures to:

- a. Develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public;
- c. Provide training for stakeholders on accessibility issues facing persons with disabilities;
- d. Provide in buildings and other facilities open to the public signage in Braille and in easy to read and understand forms;
- e. Provide forms of live assistance and intermediaries, including guides, readers and professional sign language interpreters, to facilitate accessibility to buildings and other facilities open to the public;
- f. Promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information;
- g. Promote access for persons with disabilities to new information and communications technologies and systems, including the Internet;
- h. Promote the design, development, production and distribution of accessible information and communications technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost.

Article 24 UNCRPD: Education

1. States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and lifelong learning directed to:

- a. The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;
- b. The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;
- c. Enabling persons with disabilities to participate effectively in a free society.

2. In realizing this right, States Parties shall ensure that:

- a. Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;
- b. Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;
- c. Reasonable accommodation of the individual's requirements is provided;
- d. Persons with disabilities receive the support required, within the general education system, to facilitate their effective education;
- e. Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.

3. States Parties shall enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community. To this end, States Parties shall take appropriate measures, including:

- a. Facilitating the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, and facilitating peer support and mentoring;
- b. Facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community;
- c. Ensuring that the education of persons, and in particular children, who are blind, deaf or deafblind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development.

4. In order to help ensure the realization of this right, States Parties shall take appropriate measures to employ teachers, including teachers with disabilities, who are qualified in sign language and/or Braille, and to train professionals and staff who work at all levels of education. Such training shall incorporate disability awareness and the use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support persons with disabilities.

5. States Parties shall ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others. To this end, States Parties shall ensure that reasonable accommodation is provided to persons with disabilities.

6. **Other measures**

In addition to the above mentioned principles, the Commission recommends that consideration be given to the inclusion of the following measures in the Bill:

Provision by health authorities

- A statutory duty on health authorities to provide for the health and social care related aspects of special educational need provision, which corresponds with the duty of the Education Authority in relation to the education aspects of Co-ordinated Support Plans (CSPs)/SEN Statements³.

Personal Learning Plan (PLP)

- An obligation on Boards of Governors to ensure that the plan must be accessible to parents and children and be informed by them at all stages;
- An obligation on Boards of Governors to ensure that that the plan should specify and quantify the level of support available to each child, including any reasonable adjustments.

Co-ordinated Support Plan (CSP)

- An obligation on Boards of Governors to ensure that the plan must be accessible to parents and children and informed by them at all stages;
- An obligation on Boards of Governors to ensure that the plan should specify and quantify the level of support available to each child, including any reasonable adjustments.

Term-time reviews

- An obligation that schools review PLPs and CSPs at the end of each term within the school year⁴.

Pre-school settings

- The duties and obligations of the Education Authority to children with Special Education Needs in pre-school settings including with respect to transition arrangements.

³ The Commission's recommendation is consistent with our response earlier this year to the consultation by OFMDFM on the Children's Services Co-operation Bill.

⁴ The Commission is aware that parents have expressed concerns that the timing of a review on an annual basis may mean that if problems with the outworking of the plan are identified or if the child's needs have changed over the year, early opportunities to address such issues will have been missed.

The regulations

7. The Commission recommends that the following issues be clearly set out in the regulations:
- The content of the Education Authority's plans relating to special educational provision, including:
 - Steps taken to promote positive attitudes towards disabled students in line with the public authority 'Disability Duties'⁵ obligations;
 - measures to promote awareness of UNCRPD and UNCRC rights and disability equality legislation generally as it applies to schools and all SEN settings;
 - arrangements for oversight of disability equality and awareness training measures for teachers⁶ and others responsible for delivering frontline educational services;
 - arrangements for monitoring and review of the impact of the SEN plan;
 - details of the resources allocated to the delivery of the plan;
 - a commitment to screening and, where appropriate, to equality impact assessment in line with equality scheme obligations;
 - arrangements for consultation on the plan.
 - An obligation on the Education Authority to monitor the outcomes from PLPs and CSPs/Statements on an annual basis, to examine, inter alia:
 - the extent to which the plans have delivered on intended targets and outcomes;
 - the degree of individual student participation in the development of PLPs.

⁵ Further details are available in: Equality Commission for Northern Ireland (2007): 'A Guide for Public Authorities – Promoting Positive Attitudes towards disabled people and encouraging the participation of disabled people in public life', (Belfast: Equality Commission NI). Available at: <http://www.equalityni.org/Publications?subject=Disability&type=Guides&year=2007>

⁶ In accordance with Article 24.4 (Education) of the UNCRPD (Available at: www.un.org/disabilities/documents/convention/convoptprot-e.pdf)

- An obligation on the Education Authority to assess the extent to which training needs of the learning support co-ordinators and teachers have been met.
- An obligation on the Board of Governors to ensure that, as far as practicable, the training needs of the learning support co-ordinator and teachers and other staff involved in the delivery of special education needs provision have been met.
- An obligation on Boards of Governors to make parents and students aware of the independent mediation service.
- An obligation on the Education Authority to set out the arrangements to assess the level of support required to enable a child or young person to make an appeal including:
 - the establishment of the capacity threshold of the child;
 - accessibility arrangements, including physical access and accessible information (including aids and equipment);
 - specification of resources necessary to support the child or young person.
- An obligation on the Education Authority to collect, analyse and evaluate data on SEN disaggregated by disability type, age and gender.
- The prescribed role and qualifications necessary for a Learning Support Co-ordinator.
- An obligation on Boards of Governors of Schools to ensure that the Learning Support Co-ordinator has the training and skills necessary to fulfil his/her duties with respect to SEN.
- An obligation on Boards of Governors of Schools to allocate the resources necessary to build their capacity to fulfil their legal duties.

The Code of Practice

8. The Commission recommends that the following issues should be clearly set out in the Code of Practice:
 - The form and content of PLPs and CSPs including guidance on the setting of smart⁷ targets.

⁷ Specific, Measurable, Attainable, Realistic, Timebound.

- The evidence required to demonstrate that review of PLP targets has been informed by the child and the child's parents.
- In the absence of agreement between the school and the child/parents on PLPs and CSPs, arrangements for access to the independent mediation service, including timescales for trying to resolve cases and the arrangements for further appeal at SEN tribunal.
- Guidance on effective multi-disciplinary working between the Education and Skills Authority and health and social care bodies, including setting out good practice in partnership arrangements and the obligations of both education and health authorities in the delivery of SEN provision.
- Clear guidance as to how all students (i.e. those with and without SEN statements) will be involved in the development of their own PLPs or CSPs.
- Emphasis on the importance of accessible communication provision and the relevant support obligations of each individual with SEN in order to enable them to participate effectively within any decision making process that will impact on their educational experience and opportunities.
- Furthermore, the CoP should highlight models of good practice demonstrating how students can be involved in their own reviews/appeals processes and in the development of support and learning plans.

Other matters

9. We note the proposed reduction in assessment stages from five to three. The Commission requests that the Committee seeks assurance from the Department that the rights and entitlements of parents and children will not be eroded as a consequence.

**Legal, Policy and Research Division
August 2015**

Annex 1

The Equality Commission for Northern Ireland

1. The Equality Commission for Northern Ireland (the Commission) is an independent public body established under the Northern Ireland Act 1998. The Commission is responsible for implementing the legislation on fair employment and treatment, sex discrimination and equal pay, race relations, sexual orientation, disability and age.
2. The Commission's remit also includes overseeing the statutory duties on public authorities to promote equality of opportunity and good relations under Section 75 of the Northern Ireland Act 1998 (Section 75) and to promote positive attitudes towards disabled people and encourage participation by disabled people in public life under the Disability Discrimination Act 1995.
3. The Commission's general duties include:
 - working towards the elimination of discrimination;
 - promoting equality of opportunity and encouraging good practice;
 - promoting positive / affirmative action;
 - promoting good relations between people of different racial groups;
 - overseeing the implementation and effectiveness of the statutory duty on relevant public authorities;
 - keeping the legislation under review;
 - promoting good relations between people of different religious belief and / or political opinion.
4. The Commission, with the Northern Ireland Human Rights Commission, has been designated under the United Nations Convention on the rights of Persons with Disabilities (CRPD) as the independent mechanism tasked with promoting, protecting and monitoring implementation of CRPD in Northern Ireland.