



Northern Ireland
Assembly

Committee for Education

Report on the Special Educational Needs and Disability Bill

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Remit, Powers and Membership

The Committee for Education is a Statutory Departmental Committee established in accordance with paragraphs 8 and 9 of the Belfast Agreement, Section 29 of the Northern Ireland Act 1998 and, under Standing Order 48.

Statutory Committees have been established to advise and assist the appropriate Minister on the formation of policy in relation to matters within his/her responsibilities. Specifically, the Committee has power to:

- consider and advise on departmental budgets and annual plans in the context of the overall budget allocation;
- consider relevant secondary legislation and take the committee stage of primary legislation;
- call for persons and papers;
- initiate inquiries and make reports; and
- consider and advise on matters brought to the Committee by the Minister for Education.

The Committee has 11 members, including a Chairperson and Deputy Chairperson, and a quorum of 5. The membership of the Committee is as follows:

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Peter Weir (Chairperson)¹

Sandra Overend (Deputy Chairperson)²

Maeve McLaughlin

Jonathan Craig

Danny Kennedy^{3,4}

Nelson McCausland

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Trevor Lunn

Robin Newton

Pat Sheehan

Sean Rogers

¹With effect from 11 May 2015 Mr Peter Weir replaced Miss Michelle McIlveen as Chairperson

² With effect from 15 June 2015 Mrs Sandra Overend replaced Mr Danny Kinahan as Deputy Chairperson

³ With effect from 23 June 2015 Mr Ross Hussey replaced Mrs Sandra Overend

⁴ With effect from 14 September 2105 Mr Danny Kennedy replaced Mr Ross Hussey

Executive Summary

The Special Educational Needs and Disability (SEND) Bill is described as giving effect to the legislative changes necessary to support the policy for a revised Special Educational Needs (SEN) and Inclusion Framework. The objectives of the Framework are given as: the maintenance of an inclusive ethos within schools; timely identification and assessment of SEN support; early intervention; reducing bureaucracy; building the capacity of educators; and ensuring that the views of pupils and parents are considered.

During the Committee Stage, Members considered written evidence from 32 organisations and undertook 9 oral evidence sessions and 16 formal meetings. Deliberations were also informed by a stakeholder event and an informal stakeholder meeting. Additionally, the Department provided sight of indicative draft regulations which are not necessarily referenced in the SEND Bill and relating to the revised SEN and Inclusion Framework which it is understood will include changes to the SEN assessment and statementing process.

The Committee agreed a number of amendments to the SEND Bill with the Department in respect of regulation-making powers and ensuring the consented sharing by schools of Personal Learning Plans for transferring pupils.

The Committee also agreed to put down amendments requiring the Education Authority to better specify Special Educational Needs support identified in a SEN statement and placing a specific obligation on Health and Social Care Trusts to always provide Special Educational Needs support identified in a SEN statement.

The Committee further agreed to put down amendments relating to co-operation between education and health in respect of Special Educational Needs (SEN):

- placing new and wide-ranging obligations on education and health bodies to share information, jointly plan and generally co-operate in respect of the provision of SEN; and
- extending the duties of the Regulation and Quality Improvement Authority in order to include the oversight of and reporting on the level of co-operation between education and health bodies in respect of the provision of SEN.

The Committee agreed that its views on these “SEN co-operation amendments” may alter subject to further consideration of the implications of the passage of the Children’s Services Co-operation Bill.

Introduction

1. The Special Educational Needs and Disability Bill (NIA 46/11-16) (the Bill) was introduced to the Assembly on 2 March 2015 and referred to the Committee for Education for consideration on completion of the Second Stage of the Bill on 10 March 2015 in accordance with Standing Order 33(1).
2. At introduction the Minister for Education (the Minister) made the following statement under Section 9 of the Northern Ireland Act 1998:
“In my view the Special Educational Needs and Disability Bill would be within the legislative competence of the Northern Ireland Assembly.”
3. The Special Educational Needs and Disability (SEND) Bill (NIA 46/11-16) states its overall purpose as ‘A Bill to amend the law relating to special education and disability discrimination in schools.’ The Bill’s Explanatory and Financial Memorandum (EFM) sets out the purpose of the Bill and a summary of its main provisions. The Bill and the EFM can be viewed at <http://www.niassembly.gov.uk/assembly-business/legislation/2011-2016-mandate/primary-legislation-current-bills/special-educational-needs-and-disability-bill/>
4. The SEND Bill is described as giving effect to the legislative changes required to support the policy for the revised Special Educational Needs (SEN) and Inclusion Framework. The Framework is described as maintaining an inclusive ethos in schools; ensuring early identification and intervention; reducing bureaucracy; building capacity and ensuring the views of parents and children are considered.

Committee’s Approach

5. The Committee had before it the SEND Bill (NIA 46/11-16) and the Explanatory and Financial Memorandum that accompanied the Bill.
6. Following introduction of the Bill to the Assembly, the Committee wrote on 6 March 2015 to key education stakeholders. The Committee also inserted notices in the Belfast Telegraph, Irish News and News Letter seeking written evidence on the Bill by 24 April 2015. The Committee also highlighted its call for evidence via social media.
7. The Committee jointly facilitated with the Committee for Health, Social Services and Public Safety a related evidence-taking event involving SEN stakeholders on 18

March 2015- a note of the issues raised is included at Appendix 5. Committee Members also met informally with the Association of Educational Psychologists to discuss the Bill and related matters on 2 September 2015.

8. At its meeting of 25 March 2015, the Committee agreed to put down a motion to extend the Committee Stage of the Bill. The extension was designed to allow stakeholders the opportunity to consider the Bill and formulate their responses and to set aside enough time for the scrutiny of the clauses and schedules of the Bill by the Committee. On 20 April 2015, the Assembly agreed to extend the Committee Stage of the Bill to 13 November 2015.
9. Around 30 organisations and individuals responded to the request for written evidence and copies of these submissions received by the Committee are included at Appendix 3.
10. During the period covered by this Committee Stage Report, the Committee considered the Bill and related issues at 16 of its meetings. The relevant extracts from the Minutes of Proceedings for meetings, as appropriate, are included at Appendix 1. From 20 May 2015 to 1 July 2015, the Committee took oral evidence from selected stakeholders who had submitted written evidence. These included:

Children's Law Centre (20 May 2015);

Children with Disabilities Strategic Alliance (CDSA) (3 June 2015);

Health and Social Care Board and the Education Authority (10 June 2015);

Northern Ireland Commissioner for Children and Young People (NICCY) (17 June 2015);

Irish National Teachers Organisation (INTO) and the National Association of Schoolmasters and Union of Women Teachers (NASUWT) (17 June 2015);

Autism NI (17 June 2015);

Equality Commission and the Northern Ireland Human Rights Commission (24 June 2015);

Independent Parents of children with Acquired Brain Injury (24 June 2015);
and

Blind Children UK (24 June 2015).

11. All stakeholder written submissions are available at Appendix 3. Both stakeholders and Departmental officials answered Members' questions after their individual sessions - as reflected in the Minutes of Evidence for each of these meeting sessions (extracts reproduced at Appendix 2). Departmental officials were requested to provide specific follow-up information to the Committee - this is reproduced at Appendix 4.
12. As the SEND Bill included new regulation-making powers, the Committee sought and received advice from the Examiner of Statutory Rules. As the SEND Bill is to be part of the revised SEN and Inclusion Framework which is to be underpinned by amendments to the Education (Northern Ireland) Order 1996 and changes to regulations, the Committee sought the views of some stakeholders in respect of the relevant regulation-making powers - the relevant written submissions can also be found at Appendix 3.
13. The Committee commenced its informal deliberations on the clauses of the Bill on 9 September 2015 and this continued at all of its meetings until 30 September 2015. The Committee also received a closed session briefing on the draft regulations from the Department on 7 October 2015.
14. To assist the Committee with its scrutiny on the individual clauses and schedules of the Bill, the Committee received advice on several subjects from the Assembly's Legal Services. Assembly Research Services also provided the Committee with research papers on specific subject areas - these are included at Appendix 5.

Report on the Committee Stage of the SEND Bill

15. At its meeting on 11 November 2015, the Committee agreed that its Report on the SEND Bill - this Report - would be the 6th Report of the Committee for the 2011-16 mandate. The Committee also agreed that this Report should be printed.

Consideration of the Bill

Proposed New Clause - Purposes

16. The Special Educational Needs and Disability (SEND) Bill is described, in the accompanying Explanatory and Financial Memorandum (EFM), as giving effect to the legislative changes necessary to support the policy for a revised SEN and Inclusion Framework. The EFM indicates that the objectives of the Framework are to: maintain an inclusive ethos within schools; ensure early identification, assessment and intervention of SEN; ensure that the special educational needs of children are met in a timely fashion; reduce bureaucracy; build the capacity of schools to address the SEN of most children; put a clear focus on learning and outcomes for pupils with SEN, ensuring that the views of pupils and parents are considered and ensure transparency and accountability for resources and outcomes.
17. The Northern Ireland Commissioner for Children and Young People (NICCY) suggested that the objectives of the Framework should be included on the face of the Bill in order to ensure that all related provisions, including subordinate legislation, comply with these objectives.
18. The Department argued that the insertion of a new “purposes” clause was unnecessary as the SEND Bill introduces new provisions and amends existing legislation all of which promote inclusion, early intervention, capacity-building and transparency and accountability etc.. The Department further argued that a “purposes” clause could lead to lengthy, vexatious and expensive legal challenges designed to define the meaning of the objectives and the necessary level of compliance - none of which would necessarily enhance the level of support available to children with SEN.
19. The Committee agreed that the insertion of a new “purposes” clause might very well lead to unhelpful legal challenges which may do little to enhance SEN provision. The Committee therefore agreed that it would not introduce a related amendment to the Bill.

Duties of the Education Authority and Boards of Governors

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

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20. Clause 1 is described as placing a general duty on the Education Authority to seek and have regard to the views of the child in decisions that affect the child surrounding his or her Special Educational Needs (SEN). The clause is also described as providing in relation to all functions within the SEN and Inclusion Framework a requirement for the Authority to have regard to the importance of the child participating in decisions and for the child being provided with information and support necessary to enable participation in those decisions.
 21. Some stakeholders wrote to the Committee suggesting that the clause be amended in order to include an explicit reference to the United Nations Convention on the Rights of the Child (UNCRC) and/or the United Nations Convention on the Rights of Persons with Disability (UNCRPD) as is the case in other jurisdictions. Stakeholders argued that such reference to the former would ensure better overall compliance with the UNCRC and that subsequent General Comments from the United Nations Committee on the Rights of the Child would be usefully taken into account when considering the interpretation of the related duties on the Education Authority.
 22. The Department contended that the clause is already compatible with the European Convention on Human Rights and also has a sufficient level of compliance with the UNCRC/UNCRPD. The Department advised that reported reference to UNCRC in legislation in other jurisdictions related to wider policies not just SEN and that consequently such an amendment would be inappropriate for the SEND Bill. The Department also felt that as wide-ranging debates were currently underway in a number of jurisdictions in respect of the interpretation of the UNCRC, the proposed amendment might lead to confusion, possible unnecessary litigation and an increase in bureaucracy in relation to the rights of children in respect of SEN.
 23. The Committee noted that although the UK government complies with the UNCRC, it is not included in domestic law and is thus not currently directly justiciable in UK courts - that is to say an individual can't currently go to court about a UNCRC breach. This, some stakeholders argued, militated in favour of an explicit reference to the UNCRC in the SEND Bill.
 24. However, the Committee also noted a recent House of Lords report which indicates that the European Court of Human Rights (ECtHR) has begun to take note of the UNCRC in the context of its interpretation of the European Convention

on Human Rights. As the UK Courts are required (by the Human Rights Act 1998) to take account of ECtHR jurisprudence, it was therefore contended that the UNCRC already has a degree of direct effect in the UK's legal system. This, it was suggested, indicated that explicit reference to the UNCRC in legislation like the SEND Bill was unnecessary.

25. Some Members of the Committee supported the inclusion within the Bill of an explicit requirement for the Education Authority to comply with the UNCRC or UNCRPD. They argued that the proposed amendment was a logical inclusion in the SEND Bill and would provide a clear legislative basis on the requirement to have regard to the views of the child. However the majority of Members accepted the Department's assertion that the amendment was unnecessary and might have a significant and undefined impact on the provision of SEN support including unwelcome and potentially lengthy and expensive legal challenges for the Education Authority. These Members also accepted that an additional poorly defined obligation on the Education Authority in this regard might also potentially defeat key purposes of the Bill including enhancing transparency and reducing bureaucracy.
26. Some stakeholders argued that the relevant obligations in Clause 1 could be strengthened by changes to the wording of the Clause designed to: extend the relevant obligations to all schools; limit cases where children are not consulted to exceptional situations; and require an evaluation of the extent to which children's views were sought. Other stakeholders highlighted the need for appropriate information and advocacy support for children in order to facilitate the expression of their views.
27. The Department questioned the effectiveness of the relevant amendments and indicated that even if the proposed changes might be viewed as being effective, they would create a higher expectation that might be difficult to enforce and would place an onerous or bureaucratic duty on schools and the Education Authority. The Department indicated that the wording of the Clause included well understood judicially reviewed phrases which provided a duty (though not an absolute duty) to consider the views of the child and which included an element of certainty for all parties. The Department also assured the Committee that the existing SEN Code of Practice, which is issued to schools, currently refers to the need to support the child in the expression of their views and that a revised version of the Code of Practice would further emphasize this ensuring children are included in review

meetings. The Department contended that there was no evidence that schools do not currently take the views of children into account in SEN matters and that it would consider commissioning the Education and Training Inspectorate to determine the extent to which appropriate information and support is provided to children in this regard.

28. The Committee accepted the Department's assurances in this regard and agreed that it would not bring forward related amendments.
29. Other stakeholders - including some of the teaching unions - expressed concerns in respect of the possibility that undue weight might be given to the views of the child where the child is of an age or level of maturity which is not commensurate with a necessary level of understanding of SEN related matters.
30. The Department indicated that existing guidance in the Code of Practice will be updated in order to more clearly set out how the Education Authority and schools should take into account a child's age, maturity and understanding of the SEN assessment process and that this would be based on the child's capacity; the information provided; the options available and the consequences of a decision. The Department indicated that in developing related regulations it would consult with parents, children and the Education Authority and others before making specific proposals. The Department advised that it would also take account of practices in other jurisdictions and relevant regulations including the Education (Additional Support for Learning) Scotland 2004 regulations.
31. The Committee noted the concerns of the teaching unions and felt that the Department should do more to explain the need for the change in legislation and the consequences for the Education Authority, schools, children with SEN and their parents. The Committee noted draft versions of the relevant regulations and agreed that these, coupled with the Department's consultation plans, provided sufficient assurance in respect of the robustness of the proposed assessment process of the maturity and age of a child whose views are to be sought as part of the SEN decision-making process.
32. The Committee agreed that as a consequence of the assurances set out above, it was content with the Clause as drafted. However, the Committee also agreed that it would review the regulations associated with the Clause and, subject to the Assembly's approval of the regulations, monitor closely the impact of their implementation.

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

33. Clause 2 is described as placing a new duty on the Education Authority to prepare and publish a plan setting out arrangements to be made in relation to SEN provision. The SEN Plan is to include a description of the relevant resources and the advisory and support services to be made available as well as setting out arrangements for relevant training of staff in grant aided schools. The Clause will oblige the Education Authority to review the Plan at least once a year. The Clause indicates that the Plan may be revised following consultation with appropriate bodies or persons.
34. Stakeholders - including the teaching unions, the Northern Ireland Commissioner for Children and Young People (NICCY) and the SEN Advice Centre - suggested that the Clause be amended in order to require the SEN Plan to clearly establish roles, responsibilities and resources and to improve transparency and accountability in respect of the provision of SEN resources for teachers and schools. These stakeholders felt that the SEN Plan should be required to address specific difficulties in provision including inconsistent access for all educational sectors in all parts of Northern Ireland to services e.g. Educational Psychology services. Conradh na Gaelige called for specific references in the Bill which would require the Plan to set out support for the Irish Medium sector. The Equality Commission; Council for the Catholic Maintained Sector (CCMS) and others called for specific references in the Bill which would require the Plan to set out support for voluntary and statutory Early Years settings.
35. The Department confirmed that it was intended that the SEN Plan would set out the whole range of provision that the Education Authority would plan to make for SEN - including equipment; specialist teaching; special schools or learning support centre provision; adult assistance; general assistance for children in the classroom; arrangements for training across the schools sector for SEN matters; and Educational Psychology provision where it related to advice or guidance for schools. The Department advised that it was inappropriate for the Plan to set out roles and responsibilities as these were already established in legislation and were also set out in the SEN Code of Practice. The Department clarified that provision relating to Allied Health Professionals (AHP) - Occupational Therapy; speech therapy habilitation and other services provided through the Public Health Agency will not be included in the SEN Plan. DE indicated that this will be the subject of

protocols between Education and Health and the AHP regional delivery model which are being developed. The Education Authority also advised that it is developing a regional Educational Psychology Service.

36. The Department indicated that the SEN Plan would cover statutory pre-school settings and in future DE-funded non-statutory pre-school provision. DE indicated that it hoped that capacity-building support for the latter would be rolled out during the 2015-16 school year. The Department also advised of ongoing work with the Irish Medium sector including the development of an IME SENCO group and sector specific curricular and assessment aids. DE also referenced recent expenditure and SEN capacity-building in the IME sector.
37. In response to queries from NICCY, the Department clarified that in the unlikely event that the Education Authority fails to produce a SEN Plan, it can compel the Education Authority's compliance through its existing governance and accountability mechanisms and ultimately through the Article 101 power of direction.
38. Committee Members highlighted considerable concerns in respect of poor or limited co-operation between health and education bodies. Although the Committee felt that the SEN Plan was a missed important opportunity to bring together all support provision for SEN including AHP and Educational Psychology services etc., it took the view that a general obligation on health and education bodies to co-operate effectively in respect of SEN provision might better address the concerns of stakeholders. This is discussed further, below.
39. The National Association of Head Teachers (NAHT) suggested that the Bill be amended in order to require the Education Authority to undertake consultations with named organisations or sectors in respect of a revised SEN Plan.
40. The Department advised that it expected regulations associated with consultation on the SEN Plan to refer to parents; children; schools; Boards of Governors and make general reference to the inclusion of education Arms Length Bodies; trade unions; other statutory bodies; and voluntary organizations with an interest in SEN which might extend to the voluntary and community pre-school sector.
41. The Committee accepted the Department's assurances in respect of thorough consultation on the SEN Plan and agreed that it would not bring forward related amendments.

42. The Equality Commission suggested that the clause be amended in order to require the SEN Plan to include the promotion of disability rights and the monitoring of the impact of SEN provision for disabled school children. The Equality Commission also suggested that the Bill should include obligations to provide: disabled pupils with auxiliary aids and services and protections for disabled pupils from harassment and discrimination.
43. The Department indicated that the Code of Practice refers to disabled children with SEN and that the definition of SEN includes children with a disability. Thus it was argued that, as the Code of Practice already generally promotes positive attitudes to disability and as the Department also produces educational materials which support the inclusion of disabled children, it was unnecessary for the Clause or the Bill to be amended as suggested.
44. The Committee expressed its support for improved rights and enhanced protections for disabled pupils in respect of harassment and discrimination. The Committee noted the Department's assurances in respect of the promotion of disabled rights and access for school children. The Committee felt as the SEND Bill is focused purely on SEN support and disability discrimination appeal mechanisms, it was probably not the most appropriate vehicle to enhance support for the wide-ranging promotion of disability rights and positive attitudes towards the disabled. The Committee believed that the Equality Commission's objective might be better served by a separate disabled rights Bill which might also reference UNCRPD.
45. Autism NI suggested that the Clause be amended in order to include arrangements through which parents would have greater control on how the SEN budget for their child might be spent.
46. The Department opposed the suggestion arguing that the SEN statementing process already allows parents to express a view in respect of the provision of SEN services although the cost of provision is not included in the statement.
47. The Committee noted practices in other jurisdictions in respect of flexible SEN funding packages and parental controls. Members felt that it was not appropriate at this time to pursue such an amendment as related practices in other jurisdictions were either of questionable benefit or were under active review.

Proposed New Clause - Statements of Special Educational Needs

48. The SEND Bill makes only limited reference to the current 5-stage process under which children's educational needs are assessed and statements of Special Educational Needs (SEN) are produced.
49. CDSA called for an amendment to the Bill which would require the Education Authority to better quantify and specify the support available to children in SEN statements so as to ensure improved consistency of support for statemented children. CDSA contended that the current legislation permitted the Education Authority too great a degree of discretion in the variation of agreed support and in the timing of its withdrawal as part of the current SEN assessment and review process.
50. During the Committee Stage, the Department advised that other regulations and a revised Code of Practice would be brought forward which would reform the assessment and statementing process - shortening it from 5 to 3 stages and reducing the timescale for statutory assessment from 26 to 20 weeks. DE indicated that the more streamlined approach coupled with strengthened provision in schools, should lead to a reduction in the number of children requiring statutory assessment and being granted SEN statements, as, for the majority of pupils, supports would be available at stages 1 and 2 (the school based stages) without the need for a statement.
51. The Children's Law Centre (CLC) and the Northern Ireland Human Rights Commission (NIHRC), opposed the changes arguing that they amounted to a restriction on the criteria for access and a reduction in the level of support for a significant number of children with SEN. Some stakeholders also suggested that the reduction in the stages of the SEN assessment process should be clearly set out on the face of the SEND Bill.
52. CLC also argued that protections for children at the earlier SEN assessment stages - who lack a formal SEN statement - were considerably less extensive and efficacious than for statemented children. Given DE's planned changes, CLC contended that amendments were required in order to provide additional statutory obligations on schools in the earlier part of the SEN assessment process and provide for new appeal or redress mechanisms for parents.
53. The Department argued that its proposed changes to the statementing process were in line with the plans upon which it had consulted to streamline the SEN

process and reduce bureaucracy. The Department contended that the proposed changes would positively alter the balance of the SEN and Inclusion Framework, reducing the concentration of resources on assessment and targeting provision on early intervention and tailored support for children with SEN. The Department contended that its reforms would, as was the experience in other jurisdictions, improve inclusion while reducing the need for and number of formal statements. The Department also argued that other, new redress avenues were unnecessary as the Bill would provide for new mediation procedures and place new duties on BoGs to advise parents of existing dispute resolution mechanisms in respect of SEN provision.

54. The Committee noted with concern the absence of detail on the Department's plans in respect of the reform of the statementing process. The Committee felt that the Department had not to-date properly communicated or consulted in this specific regard - evidenced by confusion and (possibly an unwarranted degree of) alarm among stakeholders. The Committee noted that the reduction in the number of stages in the SEN assessment process was to be the subject of secondary legislation and a revised Code of Practice. The Committee felt that given the potential for benefits for children in the revised SEN and Inclusion Framework, the Department should be given the opportunity to properly consult and draft the detailed regulations and revised Code of Practice setting out its changes to the SEN assessment process. The Committee therefore agreed that it would not put down amendments in this regard.
55. In the absence of detail on DE's proposed changes to statementing and the consequences for schools, the Committee felt that it would also be inappropriate to bring forward amendments to the Bill placing new statutory obligations on schools in respect of the earlier stages of the SEN assessment process. However, the Committee shared stakeholders' disquiet in respect of statementing changes and agreed that it would review the relevant regulations and revised Code of Practice when available and, subject to their agreement by the Assembly, monitor closely the impact of their implementation.
56. The Committee noted that the Public Services Ombudsperson Bill is expected to bring schools under the remit of the Northern Ireland Public Services Ombudsperson and thus provide a further avenue of appeal for parents. The Committee noted also Departmental information in relation to existing SEN appeals mechanisms in schools and the Dispute Avoidance Resolution Service

(DARS) - the Committee's views on the new mediation service are discussed below. The Committee felt that the existing dispute avoidance and redress mechanisms in respect of SEN provision by schools often prove to be bureaucratic, confusing and unsatisfactory for parents. That said, Members also felt that the application of other, new appeals and redress mechanisms in respect of SEN was unlikely to lead to better provision for children or less bureaucracy for schools or fewer expensive legal challenges for the Department and the Education Authority. The Committee therefore agreed that it would not pursue amendments in this regard.

57. Some witnesses to the Committee Stage also highlighted the critical importance of the SEN Code of Practice in guiding schools' interpretation of their obligations to children with SEN. NIHRC in particular suggested that the Code of Practice should be made subject to Assembly procedure in order to ensure proper scrutiny of its contents.
58. The Committee noted that the changes to the SEN and Inclusion Framework are to be set out in regulations some of which are associated with the SEND Bill. The Committee noted also Departmental assurances that all regulations will be subject to consultation and require the approval of the Assembly. Additionally the Committee noted that existing legislation requires the Department to consult on the content of the Code of Practice. The Committee felt that as the regulations underpinning the Code of Practice will be subject to Assembly scrutiny and approval and as Assembly procedure does not allow for amendment by the Assembly of secondary legislation, there was little to be gained by making the Code of Practice subject to formal Assembly procedure.
59. The Committee agreed that although it felt that new statutory provisions relating to schools' responsibilities in respect of the earlier stages of the revised SEN assessment process, could not be drafted at this time, there was a clear and pressing need for improvements to the existing statementing process. The Committee noted particularly concerns raised in this regard by parents' representatives including Autism NI and Independent Parents of children with Acquired Brain Injury. The Committee therefore agreed to support an amendment to the Bill which would insert a new clause requiring the Education Authority to better specify provision for those children in the latter stages of the assessment process through the SEN statement. The Committee felt that this change would provide some level of improved assurance for parents of statemented children.

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

60. Clause 3 is described as making a number of changes to the existing duties on Boards of Governors (BoGs) of schools in respect of SEN. The Clause requires BoGs to make school personnel, not just teachers, aware of a child's special educational needs. The Clause will also require BoGs to maintain a Personal Learning Plan (rather than a non-statutory Individual Education Plan) for children with SEN. BoGs will also be required to designate a suitably qualified teacher in the school as the Learning Support Co-ordinator. Finally, the Clause will oblige BoGs to make parents and children above compulsory school age aware of dispute resolution mechanisms and to make the Education Authority aware of changes regarding a child in receipt of SEN support.
61. Stakeholders - including the Children's Law Centre, Children with Disabilities Strategic Alliance and the SEN Advice Centre - suggested that the clause be reworded so as to improve the provision of SEN support by extending the existing "best endeavours" obligations on BoGs to teachers and other school personnel.
62. The Department argued that the wording of the clause was in line with other existing legislation and was designed to ensure that SEN provision was compatible with: a child's need; the provision of an efficient education; and the best use of resources.
63. The Committee noted commentary from witnesses which suggested that greater clarity and certainty was needed in respect the provision of SEN support and the responsibility of schools. The Committee therefore agreed to support an amendment to the clause which would require teachers and those likely to be associated with a child's education to "take all reasonable steps" to identify and provide SEN support for a child. Members felt that this amendment was in keeping with the intentions of the Bill to improve transparency and provide clarity for all relevant parties without placing new and insupportable or undefined obligations on schools. The Department agreed to support the amendment.
64. Children with Disabilities Strategic Alliance (CDSA) and the National Association of Schoolmasters and Union of Women Teachers (NASUWT) highlighted some general concerns about the capacity of BoGs to discharge their functions in respect of SEN. Other stakeholders e.g. Blind Children UK and the Association of

Educational Psychologists respectively referred to limited BoGs' awareness of habilitation support for children with visual disability and the importance of strategic advice for schools from educational psychologists. Teaching unions also referred to concerns in respect of the absence of specification of the qualifications for the new Learning Support Co-ordinator role.

65. The Department confirmed that the Bill will not alter the current role of the Educational Psychology Service (EPS) in supporting schools and that advice on how schools should interact with EPS will be included in the revised Code of Practice. The Department also advised that the SEN Plan - see Clause 2 - will specify the SEN services which will be available to schools including educational psychology. Additionally, the Department indicated that training and capacity-building programmes for BoGs were ongoing and that these would address concerns relating to awareness of SEN support services including e.g. habilitation.
66. In respect of the Learning Support Co-ordinators, the Department advised that the Bill would essentially remodel the existing SENCO (SEN Co-ordinator) role in schools recognising that the Learning Support Co-ordinator will be required to take account of multiple non-SEN identities e.g. where children with SEN are also newcomers or Travellers etc.. The Department also advised that regulations would set out the qualifications of the Learning Support Co-ordinators and that these would be the subject of consultation with stakeholders.
67. The Committee noted the Department's assurances in respect of BoG capacity-building; the new role for Learning Support Co-ordinators and planned consultation on their qualifications in mainstream and Special schools. The Committee therefore agreed that it would not bring forward amendments as suggested by stakeholders. However, the Committee recognised the importance of the issues raised and agreed that in order to ensure proper scrutiny of associated secondary legislation, the Assembly procedure associated with the relevant regulation-making powers should be altered from negative to draft affirmative. The Department supported this change.
68. The Association of Educational Psychologists and the Equality Commission suggested that the clause be amended in order to set out a framework for Personal Learning Plans (PLPs) including obligations for regular review and the transfer of information between schools. The teaching unions expressed concerns about an additional associated bureaucratic burden on teachers and confusion in respect of

the monitoring of outcomes associated with PLPs.

69. The Department clarified that PLPs will provide greater focus on outcomes and monitoring than the existing non-statutory Individual Education Plans and that the revised Code of Practice would set out the relevant format and content of PLPs and the timescales for review etc..
70. The Committee noted the Department's explanations and accepted that statutory PLPs would indeed provide greater clarity and certainty for all pupils with SEN. However the Committee expressed some concerns in respect of educational transitions. In particular, Members wished to ensure that important SEN information and identified educational support provision should transfer with a child when they change school. Members therefore felt that the sharing of PLPs between schools in this case was essential and that the necessary provisions should be included in the Bill. Members also noted that where parents felt that schools had wrongly diagnosed an educational need, it was likely that those parents would prefer that the relevant PLP should not transfer with the child. The Committee therefore agreed to support an amendment which would place an obligation on the BoGs of mainstream or special schools to transfer PLPs with a transferring pupil to the BoG of the receiving grant-aided school - subject to the agreement of the parent or, in line with spirit of the SEND Bill, the child where they are above compulsory school age. The Department supported the amendment.
71. The Committee also noted Departmental explanations relating to the transfer of information between schools for statemented children. NICCY had suggested that legislation was required in order to ensure that statements "follow children" rather than being associated with an individual school. The Department clarified that the Code of Practice requires planning and liaison between schools for transferring statemented pupils and that consequently pupils do not have to re-commence the SEN assessment process whenever they change schools. Thus, the Department argued statements do in effect "follow children" and related amendments are unnecessary. The Committee accepted the Department's clarification and agreed that it would not bring forward related amendments.

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

72. Clause 4 is described as amending Article 14 of the 1996 Order to impose 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. This Clause is also described as taking account of revised health and social care organisational arrangements.

73. A wide range of witnesses to the Committee Stage expressed dismay in respect of the poor and unsatisfactory level of co-operation between health and education bodies. Many representative organisations expressed similar views at the Committee's stakeholder event (18 March 2015) on health and education overlaps. Stakeholders argued that current provisions permit Health and Social Care Trusts to sometimes decline to provide support to SEN children, even where this is identified in a SEN statement, owing to resource constraints. It was argued that this allows for significant variation in the level of SEN provision available to children in different parts of Northern Ireland. Respondents to the Committee Stage, including the Committee for Health, Social Services and Public Safety, indicated support for amendments which would place an enhanced duty on health and education to share information, plan jointly and generally co-operate. Autism NI also suggested that a 3rd party organisation was needed in order to oversee the level and effectiveness of co-operation between health and education.
74. The Department of Education and witnesses from the Education Authority and the Health and Social Care Board highlighted extensive examples of successful and ongoing co-operation between both sectors. The Department also argued that further statutory obligations relating to co-operation would be unlikely to lead to improvement as the relevant constraints related to budgets not legislation. The Department indicated that further obligations might entail considerable additional costs with questionable additional benefits for children with SEN.
75. Recognising the level of concerns in schools and the high proportion of delayed SEN statements associated with the provision of information by Health and Social Care Trusts, the Department advised that the Minister might be minded to support more wide-ranging obligations to co-operate although such obligations would of course require the agreement of the Minister for Health, Social Services and Public Safety. The Department indicated that in any event, new protocols were being developed which were designed to enhance co-operation between education and health and that this process was supported by the ongoing review of Allied Health Professionals' services.
76. The Committee noted with considerable concern the views expressed by many

stakeholders during (and prior to) the Committee Stage of the Bill and by the Committee for Health, Social Services and Public Safety in respect of the lacklustre co-operation between health and education bodies. The Committee noted the large number of SEN assessments and statements which are produced outside of statutory timescales as an apparent consequence of poor communication between HSCTs and the Education Authority. The Committee was singularly unimpressed by the evidence from the Department, the Education Authority and the Health and Social Care Board in this regard. The Committee was disappointed by the Department's inability to share draft protocols covering enhanced co-operation and noted the very limited progress to-date in respect of the review of Allied Health Professionals' support for children and young people with SEN. Members felt that ongoing liaison programmes and Departmental assertions of good intentions were in the case of the former, ineffective and in the case of the latter, not credible.

77. The Committee therefore took the view that further new obligations for health and education bodies to co-operate were required. The Committee agreed that variations in SEN provision both geographical and otherwise might be best tackled in the interim by supporting a revised duty on HSCTs to provide services identified in SEN statements. The Committee therefore agreed to support an amendment to the Bill to this effect.
78. The Committee also felt that owing to the limited nature and unsatisfactory level of co-operation between education and health bodies, a more general obligation in that regard was required linked to specific activities including: the sharing of information and integrated planning underpinned by powers to pool budgets as appropriate. The Committee felt that such an obligation was necessary in order to both address long-standing failures by relevant bodies to deliver consistent services for SEN children and to coherently meet the challenge presented by increasing demand for SEN services in schools. The Committee noted the passage of the Children's Services Co-operation Bill and its provisions relating to general joint commissioning and planning in order to support the wellbeing of children. As the scope of the SEND Bill is limited to SEN and disability, the Committee agreed to put down an amendment dealing with education/health co-operation in the provision of SEN services and specifically referencing issues raised in evidence including the requirement to: share information; undertake integrated planning; and share budgets as necessary.

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79. The Committee noted proposals to establish a new oversight body or imbue an existing body with oversight powers in respect of health and education. Members agreed that for the present the establishment of a new quasi-autonomous non-governmental organisation in the health and education sectors could be expensive and potentially ineffective. Members noted Departmental suggestions that extending the duties of an existing body e.g. the Regulation and Quality Improvement Authority (RQIA) might possibly impinge on or duplicate the role of the Northern Ireland Commissioner for Children and Young People (NICCY) and have questionable effect on SEN provision given the former organisation's limited experience of the education sector. The Committee obtained the views of the RQIA and NICCY in this regard. The Committee subsequently agreed to bring forward an amendment which would extend the duties of the RQIA in order to include the assessment of co-operation between education and health in respect of the provision of SEN services. Some Members indicated that they may wish to consider further related amendments in respect of e.g. the time period during which reports might be generated by RQIA.
80. The Committee also agreed that its views on the above and related education/health SEN co-operation amendments may alter subject to further consideration of the implications of the passage of the Children's Services Co-operation Bill.
81. Blind Children UK suggested that the Clause be amended in order to require the Education Authority to seek the assistance of relevant voluntary organisations who provide key support to SEN children including e.g. habilitation services.
82. The Committee noted Departmental clarification that HSCTs already had an obligation to signpost parents of SEN children to relevant voluntary organisations that are likely to provide assistance. DE also advised that the Health and Social Care Board is to undertake a review of sensory rehabilitation services from a user perspective. DE referred to its ongoing engagement with voluntary organisations through the Children and Young People's Strategic Partnerships and assured the Committee that the revised Code of Practice would appropriately signpost parents to voluntary organisations.
83. The Committee noted the relevant Departmental clarifications and assurances and the difficulties in identifying particular non-statutory organisations in legislation. The Committee therefore agreed that it would not bring forward amendments in

this regard.

Clause 5: Assessment of needs: reduction in time limits

84. Clause 5 is described as shortening the period of time from 29 days to not less than 22 days in which the Education Authority can receive written evidence from parents of children of compulsory school age or from children (over compulsory school age) where the Education Authority is considering whether to undertake a statutory assessment. The Clause is also described as allowing the Education Authority to continue with a statutory assessment before the expiration of the 22 days period with the written consent of the parent or the child (where the child is over compulsory school age).
85. Stakeholders including CLC and CDSA supported the principle of reducing timescales for the statementing process but felt that the time periods of those parts of the process which were the responsibility of the statutory education/health bodies should be subject to compression in the first instance. The Irish National Teachers Organisation (INTO) argued that reducing the timescales for the provision of evidence by parents was unfair, as those dealing with children with complex needs would struggle to obtain expert advice or secure the release of teachers for review meetings in a 22 day period. The Southern Health and Social Care Trust also highlighted confusion among parents, who the Committee was told, wrongly believed that they were responsible for obtaining medical information from HSCTs in support of a statutory SEN assessment.
86. The Department clarified that the proposed changes were designed to reduce delays in the statementing process by allowing the Education Authority to proceed, subject to parental consent, before the 22 day period expires. DE indicated that 4 of the 5 Education and Library Boards had advised that 70% of parents provided evidence within the 22 day period but that present arrangements prevented further progress until the 29 day period expires. Thus it was argued, the proposed changes would have some marginal positive impact on the timescales for a relatively large number of SEN statements. DE advised that the Clause would complement changes in other secondary legislation which would reduce overall timeframes for the issuing of statements from 26 to 20 weeks.
87. The Department indicated that where parents - in complex or other cases - fail to provide information within the shortened time period, the statementing process will

continue as normal when the information is provided. DE advised that in this instance if the statement is subsequently issued outside of normal overall timescales, it would be viewed as a “valid exception” and reported as such in published statistics.

88. The Department also clarified that it is the Education Authority - not parents - who will seek health information from HSCTs in respect of a statutory assessment of SEN and assured the Committee that greater clarity will be provided for parents and children (over compulsory school age) in this regard in the revised Code of Practice.
89. Members made reference to the excessive number of statements which are currently issued outside of statutory timeframes and the large number of “valid exceptions”. Members expressed concerns that the proposed changes would do nothing to address the current level of “valid exceptions” and could even be used by the Department to obscure poor performance by the Education Authority in respect of the processing of SEN statements.
90. The Committee noted draft versions of DE regulations relating to the compression of timescales in respect of SEN statements and accepted that the intention of the Clause - to contribute to the overall reduction in statementing timeframes from 26 to 20 weeks - was as indicated by the Department. The Committee accepted Departmental assurances that regulations would be brought forward to compress timescales for statutory bodies in respect of statementing and that this compression would greatly exceed that to be applied to parental engagement with the process. The Committee noted also the Departmental assurance that where parents fail to comply with the reduced 22 day timescale, there would be no adverse impact on the issuing of a statement and provision of a SEN support. Consequently, the Committee agreed that it would not put down amendments to Clause 5.

Appeals

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

91. This Clause is described as introducing a new right of appeal to the Special Educational Needs and Disability Tribunal (SENDIST) for parents and children over compulsory school age where the Education Authority elects to not make a change to a statement following an annual review. The Clause requires the

Education Authority to provide both a copy of the advice on which its decision was based and information on the right of appeal to SENDIST.

92. NICCY expressed concerns in respect of the importance and format of information to potential appellants in order to ensure that they are able to understand and exercise their appeal rights.
93. Members agreed that appeals can be both confusing and daunting for parents and children (over compulsory school age) to undertake. The Committee therefore felt that the provision of suitable, useful information for potential appellants was essential. The Committee accepted Departmental assurances that regulations will ensure that the Education Authority will be obliged to advise potential appellants of their rights to an appeal and explain how those rights can be exercised. The Committee therefore agreed that it would not bring forward related amendments to the Clause.

Clause 7: Child under 2: appeals against the contents of statement or failure to make a statement

94. Clause 7 is described as providing a new right of appeal to SENDIST for the parents of SEN children under age 2 in respect of a decision by the Education Authority not to issue a statement or in respect of the description in a statement of a child's SEN and the provision specified in the statement.
95. As with Clause 6, stakeholders highlighted the importance of the provision of relevant and understandable information to appellants. CCMS referred to the importance of the serving of notices by the Education Authority in a timely manner in order to ensure the appropriate exercise by appellants of their appeal rights.
96. The Committee agreed to put down an amendment in order to strengthen the obligations in the relevant regulation-making powers in respect of the serving of notices relating to appeals in this regard. The Department supported the amendment.

Clause 8: Mediation in connection with appeals

97. This Clause requires the Education Authority to provide a mediation service for those planning to appeal to SENDIST and requires the Education Authority to

participate in mediation if requested. The Clause specifies that the mediator must be independent and thus not be an employee of the Education Authority and requires potential SENDIST appellants to receive information on mediation and to obtain a mediation certificate in order to progress their appeal. The Clause includes regulation-making powers which will specify aspects of the mediation service.

98. This Clause generated considerable anxiety and commentary among respondents to the Committee's call for evidence. In the absence of adequate explanation from the Department, most stakeholders simply sought clarity in respect of: the mandatory aspects of the mediation process; the impact on the SENDIST timescales and procedures; the independence of the mediators and mediation advisors; and the provision of guidance to potential appellants.
99. The Department provided information to the Committee on existing complaints mechanisms for parents beginning with the school principal and including the Boards of Governors of schools and the Education Authority. DE clarified that the new mediation process would be independent of and complementary to the existing complaints procedure including the Dispute Avoidance and Resolution Service. DE confirmed that appellants would be obliged only to contact the mediation advisor and if they elected to not pursue mediation need only obtain a certificate to that effect - this, DE envisaged as having a turnaround time of a few working days. DE indicated that the decision to either undertake mediation or not undertake mediation would have no impact on the timing of a SENDIST hearing. Furthermore, any outcome from mediation (or decisions to not undertake mediation) would remain confidential and could not be used to influence the deliberations or outcomes from SENDIST hearings.
100. DE also indicated that, unlike SENDIST which only meets in Belfast, it expects mediation services to be delivered in locations throughout Northern Ireland. DE advised that regulations would prescribe advocacy and other support for those undertaking mediation though it was not envisaged that those undertaking mediation would have legal representation. DE indicated that although there will be no costs to appellants in respect of the mediation process, appellants will be obliged to meet their own travelling and other expenses in respect of participation in mediation meetings. DE advised that the mediation service would be procured by the Education Authority who will ensure that mediators are appropriately independent and suitably qualified and that it expected the efficacy of the services

to be reviewed periodically.

101. DE indicated that mediation would not be available to those disputing the name and type of school in a SEN statement. DE contended that as the SEN assessment process allows for considerable informal engagement by parents with statutory bodies and schools and as this aspect of the statement could be the subject of an appeal to SENDIST, an option to review such decisions through mediation would be unnecessary.
102. Members noted the Department's explanations and draft regulations in respect of the new mediation service and generally accepted the principle that mediation may indeed lead to a reduction in unnecessary appeals to SENDIST. The Committee noted particularly Departmental assurances that participation or non-participation in mediation represented no additional costs to appellants and would have no impact on SENDIST timescales or deliberations. Given therefore that the Clause may serve to help streamline the SEN assessment and statementing process without undermining the rights of parents or children, and despite the Department's failure to properly explain this to stakeholders, the Committee agreed that it would not put down amendments to the Clause.

Proposed New Clause - SENDIST

103. As part of its deliberations on SEN appeals and mediation, the Committee noted a suggestion from NICCY that an amendment was required to the SEND Bill in order to ensure that children always have the opportunity to give oral or written evidence to SENDIST hearings.
104. The Department advised that SENDIST procedures currently permit the president of the Tribunal to summon underage persons to give oral evidence at a hearing concerned with their SEN provision. However the Department was initially unable to assure the Committee that children (above or below compulsory school age) would always have the right to present evidence to SENDIST.
105. The Committee felt that given the Department's avowed intention of complying with the UNCRC principles including ordinarily seeking the views of children and involving them in decision-making, it was surprising that provisions relating to the right of a child to speak (or present written evidence) to SENDIST had been omitted from the Bill.

106. The Committee noted that Clause 1 would probably require the Education Authority to seek the views of children in respect of mediation processes. Consequently, the Committee decided that additional explicit amendments in this regard were unnecessary.
107. The Committee initially adopted a proposed amendment which would apply only to the provision of oral and written evidence to SENDIST. The Committee felt that as the proposed amendment did not apply to the decision-making processes of the Tribunal, it was unnecessary to include explicit provisions in respect of the assessment of the maturity and ability of the child to appreciate fully the nature of SENDIST proceedings.
108. The Department advised that although the Minister for Education supported the principle of the active inclusion of children in SENDIST proceedings, the Minister of Justice had indicated that the Committee's proposed amendment had "the potential to create significant precedent for all legal proceedings in which a child has an interest". The Department indicated that the Minister of Justice had also provided assurance to the Committee that the Tribunal had never refused to consider oral or written evidence from children.
109. The Committee accepted the assurances and advice from the Minister of Justice relating to the consideration of oral or written evidence from children by SENDIST and consequently agreed to formally rescind its decision to put down a related amendment.
110. The Equality Commission and other stakeholders proposed other changes to the Bill in respect of the role and practices of SENDIST. In particular, the Equality Commission argued that SENDIST should be allowed to pay compensation to successful claimants in respect of disability discrimination or harassment claims. Other stakeholders argued that legal aid - currently available only for preparation for SENDIST hearings - should be available to cover costs of representation at SENDIST hearings. The Equality Commission also suggested that the findings of SENDIST hearings should be published in order to better inform potential claimants or appellants. The Equality Commission and CLC also highlighted concerns in respect of disabled access to SENDIST hearings.
111. The Department advised that the provision of compensation payments by SENDIST had not been consulted upon or costed. The Department argued that such a change would be a departure for SENDIST and of questionable benefit to

the SEN and Inclusion Framework as compensation costs would in all probability be met from the SEN budget.

112. The Department also indicated that the extension of legal aid support to cover representation at SENDIST hearings had not been consulted upon or costed and was in any event a matter for the Department of Justice.
113. In respect of the findings of SENDIST hearings, the Department advised that it had no objection in principle to their publication providing appropriate protections were in place regarding the privacy and identity of appellants/claimants etc..
114. As for access to SENDIST hearings, DE indicated that this was outside its control and a matter for the Department of Justice.
115. The Committee noted the Department's explanations and agreed that it would not put down related amendments.

Rights of child over compulsory school age

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

116. This Clause is described as transferring from parents to children (over compulsory school age) rights in respect of: statutory SEN assessment requests and appeals to SENDIST regarding relevant Education Authority decisions. The Clause also includes regulation-making powers relating to: the assessment of the capacity of a child (over compulsory school age) to exercise their rights and the retention by parents of rights where a child lacks the necessary capacity.
117. NASUWT expressed some concerns in respect of the Clause and argued that the provision should only be brought into effect if adequate support and advice was provided for children in order to help them exercise their new rights. The Voice of Young People in Care (VOYPIC), IPABI and Autism NI sought clarity as to how children would be supported in the exercise of these rights suggesting that e.g. experienced SEN advocacy help should be always made available in these cases.
118. Stakeholders commented at length seeking clarity as to how the Education Authority was to establish the capacity of children to exercise their rights. Other stakeholders including CLC and CCMS suggested that the Bill should explicitly allow children (over compulsory school age) to forgo the transfer of their rights, if

they wished, in favour of their parents.

119. The Controlled Schools Support Council; the Association of Educational Psychologists; NICCY and IPABI argued that the rights of children (over compulsory school age) for SEN support effectively cease when they reach age 19. These organisations highlighted concerns about the lack of continuity in respect of SEN provision during educational transitions and contended that SEN measures including statements should be extended beyond age 19 in order to ensure that young people attending Further and Higher Education continue to be adequately supported.
120. The Department clarified that in all cases where a child over compulsory school age has the necessary capacity, rights in respect of special education will transfer to the child - the parent will have no residual rights. DE indicated that regulations - which are to be consulted upon - will set out the assistance and support that children (over compulsory school age) can expect to receive in these cases. The Department also indicated that regulations will permit the child, who so chooses, to have their parent support them in the exercise of their rights.
121. In respect of the measures to be used by the Education Authority in order to determine the capacity of a child (over compulsory school age), DE indicated that it would bring forward regulations based on: UNCRC General Comment 12 which sets out relevant criteria; the experiences in other jurisdictions; and feedback from a wide-ranging consultation. DE further advised that the assessment of capacity would be dependent on: the child's maturity and development at the relevant point in time; the child's ability to understand the information provided; the SEN support options at issue; and the consequences of the relevant decisions.
122. In respect of the extension of SEN support beyond age 19, the Department argued that its remit included school age children only and that consequently it was generally unable to bring forward legislation affecting children and young people who were no longer at school. The Department indicated that the Minister for Education had previously explored these matters with the Minister for Employment and Learning who had indicated that Further and Higher Education providers had advised that their SEN provision was at least as good as that provided by schools and the Education Authority. It was therefore argued that amendments to the Bill in this regard were not required.
123. The Committee noted that the Clause may provide some benefit to Looked After

Children or other children where those charged with parental responsibility fail to represent the best interests of the child. That said, the Committee expressed disquiet regarding the general principle of removing parents' rights in respect of SEN provision for children, even when the children are over compulsory school age. The Committee considered amendments which would include on the face of the Bill the requirement for the Education Authority to ensure that the child had the necessary capacity to understand and exercise their rights, prior to the transfer of those rights from parent to child. The Committee also considered setting out on the face of the Bill, the criteria regarding the assessment of capacity. Additionally, the Committee considered amendments which would require the Education Authority to consult with a parent before a child (over compulsory school age) was permitted to forgo any aspect of SEN provision.

124. As above, the Committee accepted the Department's assurances that the Education Authority would ensure that children exercising their rights under the Clause had the necessary capacity and understanding in respect of their choices. The Committee noted the Department's assurances that the Bill already provided for protections for children who lacked the necessary capacity and that regulations would properly specify the methods and criteria which would be used to assess a child's capacity. While accepting the above, the Committee felt nonetheless that the Clause should be amended in order to strengthen the obligations on the Department in respect of the relevant regulation-making powers.
125. The Committee also noted that DE had advised of DEL assurances in respect of the good quality of SEN provision for children and young people attending Further or Higher Education. The Committee therefore agreed that it would not bring forward amendments to the Clause relating to the extension of statements beyond age 19.

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

126. This Clause is described as transferring from parents to children (over compulsory school age) rights in respect of making a claim to SENDIST relating to disability discrimination. The Clause also includes regulation-making powers regarding the provision of support for children making disability discrimination claims to the Tribunal.

127. There was limited stakeholder commentary on this Clause.
128. The Committee noted that as with Clause 9, regulations will be brought forward regarding the determination of a child's capacity in this case to exercise their disability discrimination rights. The Committee therefore agreed that it was content with the Clause as drafted.

Appeals and claims by children

Clause 11: Appeals and claims by children: pilot scheme

129. This Clause is described as providing regulation-making powers relating to a pilot scheme to enable children below the upper limit of compulsory school age to make a SEN appeal or disability discrimination claim to SENDIST. The Clause provides that the scheme will be in place within 10 years of Royal Assent with the pilot operating for at least 2 years.
130. Some stakeholders - including NASUWT - argued that the Clause should be removed or amended and the pilot scheme withdrawn. NASUWT expressed concerns that children may make appeals under the pilot scheme in respect of SEN or disability which are at odds with their best interests - as determined by their parents. NASUWT felt that there was a real danger of younger children, lacking the necessary capacity and understanding, undertaking appeals and consequently undermining the provision of necessary SEND support.
131. Other stakeholders - including NICCY, NIHRC and Autism NI - supported the Clause but argued that obligations should be added to the face of the Bill in order to compel the Department to: undertake the pilot in a timely manner; provide supporting information to potential claimants/appellants; and comply with the UNCRC. NICCY suggested that the Clause be amended in order to compel the Department to curtail the pilot and roll-out permanent arrangements allowing younger children to access SENDIST.
132. Additionally NICCY indicated support in principle for additional provisions which would recognise children over the age of 11 as ordinarily having the necessary mental capacity to undertake SENDIST appeals/claims. NIHRC also commented on the importance of considering a child's ability to understand, rather than simply their level of maturity, in determining their capacity to initiate and participate in SENDIST proceedings.

133. The Department indicated that the pilot scheme was being undertaken in order to enhance compliance with UNCRC principles relating to the involvement of children in decision-making. DE argued that Tribunal would have the competence to consider the consequences of an appeal or claim which may be at odds with a child's best interest and issue its determination accordingly. DE advised that although similar pilot schemes had been undertaken in at least 1 other jurisdiction, uptake had been small and consequently lessons learned had been limited. The Department had therefore included in the Bill a lengthy period during which it would consult widely and devise regulations relating to the pilot scheme and the assessment of a child's capacity for participation. The Department also advised that Clause 12 allows that following the completion of the pilot, permanent arrangements can be automatically rolled-out under regulations without the need for further primary legislation.
134. The Committee noted that a similar pilot scheme had been operated in 2 small local authority areas in Wales - participation had been limited to 1 child who declined to contribute to the relevant evaluation report. The Committee also noted that the relevant evaluation report highlighted that there was a relatively large number of similar schemes in other jurisdictions but that very little information had been published either in respect of the effectiveness of the schemes or how disputes between child appellants/claimants and parents had been resolved. The Committee noted also that unlike the proposed Northern Ireland scheme, the Welsh pilot scheme did not include a lower age limit for participants.
135. In the absence of either an evaluation of the benefits of similar pilot schemes in other jurisdictions or information as to how problems, such as related disputes with parents, might be avoided or resolved, Members expressed some doubts as to the value of the pilot scheme or the wisdom of including the provisions in the Bill at this time. The Committee noted however the Department's assurance that related regulation-making powers were in keeping with UNCRC principles, would provide clarity on restrictions on participation with the pilot scheme and would in any event be subject to approval by the Assembly. The Committee therefore agreed that it would not bring forward amendments to the Clause.

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

136. This Clause provides further regulation-making powers relating to children below

the upper limit of compulsory school age making a SEN appeal or disability discrimination claim to SENDIST. Following the conclusion of the pilot scheme identified in Clause 11, this Clause includes regulation-making powers which will roll-out permanent arrangements in this regard.

137. As indicated above, Members were concerned about the value of and need for the provisions included in this section of the Bill. Members felt that in the event of an unsuccessful pilot scheme, the associated draft affirmative Assembly procedures would afford the Committee an opportunity to oppose the regulations if Members believed this would prevent a disbenefit for child claimants/appellants.

Interpretation

Clause 13 Definition of a “child” for the purposes of special education

138. This Clause makes provision to allow a child with a SEN statement who reaches age 19 during a school year to remain at school until the end of the school year subject to the Education Authority maintaining the statement.
139. Stakeholders - including NICCY - generally welcomed the Clause but suggested that amendments might be required in order to ensure adequate support for children undertaking educational transitions particularly between school and Further and Higher Education.
140. The Department indicated that legislation makes provision for the preparation of transition plans for young persons with SEN statements over age 14. DE advised that there is already “a well embedded statutory transition planning process in our schools. A Transition Service exists in each Education Authority region, supported by Education Transition Coordinators.” DE advised that the Co-ordinators’ role includes co-operation with the Department of Employment and Learning and the Department of Health, Social Services and Public Safety. DE also advised that wider linkages including e.g. the Department for Social Development etc. are planned as is work with the Education Authority and other partners to revise the Code of Practice and strengthen transition practices.
141. The Committee noted the Department’s assurances and agreed that it was content with the Clause as drafted.

Clause 14: Interpretation of this Bill

142. This Clause is described as including interpretations of terminology relevant to the Bill.
143. In response to Committee queries, the Department provided assurances that the interpretation of the term “parent” used in the Bill would include individuals with varying familial connections e.g. grandparents etc. who also had parental responsibility for a child.
144. The Committee noted the above and agreed that it was content with the Clause as drafted.

Proposed New Clause - Regulation-making Powers

145. As indicated above in respect of Clause 3, the Committee considered stakeholders’ concerns regarding the additional SEN obligations on Boards of Governors and the absence of specification of the qualifications for the new Learning Support Co-ordinator role. The Committee noted the Department’s assurances in respect of BoG capacity-building; the new role for Learning Support Co-ordinators and planned consultation on their qualifications in mainstream and Special schools. However recognising the importance of the issues raised, the Committee agreed that in order to ensure proper scrutiny of associated secondary legislation, the Assembly procedure associated with the relevant regulation-making powers should be altered from negative to draft affirmative.
146. The Committee agreed to propose that a new clause be inserted in order to give effect to the above. The Department supported the insertion of the new clause.

Supplementary**Clause 15: Commencement, transitional provisions etc.**

147. This Clause contains provisions for the commencement of the legislation in the Bill.
148. Some stakeholders - CCMS, CSSC, NASUWT and NICCY - expressed concern at the level of discretion which the Clause affords the Department in the commencement of provisions.

149. The Department advised that as it was to undertake wide-ranging consultations which would inform the drafting of regulations and the revised Code of Practice, a higher level of discretion in respect of commencement than usual was required in order to allow the Department to bring the above into effect in a logical sequence.

Clause 16: Short title

150. This Clause contains the short title of the Act - Special Educational Needs and Disability Act (Northern Ireland) 2015.
151. The Committee was content with the Clause as drafted.

Schedule

152. The Schedule includes provisions relating to the transfer of rights from a parent to a child over compulsory school age in respect of SEN assessments and appeals.
153. Subject to its commentary in respect of Clauses 9 and 10, the Committee was content with the Schedule as drafted.

Long Title of the Bill

154. The Long Title of the Bill was given as: "A Bill to amend the law relating to special education and disability discrimination in schools."
155. The Committee was content with the Long Title of the Bill, as drafted.

Clause by Clause Consideration of the Bill

156. This section gives the decisions on the Committee’s scrutiny of the clauses and schedule of the SEND Bill. Members and other readers of this report may wish to refer to the previous section so as gain a full understanding of the Committee’s consideration and deliberations on the individual clauses and schedule, alongside the decisions set out below.

Proposed New Clause

157. The Committee agreed that it would not recommend to the Assembly that a new “purposes” clause be inserted which would require the functions conferred by the SEND Bill to be exercised in conformity with high-level principles including the promotion of efficiency, early intervention and inclusion etc.

The Committee divided.

Ayes	Noes	Abstained	Not voting
Trevor Lunn Seán Rogers	Jonathan Craig Chris Hazzard Nelson McCausland Robin Newton Peter Weir		Sandra Overend

Clause 1 Duty of Authority to have regard to the views of the child

158. The Committee agreed that it was content with Clause 1, as drafted.

Clause 2 Duty of Authority to publish plans relating to its arrangements for special educational provision

159. The Committee agreed that it would recommend to the Assembly that the Clause be amended in line with the Department’s proposal that the wording of the regulation-making power at 2(7) be altered, replacing “Regulations may” with “Regulations shall.”

160. The Committee agreed that it was content with Clause 2, subject to the Department’s proposed amendment.

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

161. The Committee agreed that it would recommend to the Assembly that the Clause be amended in line with the Department's suggestion that the wording "take reasonable steps to identify and provide" be replaced with "take all reasonable steps to identify and provide" in respect of SEN support for children.
162. The Committee further agreed that it would recommend to the Assembly that the Clause be amended in line with the Department's proposal, as indicated below, placing a duty on BoGs of grant-aided schools to forward Personal Learning Plans to the receiving grant-aided school (with parental consent or the consent of the child where they are above compulsory school age) when children change schools.

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).".'

163. The Committee also agreed that it would not recommend to the Assembly that the Clause be amended so as to revise the wording of the regulation-making powers at (3)(2A) and 3(4)(8ZA)(2) replacing in both cases "Regulations may" with "Regulations shall".
164. The Committee agreed that it was content with Clause 3, subject to the proposed amendments.

Proposed New Clause 3A

165. The Committee agreed that it would recommend to the Assembly that a new Clause be inserted, as indicated below, which would place a general duty on health and education bodies to co-operate in the provision of SEN support including the sharing of information and the development of integrated plans

After Clause 3, insert—

- 'Co-operation to identify, assess, and provide services to, children with special educational needs
- 3A. Before Article 13 of the 1996 Order insert—
- "Co-operation to identify, assess, and provide services to, children with special educational needs
- 12A. (1) The board and the health and social services authorities ("the relevant bodies") shall co-operate with one other to identify, assess, and provide services to, children with special educational needs.
- (2) The relevant bodies shall share information with one another on request.
- (3) But information about a child may only be shared with the permission of that child, if the child is over compulsory school age, or the parent of the child in any other case.
- (4) The relevant bodies must co-operate to prepare a joint and integrated plan for exercising their functions in accordance with this Article.
- (5) The relevant bodies may pool budgets and share resources for the purposes of exercising their functions in accordance with this Article.
- (6) In this Article, "health and social services authorities" comprises—

- (a) the Regional Board for Health and Social Care; and
- (b) the health and social care trusts established under Article 10 of the Health and Personal Social Services (Northern Ireland) Order 1991.”

166. The Committee also agreed that it would recommend to the Assembly that the new Clause 3A be amended as indicated below in order to extend the duties of the RQIA to include oversight and reporting on co-operation between education and health.

Insert at the end of new Clause 3A -

“(7) The Health and Social Care Regulation and Quality Improvement Authority (RQIA) established under Article 3 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 (NI 9) must, at intervals of not more than 2 years, conduct a review, and publish a report, on how the relevant bodies have co-operated with one another under this Article. “

167. The Committee agreed that its views on all of the provisions in Clause 3A may alter subject to further consideration of the implications of the passage of the Children’s Services Co-operation Bill.

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

168. The Committee agreed to recommend to the Assembly that the Clause be amended as indicated below in order to place a duty on Health and Social Care Trusts to provide services identified in a SEN statement.

Clause 4, page 3, line 33

At end insert–

‘(2A) After paragraph (4), insert–

“(4A) If, in helping a board in the making of an assessment under Article 15, the health and social services authority identifies any therapeutic or other treatment, or service, likely to be beneficial to the child, the health and social services authority shall provide that treatment or service to the child.”

169. The Committee agreed that it was content with Clause 4, subject to the proposed amendment.

Clause 5 Assessment of needs: reduction of time limits

170. The Committee agreed that it was content with Clause 5, as drafted.

Proposed New Clause 5A

171. The Committee agreed that it would recommend to the Assembly that a new Clause be inserted, as indicated below, which would require the Education Authority to provide detailed specification of services in SEN statements.

After Clause 5, insert–

‘Nature and extent of special educational provision

5A. In Article 16 of the 1996 Order (statement of special educational needs) in paragraph (3)(b), after “specify” insert “the nature and extent of”.

Clause 6 Appeal following decision not to amend statement following review

172. The Committee agreed that it was content with Clause 6, as drafted.

Clause 7 Child under 2: appeals against contents of statement or failure to make statement

173. The Committee agreed that it would recommend to the Assembly that the Clause be amended in line with the Department’s proposal to revise the wording of the regulation-making power at 7(2)(10) replacing “Regulations may” with “Regulations shall”.

174. The Committee agreed that it was content with Clause 7, subject to the Department’s proposed amendment.

Clause 8 Mediation in connection with appeals

175. The Committee agreed that it would not recommend to the Assembly that the Clause be amended in line with the proposal to revise the wording of the regulation-making power at 8(7) replacing “Regulations may” with “Regulations shall”.

176. The Committee agreed that it was content with Clause 8, as drafted.

Proposed New Clause 8A

177. The Committee agreed that it would not recommend to the Assembly that a new Clause be inserted which would ensure children have the right to present written or oral evidence to SENDIST hearings.

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

178. The Committee agreed that it would not recommend to the Assembly a proposed amendment to Clause 9(4)(b) which would include explicit reference to the retention of rights by parents where a child lacks capacity and which would also ensure that in all cases, a parent be consulted before SEN services are not taken up by a child.
179. The Committee agreed that it would not recommend to the Assembly a proposed amendment to the Clause which would include explicit reference to the criteria in respect of the assessment of a child's capacity to exercise its right.
180. The Committee agreed that it would recommend to the Assembly that the Clause be amended in line with the Department's proposal to revise the wording of the regulation-making powers at 9(2) and 9(3) by replacing in both cases "Regulations may" with "Regulations shall".
181. The Committee agreed that it was content with Clause 9, subject to the Department's proposed amendments.

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

182. The Committee agreed that it would not recommend to the Assembly a proposed amendment to the Clause revising the wording of the regulation-making power at 10(2) by replacing "Regulations may" with "Regulations shall".
183. The Committee agreed that it was content with Clause 10, as drafted.

Clause 11 Appeals and claims by children: pilot scheme

184. The Committee agreed that it would not recommend to the Assembly that the Clause be amended so as to revise the wording of the regulation-making powers at 11(1) and 11(3) by replacing in both cases "Regulations may" with "Regulations shall".
185. The Committee agreed that it was content with Clause 11, as drafted.

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

186. The Committee agreed that it was content with Clause 12, as drafted.

Clause 13 Definition of “child” for the purposes of special education

187. The Committee agreed that it was content with Clause 13, as drafted.

Clause 14 Interpretation of this Bill

188. The Committee agreed that it was content with Clause 14, as drafted.

Proposed New Clause 14A

189. The Committee agreed that it would recommend to the Assembly that a new Clause be inserted in line with the Department’s proposal, as indicated below, which would change the Assembly procedure for the regulation-making powers at Clause 3(3) and 3(4) from negative to draft affirmative.

Before Clause 15, 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 8ZA 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.”’

Clause 15 Commencement, transitional provisions, etc

190. The Committee agreed that it was content with Clause 15, as drafted.

Clause 16 Short title

191. The Committee agreed that it was content with Clause 16, as drafted.

Schedule

192. The Committee agreed that it was content with the Schedule 15, as drafted.

Long Title

193. The Committee agreed that it was content with the Long Title of Bill, as drafted.

Links to Appendices

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