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FROM: [REDACTED]
DATE: 23 APRIL 2026
TO: KATHY O'HANLON
CLERK TO THE COMMITTEE FOR JUSTICE

**SL1 – THE SPECIAL EDUCATIONAL NEEDS AND DISABILITY TRIBUNAL
(AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2026**

Summary

Business Area: Civil Justice & Judicial Policy Division.

Issue: SL1 – The Special Educational Needs and Disability Tribunal (Amendment) Regulations (Northern Ireland) 2026 and the summary of responses to the consultation on the draft Regulations.

Restrictions: None.

Action Required: The Department invites the Committee to consider the summary of responses to the consultation on the draft Regulations and to note the intention to make these Regulations, welcoming any views which the Committee may have.

Officials Attending: N/A – This is a written briefing.

The Department of Justice proposes to make a Statutory Rule under powers conferred by Articles 22(3), 23(1), (2) and (4A), and 28(2) of the Education (Northern Ireland) Order 1996 and Articles 23(1), (2), (3) and (6) and 49(4) of the Special Educational Needs and Disability (Northern Ireland) Order 2005. The Department of Justice has consulted organisations and representatives of persons as appear to it likely to be affected by the Regulations. The statutory rule is subject to negative resolution procedure.

Purpose of the Statutory Rule

The Special Educational Needs and Disability Act (Northern Ireland) 2016 (the SEND Act) received Royal Assent in March 2016. The SEND Act introduces important changes to the Education (Northern Ireland) Order 1996 (the 1996 Order) and the Special Educational Needs and Disability (Northern Ireland) Order 2005 (the 2005 Order) which contain the legislative provisions relating to special educational needs (SEN). In order for the SEND Act to operate fully upon commencement, the Department of Education needs to put in place new Regulations to amend the Education (Special Educational Needs) Regulations (Northern Ireland) 2005. Consultation on these new Regulations has been completed and the Department of Education (DE) is currently taking these Regulations through the legislative process.

The Special Educational Needs and Disability Tribunal (SENDIST) is a tribunal which currently considers parents' appeals against the decisions of the Education Authority (EA) about children's special educational needs, where agreement cannot be reached between parents and the EA. It also deals with claims of disability discrimination in relation to children at school.

Each case is heard by a panel of three people. The chairman will be a lawyer and the other two members will have experience of SEN and/or public administration. The Tribunal members decide the case on the basis of the law and the documents before them, as well as taking into consideration any oral evidence given at the appeal hearing.

Until now, only parents held rights of appeal and these were limited to instances where:

- following a request the EA decides not to assess formally the child's SEN or where it carries out the assessment but then decides not to make a statement on the child;
- the EA does make a statement, or amends an existing statement, an appeal may be made concerning the educational contents of the statement;
- the EA decides that the child should no longer have a statement, or decides not to amend a statement after carrying out a re-assessment of the child's needs; or
- the EA decides not to re-assess the child, or turns down a request to have the child placed in a different school.

The SEND Act makes a number of important changes to the law relating to special educational needs which will affect the procedure of SENDIST. It requires all parties to be advised about a new mediation service (which may help resolve issues without the need to take their case to the tribunal). It also introduces new rights of appeal for children over compulsory school age to apply to SENDIST to have it review decisions made by the EA and, in doing so, establishes the procedure to be followed in situations where the question of the capacity of such a child is raised during the proceedings. The SEND Act also creates new appeal rights, allowing an appeal to SENDIST against a decision of the EA *not* to amend a statement of special educational needs and to allow certain appeals in relation to decisions about statements made in relation to children under the age of two.

Previous Engagement with the Committee

The Department forwarded a draft consultation paper on the proposed Statutory Rule to the Committee on 9th September 2021. The Department has not been able to take forward this proposed Statutory Rule until the Department of Education (DE) has been able to progress its own Regulations to support the SEND Act.

Financial Implications

The introduction of new appeal rights to the SENDIST is likely to give rise to an additional burden on the tribunal, although DE has indicated that any additional cost is likely to be

small, given the small number of children likely to appeal to the tribunal and the probability that the introduction of mediation will result in a decrease in appeals generally. However, figures recently provided by the Education Authority suggest that the new yearly appeal right has potential to significantly impact on the numbers of cases coming before SENDIST and, therefore, affect costs and the Department continues to work with officials in DE and the Education Authority to understand that impact.

Consultation

The draft Special Educational Needs and Disability Tribunal (Amendment) Regulations (Northern Ireland) were subject to a targeted consultation which was launched on 13th September 2021. This ran for 8 weeks until 5th November 2021.

Respondents broadly agreed with the changes proposed by the draft Regulations. A copy of the summary of responses to the consultation is attached for the attention of the Committee.

While there were a number of concerns raised by consultees, these were for DE to consider and the Department of Justice has flagged these matters to that department.

10. In relation to the provision of mediation, these concerns include:

- the importance of making applicants aware that the mediation is between them and the Education Authority (EA) and not the school.
- the unfairness inherent in a system that makes the provision for delivery of a Notice of Appeal in SENDIST cases within a two-month time limit contingent upon the issue of a mediation certificate.
- concerns about what happens in cases where the mediation provisions are not applicable and can therefore not have a time limit that is contingent upon issue of a mediation certificate or the ending of a mediation process.
- suggestions that the Regulations be amended in such a way that a mediation process is enabled to run alongside the SENDIST process without delaying or

obstructing access to appeal rights, whilst also allowing for mediation to occur at the earliest possible juncture for those who wish to avail of it.

- how the mediation process is to be funded, who this mediator is, what criteria the role needs to meet, what the parameters are around the mediator, and the workload implications for all involved in the tribunal process.
- the need for qualified independent mediators.

In relation to the capacity of the child, various concerns were raised by consultees:

- whether the EA can make such a determination unilaterally that a child over compulsory school age lacks capacity.
- which professionals will be carrying out capacity assessments relating to education settings; what the capacity assessment process will be; who will carry it out and when and how will the child's human rights, including the right to a fair trial, be protected if the Tribunal or another relevant party raises a question about the child's capacity.
- Concern about the challenge mechanism or safeguards (other than judicial review) put in place to enable a young person to challenge a determination that they lack capacity. This consultee sought confirmation that, when it is deemed that an individual above compulsory school age is determined not to have the capacity to proceed with SENDIST proceedings, that a designated responsible adult deputises for him/her during any tribunal.

Compliance with section 24 of the Northern Ireland Act 1998

It is considered that the proposed Statutory Rule is in compliance with section 24 of the Northern Ireland Act 1998. It is not incompatible with Convention Rights, nor is it incompatible with Article 2(1) of the Protocol on Ireland/Northern Ireland in the EU Withdrawal Agreement (rights of individuals). The proposed Statutory Rule does not discriminate against a person or class of person on the grounds of religious belief or political opinion; and does not modify an enactment in breach of section 7 of the Northern Ireland Act 1998.

Consideration by the Executive

The proposed Statutory Rule has not been considered by the Executive.

Equality Impact

The Department of Justice has carried out equality screening and concluded that the proposals do not have significant implications for equality of opportunity and that an equality impact assessment is not necessary. This is largely due to this particular set of Regulations being concerned with matters of procedure.

Regulatory Impact

It is considered that the proposed Statutory Rule does not require a regulatory impact assessment as it does not impose costs on businesses, charities or voluntary groups.

Rural Needs Impact

A Rural Needs Impact Assessment has been carried out by the Department of Justice and it is considered that no impact is identifiable.

Data Protection Impact

Not applicable.

Child Rights Impact

It is not considered that a Child Impact Assessment is required as these are technical Regulations that give effect to the policy of DE.

Position in Great Britain

No equivalent Regulations are in place in England and Wales.

Proposed timing of consideration of the SL1

The SL1 has been submitted to the Committee in accordance with the minimum four week timeframe and it is proposed that the Committee considers the SL1 on 30th April 2026.

Proposed Operational Date

It is proposed that the proposed Statutory Rule will come into operation on 1st September 2026.



The draft of the proposed Statutory Rule and Explanatory Memorandum are attached, together with a summary of responses to the consultation and I would be grateful if you could bring this matter to the attention of the Committee.

Yours sincerely,



DALO

cc Human Rights Commission
Equality Commission