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Dear Peter

SPECIAL EDUCATIONAL NEEDS AND DISABILITY (SEND) BILL – DELEGATED POWERS MEMORANDUM

Thank you for your letter of 13 March 2015.

I am writing to confirm that DE officials will attend the meeting on 13 May 2015 to further brief the Committee regarding the SEND Bill. In the meantime, if considered helpful, officials would gladly meet to discuss issues raised in the Assembly research paper provided to the Committee.

The Committee have also requested sight of the Delegated Powers Memorandum and the Equality Screening information for the SEND Bill. These are attached at Annex A and B respectively. In addition, I have provided an overview of the existing subordinate legislation on SEN at Annex C, which lists the delegated powers included in the Education (NI) Order 1996. These will be used in drafting new SEN regulations to support the revised SEN framework.

Yours sincerely

Russell

RUSSELL WELSH
Departmental Assembly Liaison Officer

INTRODUCTION

1. This memorandum identifies provisions in the Special Educational Needs and Disability (SEND) Bill for delegated powers to the Department to make subordinate legislation.
2. The general rationale behind the choice of delegated power is based on the:
 - primary purpose of subordinate legislation being to reflect detail, which would not be appropriate for the face of a Bill;
 - precedent (in the Education (Northern Ireland) Order 1996 (“the 1996 Order”) as amended by the Special Educational Needs and Disability (Northern Ireland) Order 2005 (“SENDO”)) for the detailed procedural arrangements (of the Education Authority), within the SEN framework, to be delivered through subordinate legislation.
3. Section A sets out the delegated powers which have been included under Negative Resolution Assembly procedure and Section B under Draft Affirmative procedure. Each clause highlights the purpose of the delegated powers taken and further outlines why the matter is to be left to delegated legislation.
4. Unless otherwise stated the clauses and delegated powers referred to relate to amendments to the 1996 Order as amended by SENDO.
5. This memorandum should be read in conjunction with the Explanatory and Financial Memorandum (EFM) accompanying the Bill.
6. Drafts of the regulations referred to in this memorandum are currently under development and therefore are not yet available.

Section A: NEGATIVE RESOLUTION

7. The Assembly negative resolution procedure was selected under the SEND Bill clauses 2, 3, 6, 7, 8, 9 and 10 on the basis that:
 - the generality that affirmative procedure is reserved for matters with either direct financial import or which bring about radical substantive change;
 - the precedent of negative resolution for previous delegated powers with the current SEN framework (in the 1996 Order as amended by SENDO); and
 - Assembly time would not normally be required to be taken up with matters of a procedural nature; however should a concern arise, the Assembly may still pass a resolution to annul the subordinate legislation within the statutory period. .
8. The underlying policy for the proposals contained in the SEND Bill was set out for and agreed by the Executive in July 2012. The Bill, including provision for

negative resolution for the subordinate legislation, was agreed by the Executive on 12 February for introduction to the Assembly.

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

9. Clause 2 of the SEND Bill proposes a new Article 6A (duty to prepare and publish plan of arrangements for special educational provision). It places a duty on the Authority to prepare and publish a plan of arrangements for special educational provision, including a description of the resources and the advisory and support services the Authority proposes to make available and the description of the arrangements for training of staff.

10. New Article 6A(7) provides a regulation-making power to the Department to:

- set out the form and content of the Authority's plan;
- the procedure to be followed by the Authority in the preparation, reviewing or revision of the plan; and
- the persons to be consulted by the Authority.

11. In addition to the general rationale for the choice of delegated power, clause 2 was informed by precedent in the Children and Families Act 2014 in England, section 30 (Local offer), which provides delegated power to set out the information to be included in the local offer and who is to be consulted by the authority in preparing and reviewing an authority's local offer.

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

12. Clause 3 amends Article 8 (duties in relation to pupils with special educational needs in ordinary schools). It places statutory duties on Boards of Governors including a requirement for a personal learning plan for each child on the school's SEN register and to raise the awareness of those involved in supporting pupils. The clause places a duty on schools to designate a teacher as a Learning Support Co-ordinator with responsibility for co-ordinating provision for SEN children.

13. New paragraph (2A) to Article 8 (proposed at Clause 3 (3)) provides a regulation-making power to the Department requiring the Board of Governors of an ordinary school to:

- notify the Authority, in a prescribed manner of any changes of a prescribed kind affecting a child attending the school for whom the Authority is making special educational provision;
- ensure that a learning support co-ordinator has prescribed qualifications or prescribed experience (or both); and

- confer other functions on the Board of Governors relating to learning support co-ordinators.

14. Clause 3(4) proposes a new Article 8ZA(2) (duties in relation to pupils in special schools) with delegated power to the Department to make regulations requiring the Boards of Governors of special schools to:

- ensure that a learning support co-ordinator has prescribed qualifications or prescribed experience (or both); and
- confer other functions on the Board of Governors relating to learning support co-ordinators.

15. In addition to the general rationale for the choice of delegated power, clause 3 was informed by precedent in the Children and Families Act 2014 in England, section 67 (SEN co-ordinators), which provides delegated power to prescribe the qualifications and experience required of SENCOs and other the appropriate authority's functions in relation to the SENCO.

Clause 6 - Appeal following decision not to amend statement following review

16. Clause 6 proposes to amend Article 19 (reviews of statements) to provide a new right of appeal to the Special Educational Needs and Disability Tribunal following a decision of the Authority not to amend a statement following an annual review.

17. Clause 6(3)(a) and (b) proposes new paragraph (1C) in Article 19 which provides a delegated power for the Department to:

- prescribe information to be included in the notice issued by the Authority advising that it does not propose to amend the statement following annual review;
- prescribe the time period in which the Authority must serve the notice advising that it does not propose to amend the statement following annual review.

18. In addition to the general rationale for the choice of delegated power, clause 6 was specifically informed by existing Article 17 (2A) and Article 17 (2B) of the 1996 Order. This uses delegated powers to prescribe information to be included in a notice informing the parent of the right of appeal and to prescribe the time period for a board to serve a notice advising that it does not propose to make a statement.

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

19. Through amendments to Article 21 (assessment of educational needs of children under 2) and proposed new Article 21ZA (Appeal against decisions under Article 21) clause 7 provides a new right of appeal to the parent of a child under 2 against the contents of a statement or failure to make a statement.

20. Clause 7(9) and (10) provides a delegated power to the Department to:

- prescribe such other information to be included in the notice issued by the Authority advising that it does not propose to make a statement (including the reason for the decision and the right of appeal) or that it does intend to make or amend a statement and a right of appeal; and
- to prescribe the time period in which the Authority must serve the notice outlined above.

21. In addition to the general rationale for the choice of delegated power, clause 6 was specifically informed by existing Article 17 (2A) and Article 17 (2B) of the 1996 Order. This uses delegated powers to prescribe information to be included in a notice informing the parent of the right of appeal and to prescribe the time period for a board to serve a notice advising that it does not propose to make a statement.

Clause 8 - Mediation in connection with appeals

22. Clause 8 places a duty on the Authority to provide an independent mediation service to a person who intends to make a SEN appeal to the tribunal and for the Authority to participate, should the person wish to pursue mediation.

23. Clause 8(7) clause provides a delegated power to the Department to make detailed regulations in relation to the provision of mediation. These regulations would in particular include:

- about giving notice;
- imposing time limits;
- about who may attend, about the training;
- where a child's parent is party to mediation, requiring the mediator to take reasonable steps to ascertain the views of the child;
- about the provision of advocacy and other support services for a person pursuing mediation with the Authority;
- enabling the Authority to take prescribed steps following the conclusion of mediation; and about
- qualifications and experience of mediation advisers and mediators.

24. In addition to the general rationale for the choice of delegated power, clause 8 was specifically informed by the Children and Families Bill in England, section 56

(Mediation: supplementary), which uses delegated powers to make provision for the purpose of mediation. The SEN and Disability Regulations 2014 in England are used for this purpose

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

25. Clause 9 confers, on a child over compulsory school age, who has special education needs, rights within the SEN framework previously exercisable by the parent. This includes the right to request a statutory assessment and the right of appeal to the Tribunal against certain decisions by the Authority.

26. Within the scope of the Authority's delivery of the SEN framework with regard to children over compulsory school age, clause 9 (2) and (3) provides regulation-making powers the Department to:

- make provision about the assistance and support to enable a child over compulsory school age to exercise such rights within the SEN framework;
- make provision for a child over compulsory school age who lacks of may lack capacity to exercise any such right within the SEN framework.

27. Again within the scope of the SEN framework, clause 9(4) provides that the Department may in particular through regulations make provision:

- for, and in connection with, determining whether a child lacks capacity in relation to the rights within the SEN framework (including the criteria to be applied in that determination);
- the exercise of any such rights, within the SEN framework, by the parent of the child in the case where it is determined that the child lacks capacity to exercise the right; and
- to prescribe any modifications required for Part 2 of the 1996 order to have effect.

28. In addition, within the scope the child over compulsory school age right to make a SEN appeal, clause 9(5) references the delegated powers of the Department of Justice to make regulations about the proceedings of the Tribunal on appeal and the initiation of such an appeal. The responsibility for making these regulations transferred from DE to DOJ in 2011.

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

29. Clause 10 confers on a pupil or prospective pupil, over compulsory school age, the right to make a claim of unlawful disability discrimination to the Tribunal that

a school or the Authority has unlawfully discriminated against him or her on the grounds of disability. Clause 10 amends Article 22 of SENDO 2005.

30. Within the scope of making a claim of unlawful discrimination to Tribunal, through new paragraph (2A) in Article 23 of SENDO 2005, clause 10(2) provides further regulation-making powers to the Department of Justice to, in particular make provision:

- about the assistance and support to enable a pupil or prospective pupil over compulsory school age to make a claim;
- for cases where, in the opinion of the Tribunal, the pupil or prospective pupil lacks (or may lack) capacity to pursue the claim, including provision -
- for , and in connection with, determining whether the pupil or prospective pupil lacks capacity to pursue a claim (including the criteria to be applied in that determination);
- for the pupil or prospective pupils parent to pursue the claim in a case where it is determined that a pupil lacks capacity to do so; and
- for provisions of the regulations to apply with modifications in relation to such a claim.

Section B: DRAFT AFFIRMATIVE PROCEDURE

40. The choice of delegated power within clauses 11 and 12 of the SEND Bill is based on the:

- primary purpose of subordinate legislation being to reflect detail, which would not be appropriate for the face of a Bill;
- precedent, which exists here for the detailed procedural arrangements (of boards) within the SEN framework to be delivered through subordinate legislation; and
- precedent in England using delegated power to make arrangements for a similar pilot, under sections 58 and 59 of the Children and Families Act 2014 in respect of pilot schemes.

41. Similarly, the choice of Assembly control of affirmative resolution is selected:

- given the novel and substantive change and cross cutting nature of the pilot (with DoJ); and the
- precedent that exists in England through the Children and Families Act 2014 where the pilot proposed, in section 135(6)(b) of that Act, requires a draft of the instrument to be laid before, and approved by, a resolution of each House of Parliament.

Clause 11- Appeals and claims by children: pilot scheme

42. Clause 11 (1) provides a delegated power to the Department of Education to make regulations to establish and conduct a pilot scheme for children, who have not reached the upper limit of compulsory school age, to make a SEN appeal or a claim of unlawful disability discrimination to the Tribunal.

43. Clause 11(2) provides that the rights of appeal for the child who has not attained the upper limit of compulsory age, within the scope of the pilot, relate to a SEN appeal against:

- decision not to make a statement;
- contents of statement;
- refusal to arrange assessment of educational needs;
- not to assess educational needs at the request of a responsible body;
- refusal to substitute named school; and
- the Authority ceasing to maintain a statement.

44. Clause 11(3) in particular sets out that the regulations may make provision:

- About the age from which children may appeal or make a claim;
- In respect of SEN appeals about mediation and about the information and advice as to mediation;
- About bringing appeals or making of claims by a child and by his or her parent concurrently;
- About determining whether a child is capable of bringing an appeal or making a claim, and the assistance and support a child may require to enable the child to do so;
- Enabling a person to exercise a child's rights under the scheme on behalf of the child;
- Enabling children to have access to advice and information which is available to a parent in respect of a SEN appeal or claim;
- About the provision of advocacy and other support services to children;
- Requiring notices to be given to a child (as well as his or her parent);
- Applying any statutory provision (with or without medications); and
- Making consequential or transitional provision with respect to the cessation of the scheme.

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

45. Clause 12 (1) provides a delegated power to the Department of Education to make regulations to provide for a children who have not reached the upper limit of compulsory school age, to make a SEN appeal or a claim of unlawful disability discrimination to the Tribunal.

46. Clause 12(2) provides that the rights of appeal for the child who has not attained the upper limit of compulsory age relate to a SEN appeal against:

- decision not to make a statement;
- contents of statement;
- refusal to arrange assessment of educational needs;
- not to assess educational needs at the request of a responsible body;
- refusal to substitute named school; and
- the Authority ceasing to maintain a statement.

47. Clause 12(3) provides that these regulations cannot be made until two years after the regulations to establish the pilot, under clause 11, come in to operation.

48. Clause 12(4) in particular sets out that the regulations may make provision:

- About the age from which children may appeal or make a claim;
- In respect of SEN appeals about mediation and about the information and advice as to mediation;
- About bringing appeals or making of claims by a child and by his or her parent concurrently;
- About determining whether a child is capable of bringing an appeal or making a claim, and the assistance and support a child may require to enable the child to do so;
- Enabling a person to exercise a child's rights under the scheme on behalf of the child;
- Enabling children to have access to advice and information which is available to a parent in respect of a SEN appeal or claim;
- About the provision of advocacy and other support services to children;
- Requiring notices to be given to a child (as well as his or her parent);
- Applying any statutory provision (with or without modifications); and
- Making consequential or transitional provision with respect to the cessation of the scheme.

Commencement, transitional provisions, etc

No Resolution

49. This clause is the normal clause which allows the Department to commence provisions on a day appointed by the Department. Commencement Orders are not subject to Assembly Control, but the Department does consult the Education Committee before making such orders.

DEPARTMENT OF EDUCATION

EQUALITY AND HUMAN RIGHTS POLICY SCREENING

**SPECIAL EDUCATIONAL NEEDS (SEN) AND
INCLUSION POLICY**

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1. POLICY SCOPING

1.1 Title of policy

Special Educational Needs (SEN) and Inclusion Policy.

1.2 Type of Policy Development

A revision to a number of key aspects of the existing SEN and inclusion policy on the identification, assessment of, and provision for, children with SEN. It will be progressed through a combination of primary legislation, revised regulations and a revised statutory Code of Practice. Consultation and screening exercises will be carried out in respect of the draft regulations and Code of Practice in due course

1.3 Description of policy

Sitting within Every School a Good School, the revised policy aims to provide a framework to promote earlier identification and assessment of, and provision for, SEN children in order for them have the necessary educational support so that they can achieve to their potential.

The term “special educational needs” is defined in legislation as “a learning difficulty which calls for special educational provision to be made”. “Learning difficulty” means that the child has significantly greater difficulty in learning than the majority of children of his or her age, and/or has a disability which hinders his or her everyday use of educational facilities(or, where the child is below compulsory school age, would hinder such use if the child were of school age)”. “Special educational provision” means education provision which is different from, or additional to, the provisions made generally for children of comparable age.¹

The revised policy achieves a middle ground in addressing core difficulties in the current SEN framework while at the same time acknowledging the concerns expressed by stakeholders. These core difficulties include: inconsistencies and delays in SEN assessment and provision; increasing numbers of children with SEN, with statements and with significant needs; and mounting pressures on parents, teachers, schools and ELBs. (replaced by the Education Authority from 1 April 2015).

The proposed Bill will provide a general legislative framework for schools and the Education Authority (the Authority) in the identification and assessment of, and provision for, children with SEN. The Bill will make provision to strengthen the existing duties of the Authority and Boards of Governors of grant aided schools in meeting the needs of children with SEN. In particular, it proposes that Boards of Governors must ensure that adults providing or supporting the education of a SEN pupil in school are made aware of his or her special educational needs and take reasonable steps to address these.

The Bill will also introduce specific new rights for SEN children who are over compulsory school age and parents, including certain rights of appeal to the Special Educational Needs and Disability Tribunal (the Tribunal). The Bill will also introduce a new right to make a claim of unlawful disability discrimination to Tribunal for pupils, or prospective pupils, who are over compulsory school age.

An ongoing capacity building programme has been in operation for some time and aims to support the new framework by enhancing the skills and knowledge of educational professionals so that early identification and intervention will facilitate improved outcomes for SEN children.

The revised SEN policy and framework continue to focus on the special educational needs of the individual child regardless of the Section 75 category. The approach and supports provided through the revised SEN framework complement those provided through other departmental policies and strategies. For example, Every School a Good School a Policy for School Improvement, additional educational needs policies (which embrace such areas as Looked After Children (LAC), Newcomer Children, Traveller Children, School Age Mothers (SAMS), Children of

1.4 What factors could contribute to, or detract from the intended aim/outcome of the policy?

None	
Legislative – SEN Bill; SEN Regulations, SEN Code of Practice and SENDIST Regulations (developed with Department of Justice (DoJ))	√
Financial - in the main the changes will be catered for within existing budget. There may be some modest funding required in relation the provision of more independent dispute avoidance and resolution and mediation arrangements and new appeal rights.	√
Others (please specify) - successful implementation and commitment by schools to the capacity building programme. <ul style="list-style-type: none"> • successful implementation of long term arrangements for the provision of SEN in early years settings, once determined. • successful development and delivery of the ELB plans for SEN advice, support and training. 	√

1.5 Main stakeholders affected

Pupils (Actual or Potential)	√
Parents	√
Teaching Staff	√
Trade Unions or Professional Organisations	√
Other Public Sector Organisations (<i>the Authority; Health and Social Care Trusts</i>)	√
Departmental Staff	√
Others (please specify) – <i>Boards of Governors of grant aided schools; proprietors of independent schools; Department of Justice; Special Educational Needs and Disability Tribunal</i>	√

1.6 Who is responsible for:

(a) Devising the policy - the Department of Education

(b) Implementing it - the Department of Education; the Authority; Boards of Governors (BoGs) of grant-aided schools; Proprietors of independent school (Article 26 of the 1996 Order); proprietors of DE - funded pre-school settings; Health and Social Care Trusts (HSCTs); Department of Justice (DoJ) and the Special Educational Needs and Disability Tribunal (the Tribunal)

(c) Explain the relationship?

DE is responsible for setting the strategic policy direction in respect of the wider SEN framework. DE will implement the high level actions – primary legislation, SEN regulations and revised statutory Code of Practice for SEN. DE will also consider the outcomes from the SEN capacity building initiatives including in early years and educational testing in order to inform future strategy.

The Authority will comply with the new duties as set out and implement the new SEN policy framework to provide necessary supports to schools and SEN children in accordance with detailed plans at operational level. The Authority will also be responsible for making arrangements for the provision of advice and information, dispute avoidance and resolution and mediation.

The Authority and Boards of Governors will have a responsibility to ensure that they have a full understanding of their new roles and responsibilities.

Boards of Governors of schools will be responsible for ensuring that schools comply with the new duties and arrangements set out in the revised Code of Practice in order to address, in a timely manner, the needs of pupils with SEN.

DE will work with the Department of Justice (DoJ) and the Tribunal in taking forward changes to Tribunal regulations / operating procedures which relate to new Tribunal rights of SEN appeal and disability discrimination claim for children over compulsory school age and parents of children under 2. DE will also work with DoJ on the piloting of a right of appeal to Tribunal for SEN children who have not reached the upper limit of compulsory school age.

1.7 Other policies or objectives with a bearing on this policy

- **International:-** European Convention on Human Rights (ECHR); UN Convention on the Rights of the Child (UNCRC); UN Convention on the Rights of Persons with Disabilities (UNCRPD); Reports of the UN Committee on the Rights of the Child
- **Wider Government: A range of other policies or objectives have a bearing on this policy and include:** OFMDFM 10 year Strategy for Children and Young People. OFMDFM Draft Child Poverty Strategy, Human Rights Act 1998, DEL's NEET Strategy, Cross - cutting Autism Action Plan, Review of Allied Health Professionals.
- **Department of Education:** Range of Departmental policies and objectives including: the existing SEN policy; the range of strategies and policies under the raising standards agenda Every School a Good School e.g. Literacy and Numeracy Strategy, School Improvement; Additional Educational Needs Policies – Looked after Children, Traveller children, Forces Children, School Aged Mothers, Newcomer Children; Task Force on Traveller Education Report for the SEN Sub Group 2010 & The Education of Children and Young People From The Traveller Community Circular 2013; Education Otherwise than At School (EOTAS) Policy; Early Years Policy and Learning to Learn – A framework for Early Years Education and Learning; Irish Medium policy; Integrated Education policy; Disability Discrimination policy - Special Educational Needs and Disability (NI) Order 2005

2) Available Evidence

2. EVIDENCE

2.1 What evidence/information (both qualitative and quantitative) have you gathered to inform this policy?

(Unless otherwise stated the data below is drawn from the annual school census 2013/14)

Some 3000 written responses were received to the formal, public consultation on the SEN and Inclusion review, which ran from August 2009 January 2010. The Department consulted widely during this time using a range of different events including: public presentations; meetings with key stakeholders; direct consultation with parents and children; engagement with teaching unions; and through a stakeholder event organised by the Education Committee. Following the issue in 2012 of a Summary Report, providing feedback on the consultation response received, and including the Minister's considered direction of travel, evidence was gleaned through further stakeholder engagement. During January to June 2012 there were further refinements to the SEN and Inclusion proposals in light of further evidence gleaned through reference groups and the Education Committee key stakeholder group. In July 2012 the Executive agreed to the revised SEN framework including the making of legislation.

Whilst not exhaustive, the following reports were also considered:

- Range of DE policy documents e.g. ESAGs and Learning to Learn
- Chief Inspectors reports, ETI Inspection Reports and Surveys.
- Effective Pre-school Provision in NI, A Summary Report 2006
- Range of reports issued by statutory and voluntary organisations e.g.
 - Working Paper on the Implementation of UNCPRD (ECNI/HRC), Review of Transitions to Adult Services for Young People with Learning Disabilities (NICCY),
 - State of SEN Statements (CDSA);
 - Statement of Key Inequalities (ECNI).

Other jurisdictions:

- Reducing Reliance on Statements-An Investigation in Local Authority Practice and Outcomes (Anne Pinney)
- Lamb Inquiry – SEN and Parental Confidence
- Review of Services for Children Young People (0-19) with Speech, Language and Communications Needs (Bercow Report)
- Rose Review (Dyslexia)
- A SEN and Disability Review - Statement is Not Enough (OFSTED)

The evidence considered from the School Census includes the numbers and percentages of children reported with SEN and broken down across the Section 75 groups. Information on the type of SEN reported by primary need is also considered.

Section 75 Category	Details of Evidence/Information
Religious Belief	<p>Incidence of SEN</p> <ol style="list-style-type: none"> 1. All children by reported religious group and all children with SEN (Stages 1-5) by reported religious belief: <ul style="list-style-type: none"> • religious belief of all children - 36% Protestant, 51% Catholic and 13% Other ¹; • religious belief of all children with SEN (Stages 1 to 5) - 34.4% Protestant, 53% Catholic and 12.6% Other. 2. All children by reported religious belief and all children with a statement (Stage 5) by reported religious belief: <ul style="list-style-type: none"> • religious belief of all children - 36% Protestant, 51% Catholic and 13% Other ²; • religious belief of all children with a statement (Stage 5) – 35.5% Protestant, 51.5% Catholic and 13% Other. 3. All children with SEN (Stages 1-5) and all children with SEN (Stages 1-5) by reported religious belief: <ul style="list-style-type: none"> • 21.7% of children at primary, post primary and special schools were recorded as having SEN; • 20.6% of Protestants, 22.4% of Catholics and 21.6% Other are recorded as having SEN (Stages 1-5). 4. All children with a statement of SEN (Stage 5) and all children with a statement (Stage 5) by reported religious belief: <ul style="list-style-type: none"> • 4.7% of all children have a statement (Stage 5) • 4.6% of Protestants, 4.8% of Catholics and 4.8% Other have a statement <p>Type of SEN reported</p> <ol style="list-style-type: none"> 5. For pupils with a statement: <ul style="list-style-type: none"> • the top 3 SEN categories for those reported as Protestant and Catholic religious belief are the same i.e. Moderate Learning Difficulties (MLD); Autism and Speech and Language(SL); • When considering across those reported as Protestant, Catholic and Other religions/unknown the top 5 categories reported contain the same 5 SEN categories i.e. Moderate Learning Difficulties (MLD); Autism (AUT); Speech and Language (SL); Social, Emotional and Behavioural Difficulties (SEBD); and Severe Learning Difficulties (SLD) albeit in different ordering. 6. At the other end of the SEN spectrum for children at Stages 1-2 the type of

¹ Christian/non Christian/no religion/not recorded

² Christian/non Christian/no religion/not recorded

	SEN reported across Protestant, Catholic and Other Religion/unknown are in the same order, namely, Cognitive (COG), Mild Learning Difficulties (MILD), Dyslexia (DYL), SEBD and Speech and Language (SL)
Political Opinion	<p>Specific data on political opinion is not collected in the annual school census. Political opinion does not form part of that record as most children are below the age at which they may participate in the electoral process and therefore it is difficult to judge their political opinion. There is therefore no means to determine whether there is any difference in the prevalence or type of SEN experienced by those with different political opinions.</p> <p>The <u>2011 Northern Ireland Young Life and Times (YLT) Survey</u> of 16-year olds living in Northern Ireland indicated that:</p> <ul style="list-style-type: none"> • 43% felt they knew a great deal, quite a lot or had some knowledge about politics in Northern Ireland • 57% felt they did not know very much or nothing at all about politics in Northern Ireland.
Racial Group	<p>Incidence of SEN</p> <ol style="list-style-type: none"> 1. All children by reported racial group and all children with SEN (Stages 1-5) by reported racial group: <ul style="list-style-type: none"> • racial group of all children - 97.7% White, 0.29% Irish traveller and 2.9% Other; • racial group of all SEN children (Stages 1 to 5) – 96.7% (67,011) White, 0.72% (499) Irish traveller and 2.5% (1,756) Other. 2. All children by reported racial group and all children with a statement (Stage 5) by reported racial group: <ul style="list-style-type: none"> • racial group of all children - 97.7% (309,938) White, 0.29% (932) Irish traveller and 2.9% (9,483) Other; • racial group of all children with a statement (Stage 5) - 96.9% (14,672) White, 0.96% (145) Irish traveller and 2.12% (321) Other. 3. All children with SEN (Stages 1-5) and all children with SEN by reported racial group (Stages 1-5): <ul style="list-style-type: none"> • 21.7% of children at primary, post primary and special schools were recorded as having SEN (Stages1-5); • 21.6% White, 53.5% of Irish Travellers and 18.5% Other are recorded as having SEN (Stages1-5). 4. All children with a statement of SEN (Stage 5) and all children with statements (Stage 5) by reported racial group: <ul style="list-style-type: none"> • 4.7% of all children have a statement (Stage 5); • 4.7% of White, 15.6% of Irish Traveller and 3.4% Other have a statement. <p>Type of SEN reported</p>

5. For pupils with a statement the top 4 SEN types recorded by primary need which feature across the three racial groups (i.e. White, Irish Traveller and Other ethnic group) are Moderate Learning Difficulties (MLD), Severe Learning Difficulties (SLD), Speech and Language (SL) and Social, Emotional and Behavioural Difficulties (SEBD).

6. For children recorded at Stages 1-2 the common primary needs recorded across the 3 racial groups include: Cognitive (COG), Mild Learning Difficulties (MILD), Speech and Language Difficulties (SL) and Social, Emotional and Behavioural (SEB) / Social, Emotional and Behavioural Difficulties (SEBD).

Newcomer children

Incidence of SEN

7. The incidence of newcomer children compared with all children and SEN newcomer (Stages 1-5) compared with all children (Stages 1-5).

- 3.1% (10,026) of all children are reported as newcomer;
- 3% (1,971) of children with SEN (Stages1-5) are reported as newcomer.

8. Children with SEN (Stages 1-5) compared with all children and the percentage of newcomer children reported with SEN (Stages 1-5) compared with all newcomer:

- 21.7% (69,266) of all children are reported as having SEN (Stages 1-5));
- 19.7% (1,971) of newcomer children are reported as having SEN (Stages1-5).

9. All children with a statement (Stage 5) compared to all children and newcomer children with a statement (Stage 5) compared with all newcomer children:

- 4.7% of all children have a statement (Stage 5);
- 2.2% (220) of all newcomer children have a statement (Stage 5).

Type of SEN reported

10. Similar to the type of SEN reported by racial groups, for Newcomer pupils with a statement the top 4 types of SEN by primary need include: Moderate Learning Difficulties (MLD), Severe Learning Difficulties (SLD), Speech and Language Difficulties (SL) and Social, Emotional and Behavioural Difficulties (SEBD).

11. Similar to racial groups reported above, for Newcomer children recorded at Stages 1-2 the common primary needs recorded include: Cognitive (COG), Mild Learning Difficulties (MILD) and Speech and Language (SL).

Age	<p>Incidence of SEN³</p> <p>1. Overall percentage of children with <u>SEN (Stages 1-5)</u> in all pre-school education and school phases compared with the individual phases:</p> <ul style="list-style-type: none"> • 21.4% of children in all schools and pre-school Education Centres are reported as having SEN (21.7% when all schools only are included) <p><u>(a) Pre -school</u></p> <ul style="list-style-type: none"> • 10.4% of children in voluntary and Private Preschool Education Centres are reported as having SEN; • 24.7% of children at nursery schools are recorded as having SEN; • 4.6% of children in nursery class are recorded as having SEN; and • 5.0% of reception classes are recorded as having SEN. <p><u>(b) Compulsory School age</u></p> <ul style="list-style-type: none"> • 20.5% of primary school pupils have SEN; • 20.3% post primary pupils have SEN. <p><u>(c) Over compulsory school age (Years 13 – 15)</u></p> <ul style="list-style-type: none"> • 12% (3,689) of Year 13 to 15 pupils in post primary schools have SEN (Stages 1 -5). <p>2. Overall percentage of children with <u>a statement (Stage 5)</u> in all pre-school education and school phases compared to individual phases:</p> <ul style="list-style-type: none"> • 4.6% of children in all schools and pre-school Education Centres are recorded as having a statement (4.7% when all schools only are included). <p><u>(a) Pre -school</u></p> <ul style="list-style-type: none"> • 0.5% of children in voluntary and Private Preschool Education Centres are recorded as having a statement; • 1.2% of children at nursery schools are recorded as having a statement; • Small numbers, therefore % children in nursery class and reception classes not provided. <p><u>(b) Compulsory School age</u></p> <ul style="list-style-type: none"> • 2.8% of primary school pupils have a statement; • 4.0% post primary pupils have a statement.
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³ Statistical Press Release Enrolments at school and in funded pre-school education in Northern Ireland - 25 February 2014

	<p><u>(c) Over compulsory school age (Years 13 – 15)</u></p> <ul style="list-style-type: none"> • 1.6% (486) of all Year 13 to 15 pupils in post primary schools have a statement (Stage 5); • 13.2% of Year 13 to 15 pupils with SEN have a statement. <p>3. Type of SEN</p> <p><u>(a) Pre-school</u></p> <p>For statemented children at <u>pre-school phase</u> the top 3 SEN types recorded by primary need include Autism (AUT), Speech and Language (SL) and Severe Learning Difficulties (SLD).</p> <p><u>(b) Compulsory school age</u></p> <p>For statemented children at <u>primary school level</u> the top 3 SEN types recorded by primary need include Autism (AUT), Moderate Learning Difficulties (MLD) and Speech and Language (SL).</p> <p>For statemented children at <u>post primary level</u> (in years 8 to 12) the top 3 SEN types recorded by primary need include Moderate Learning Difficulties (MLD), dyslexia (DYL) and Autism (AUT).</p> <p><u>(c) Over compulsory school age (Years 13 – 15)</u></p> <p>For statemented children <u>over compulsory school age</u> (years 13-15) the top 3 SEN types recorded by primary need include Asperger's (ASP), Other Medical Conditions and Syndromes (OMCS) and Autism (AUT).</p>
Marital Status	No information is collected on the marital status of pupils and therefore no comparisons can be made.
Sexual Orientation	In the 2014 School Omnibus Survey, approximately 84% of the responding post primary schools were aware of LGB pupils having attended the school. The figure for primary schools was 11.4%.
Men And Women Generally	<p>Incidence of SEN</p> <p>1. All children reported by gender and all children with SEN (Stages 1 -5), reported by gender:</p> <ul style="list-style-type: none"> • all children by gender – 50.7% male and 49.3% female; • all SEN children (Stages 1 to 5) by gender – 63.6% male and 36.4% female. <p>2. All children by gender and all children with a statement (Stage 5) reported by</p>

	<p>gender:</p> <ul style="list-style-type: none"> • all children by gender – 50.7% male and 49.3% female; • all children with a statement (Stage 5) – 72.4% male and 27.6% female. <p>3. All children with SEN (Stages 1-5) and all children with SEN (Stages 1-5) reported by gender:</p> <ul style="list-style-type: none"> • 21.7% of children are recorded as having SEN; • 27.1% of males and 16% of females are recorded as having SEN. <p>4. All children with a statement of SEN (Stage 5) and all children with a statement of SEN by reported gender.</p> <ul style="list-style-type: none"> • 4.7% of all children have a statement; • 6.7% of males and 2.6% females have a statement. <p>Type of SEN</p> <p>5. For pupils with a statement the top 4 types of SEN by primary need reported which feature for both male and females are Moderate Learning Difficulties (MLD), Severe Learning Difficulties (SLD), Speech and Language (SL) and Autism.</p> <p>6. For children recorded at Stages 1-2 for both male and female the type of SEN reported by primary need include: Cognitive, Mild Learning Difficulties (MILD), Dyslexia (DYL), Social, Emotional and Behavioural Difficulties (SEBD) and Speech and Language (SL).</p>
Disability	<p>Incidence of SEN</p> <p>1. Children reported with a disability and children with SEN (Stages 1 -5) reported with a disability:</p> <ul style="list-style-type: none"> • 1.35% (4,328) of all children are reported as having a disability⁴; • 6% (4,178) children with SEN (Stages 1 -5) are reported with a disability. <p>2. All children reported with a disability and children with a statement (Stage 5) reported with a disability:</p> <ul style="list-style-type: none"> • 1.35% (4,328) of all children are reported as having a disability⁵; • 23% of children with a statement (Stage 5) are reported with a disability. <p>3. Percentage of all children with SEN (Stages 1-5) and all children with SEN</p>

⁴ Annual school census – Children with a Disability - This field should be completed for children who have been assessed *by a medical professional* as having a disability, whether or not they have special educational needs.

⁵ Annual school census – Children with a Disability - This field should be completed for children who have been assessed *by a medical professional* as having a disability, whether or not they have special educational needs.

	<p>(Stages 1-5) reported with a disability:</p> <ul style="list-style-type: none"> • 21.7% of all school children are reported as having SEN (Stages 1-5); • 6% (4,178) of school children with SEN (Stages 1 – 5) are reported as having a disability. <p>4. Percentage of all children with a statement (Stage 5) and all children with a statement (Stage 5) reported with a disability:</p> <ul style="list-style-type: none"> • 4.7% of all children have a statement (Stage 5); • 23% (3,475) of children with a statement (Stage 5) are recorded as having a disability. <p>5. Of all children recorded as having a disability (4,328):</p> <ul style="list-style-type: none"> • 3.5% (150) are recorded as not with SEN (Stage 1-5); and • 16.2% (703) are recorded as having SEN (Stages 1-4); • 80.3% (3,475) are recorded as having a statement (Stage 5). <p>Type of SEN</p> <p>6. For pupils reported with a statement and reported with a disability the top 5 SEN types reported by primary need are Severe Learning Difficulties (SLD), Autism (AUT), Moderate Learning (MLD), Speech and Language (SL) and Other Medical Conditions/Syndrome (OMCS) .</p> <p>7. For children recorded at Stages 1-2 and reported with a disability the type of SEN reported by primary need include: Mild Learning Difficulties (MILD), Cognitive, Medical (MED), Dyslexia (DYL) and Attention Deficit Disorder (ADD).</p>
Dependants	<p><u>School Age Mothers (SAMs)</u></p> <p>7. SAMs information is not captured through the School Census. Through information reported to the Department during September 2012 to June 2013, a total of 186 young women received support from the SAM programme. No information is available as to whether any of these young women were recorded on the SEN register.</p> <p><u>Children with caring responsibilities</u></p> <p>8. Neither the School Census nor the School Leavers Survey collect information about children with caring responsibilities. The <u>2007 Young Life and Times (YLT) Survey</u> found that many young people in the north of Ireland had caring responsibilities. The 2010 YLT Survey asked 16 year olds living across the north of Ireland questions about caring responsibilities. Among the 786 young people who took part in the survey, 10% indicated that they provided care for someone. In relation to school, the vast majority (80%) say they never miss school because of their caring role, whilst 70% say that caring does not affect their school work.</p>

Looked After Children (LAC)

Whilst looked after children do not naturally fall under any of the s75 groups, the revised SEN policy would apply to all children. The incidence of SEN for Looked After Children (LAC) children is as follows:

1. All children reported as LAC and all children with SEN (Stages 1-5) reported as LAC:

- 0.6% (1,809) of all children are reported as LAC;
- 1.6% (1,072) of children with SEN (Stages 1-5) are reported as LAC.

2. All children reported as LAC and all children with a statement (Stage 5) reported as LAC:

- 0.6% (1,809) of all children are reported as LAC;
- 0.3% (421) of children with a statement of SEN (Stage 5) are reported as LAC.

3. Overall percentage of children with SEN (Stages 1-5) and the percentage of children reported as LAC with SEN (Stages 1-5):

- 21.7% (69,266) of all children are reported as having SEN Stages 1-5;
- 59.3% (1072) of children reported as LAC have SEN.

4. Overall percentage of all children with a statement of SEN (Stage 5) and all children reported as LAC with a statement of SEN:

- 4.7% of all children are reported with a statement of SEN;
- 23% (421) of children reported as LAC have a statement of SEN (Stage 5).

SEN Type for LAC children

5. For pupils reported with a statement and reported as LAC the top 5 SEN types reported by primary need are Moderate Learning (MLD), Social, Emotional and Behavioural Difficulties, (SEBD), Severe Learning Difficulties (SLD), Speech and Language (SL) and Attention Deficit Disorder (ADD).

6. For children recorded at Stages 1-2 and reported with a disability the type of SEN reported by primary need include: Mild Learning Difficulties (MILD), Cognitive (COG), Social, Emotional and Behavioural Difficulties (SEBD), Social, Emotional and Behavioural (SEB) and Other.

2.2 Taking into account the evidence gathered at 2.1 what are the needs, experiences and priorities of each of the categories in relation to this particular policy?

Section 75 category	Needs/Experiences/Uptake/Priorities
Religious Belief	<p>The SEN framework applies equally to all children regardless of religious belief. In the new framework provision continues to be based on the individual needs of the child and the measures put in place by schools and Boards to address those needs. Most special schools are open to all children who require special school placement regardless of religious belief (recognising that St Gerard's ERC is a Catholic Maintained special school).</p> <p>In considering the information at 2.1 (religious belief) no significant difference in the incidence of SEN is apparent between the percentage of:</p> <ul style="list-style-type: none"> all children by religious belief and all SEN children by religious belief. Looking back a similar position was reflected in the 2007/08 School Census.⁶ all children by religious belief and SEN children with a statement by religious belief. all SEN children (Stages 1-5) and SEN children (Stages 1-5) by religious belief. SEN children with a statement (Stage 5) and SEN children with a statement by religious belief.
Political Opinion	<p>Not applicable. No data available to consider whether or not there are any significant variations across SEN pupils with different political opinions.</p> <p>In the new framework, provision will continue to be based on the individual needs of the child and the measures put in place by schools and boards to address those needs.</p>
Racial Group	<p>The SEN framework applies equally to all children regardless of racial group. In the new framework provision continues to be based on the individual needs of the child and the measures put in place by schools and Boards to address those needs.</p> <p>In considering the information at 2.1 (racial group), no significant difference in the incidence of SEN is apparent between all children by racial group and all SEN children (Stages 1-5) by racial group (paragraph 1 and 2 refers). Similarly no significant difference is apparent in the incidence of all children by racial group and statemented SEN children by racial group</p>

⁶ Way Forward for SEN and Inclusion EQIA 2009

	<p>(paragraph 3 and 4 refers).</p> <p><u><i>Children from the Irish Traveller community (2.1 paragraphs 3 and 4 under racial groups)</i></u></p> <p>In considering the information at 2.1 (racial group), a significant difference is apparent between the incidence of all SEN children (21.7%) and Irish traveller SEN children (53.7%) – paragraph 3 refers.. A similar difference is apparent when comparing all statemented children (4.7%) with statemented children from Irish Traveller community (15.6%) -paragraph 4 refers.</p> <p>It should be noted that the ⁷Taskforce on Traveller Education reported to the Department that the SEN figures may capture children who are underachieving because of poor attendance rather than having a specific learning difficulty. Task Force did not recommend any specific actions regarding the SEN framework. The Department has recognised the particular needs of the Traveller Community through the Taskforce and the adapted policy. It is envisaged that the revised SEN Code of Practice will provide greater clarification on the definition and recording of children with SEN and linkages with the policy on traveller education.</p> <p><u><i>Newcomer children (2.1 paragraphs 7 – 9 under racial groups)</i></u></p> <p>In considering the information at 2.1 (newcomer children), a difference is apparent between the incidence of all SEN children (21.7%) and newcomer SEN children (19.7%) – paragraph 8 refers. A similar difference is apparent between all children with a statement (4.7%) and newcomer children with statement (2.2%) – paragraph 9 refers. It is difficult to explain this variation in incidence. ETI have reported “<i>a minority of schools categorise inappropriately the level of need within the SEN register</i>”⁸ highlighting that there is evidence to suggest that some schools inappropriately record children as having SEN. It may be that the financial support available to schools for newcomer children enables a focus on the acquisition of language skills and prevents misidentification as SEN. Alternatively, it may be that early difficulties in developing an understanding in English prevent appropriate early identification of SEN. Nevertheless, the revised SEN framework will require that the special educational needs of children should be identified on an individual basis and will provide guidance about situations when multiple identities present.</p>
Age	<p>The SEN framework applies equally to all children. In the new framework provision continues to be based on the individual needs of the child and the measures put in place by schools and Boards to address those needs.</p>

⁷ Taskforce on Traveller Education – Report of the Taskforce to the Department of Education August 2011

⁸ Chief Inspector’s Report 2008-2010

In considering the information at 2.1 (Age):

Pre- school (paragraphs 1(a) and 2(a))

A significant difference is apparent between the incidence of SEN children in nursery classes (4.6%) and reception classes (5%) compared with SEN children in nursery schools (24.7%) There is also a significant difference between incidence of SEN children in voluntary and private pre-school education centres (10.4%) compared with children with SEN in nursery schools (24.7%) – paragraph 1(a) refers.

A similar variance is noted for children with a statement in voluntary and private pre-school education centres (0.5%) and children in nursery schools (1.2%) having a statement – paragraph 2(a) refers. For children with a statement in nursery classes and reception classes the numbers are so small percentages are negligible and comparison cannot be made. This variance was highlighted by DE prior to commencement of the SEN capacity building pilot in early years, which ran for 3 years ending in September 2014. The ETI, in conducting an evaluation of the pilot, was also made aware of the variation across settings and any recommendations made in this regard may be used in the development of a business case for ongoing work in early years settings.

The thrust of the new proposals is to provide support for settings to enable early identification of SEN. Arrangements for identification and assessment of SEN children will therefore apply equally across all statutory early years settings and the revised Code of Practice will emphasise this. Guidance for identification of SEN in non-statutory early years settings will also be provided.

Compulsory school age (paragraphs 1(b) and 2(b))

There is no difference of note between the incidences of SEN children of compulsory school age in primary (20.5%) compared with compulsory school age in post primary school (20.3%) -paragraph 1(b) refers.

A difference is noted when comparing statemented children of compulsory school age in primary school (2.8%) and statement pupils in post primary settings (4.0%) – paragraph 2(b) refers. It is difficult to explain this difference. Nevertheless, the new framework aims to promote early identification of a child's needs regardless of the stage of education. Arrangements for identification and assessment of SEN children will therefore apply equally across all schools and the revised Code of Practice will emphasise this.

Over compulsory school age (years 13-15)(paragraphs 1(c) and 2(c))

A difference is apparent, when excluding special schools, between the incidence of SEN children over compulsory school age (11.6%) and those of compulsory school age in post primary (20.3%) – paragraph 3 (a) refers.

	Similarly a difference is apparent when comparing statemented children over compulsory school age (1.6%) and statemented children of compulsory school age in post primary (4.0%). Many SEN children leave education at the end of compulsory school age to seek opportunities in further education, training or employment. The new SEN framework aims to support SEN children until such time as they leave school.
Marital Status	Not applicable – no information is collected on the marital status of pupils and therefore no comparisons can be made.
Sexual Orientation	Whilst the annual School Census does not capture this information, the general view here among LGB&T organisations, service providers and policy makers is that an estimated 6% to 10% of the population identifies as lesbian, gay, bisexual and transgender. The recent DE School Omnibus Survey posed questions to school management in relation to homophobia / transphobia and to information and support provided within schools on sexual orientation / transgender issues. None of the questions posed were linked to special educational needs.
Men And Women Generally	<p>The SEN framework applies equally to all children regardless of their gender. In the new framework provision continues to be based on the individual needs of the child and the measures put in place by schools and Boards to address those needs.</p> <p>In considering the information at 2.1 (men and women generally) of all SEN children boys account for 63.6% and girls 36.4% -around two thirds of the SEN register is made up of boys – paragraph 1 refers. A greater variance is apparent with regard to those children with a statement with boys accounting for (72.4%) of all statements – paragraph 2 refers.</p> <p>These variances are reflected in other jurisdictions. For example, an analysis in England in 2012 showed that boys were 2 and a half times more likely to have statements at primary level and more than three times more likely to have statements at secondary level.⁹</p>
Disability	<p>The SEN framework applies equally to all children whether or not they are recorded as having a disability. The definition of learning difficulty means that the child has significantly greater difficulty in learning than the majority of children his age, and/or has a disability which hinders his or her everyday use of educational facilities. In the new framework provision continues to be based on the individual needs of the child and the measures put in place by schools and Boards to address those needs.</p> <p>As can be seen from the data at 2.1 (disability) of all children with SEN a small percentage (6%) are reported as having a disability - paragraph 3</p>

⁹ Get link/reference

	refers. Similarly for all children with a statement 23% are recorded as having a disability. ¹⁰ - paragraph 4 refers. For the most part the child recorded as having a disability is also recorded as having SEN, however, a small number of children recorded as having a disability but not SEN – paragraph 5 refers. For the purposes of the annual School Census, the school is directed to record only children who are assessed as disabled by a medical professional. Children with SEN may or may not have been assessed by a medical professional. Additionally, schools may not be aware of such a diagnosis and therefore may not be in a position to record. In any case there is no clear explanation as to why there is such an extensive variation across the SEN and disabled categories. Nevertheless, the revised SEN framework will apply to all SEN pupils, whether or not they have a disability or whether or not they are recorded by schools as having a disability.
Dependants	The revised SEN framework will apply to all children regardless of whether or not they have dependants or caring responsibilities. There is, however, no data available from the School Census, which would enable an analysis of the impact of the current SEN framework on either school aged mothers or young carers. A revised Code of Practice on the new framework will highlight the importance of putting in place SEN provision to meet the assessed needs of the child, while taking into account the interface with other non-SEN related needs and DE policies.

Looked After Children (LAC) - Needs/Experiences/Uptake/Priorities

The SEN framework applies equally to all children. In the new framework provision continues to be based on the individual needs of the child and the measures put in place by schools and Boards to address those needs.

As can be seen at page 15 (Looked After Children) whilst there are small numbers of looked after children (LAC), a significant difference is noted between the incidence of SEN LAC children (59.3%) compared to the incidence of SEN for all children (21.7%). A similar difference can be seen for Traveller statemented children (23%) compared all statemented children (4.7%). The fact that the overall rate of absenteeism is higher for LAC may be one of the reasons for the recorded higher incidence of LAC with SEN. Data gathered from research commissioned by the Department ^[1] highlighted a range of underlying causes of and influences on non attendance of LAC children. Whilst not exhaustive these included: personal factors, age at which the child enters the care system, placement type and stability; contact with birth parents. The revised SEN framework will require that the SEN of children should be identified on an individual basis and will provide guidance in a revised Code of Practice and other guidance about situations when multiple identities occur.

¹⁰ The criteria used in the Annual school census for recording a disability indicator data is that a child has been assessed as disabled by a medical professional

^[1] PricewaterhouseCoopers 'Study into how the education system can improve the attendance of Looked after Children at post primary school' 2011

3. SCREENING QUESTIONS

3.1 What is the likely impact of this policy on equality of opportunity for each of the Section 75 equality categories?

Section 75 category	None	Minor	Major	Details of policy impact Level of impact?
Religious belief	√			N/A
Political opinion	√			N/A
Racial group	√			N/A
Age		√		It is anticipated that there will be a positive impact on SEN children in early years settings as a result of the mainstreaming of the SEN Review' s SEN in Early Years Pilot. While early identification, assessment and intervention are key features of the revised policy for pupils of all ages, it is anticipated that children in early years settings will benefit particularly from the added focus in early years. Also, it is anticipated that the new rights for the SEN child, who is over compulsory school age, to make an SEN appeal and to have access to advice /information and mediation services, in his own right, will have a positive impact.
Marital status	√			N/A

Sexual Orientation	√			N/A
Men and women generally	√			N/A
Disability		√		<p>It is anticipated that there will be a positive impact on all SEN children regardless of their disability or regardless of whether they have both SEN and disability. This positive impact will be as a result of more timely assessment and appropriate interventions by schools and the Authority. Interventions will be delivered as a result of strengthened Board of Governor and Education Authority duties and the r improved capacity of the school workforce.</p> <p>In particular, it is anticipated that the new rights for the disabled child, who is over compulsory school age, to make an appeal of disability discrimination, in his own right, will have a positive impact. Similarly SEN pupils over compulsory school age will be able to make a SEN appeal to Tribunal in their own right. Importantly they will have the lead relationship within the framework in terms of liaison with schools and the Education Authority about their special educational needs.</p>
Dependants	√			N/A

3.2 Are there opportunities to better promote equality of opportunity for people within the Section 75 equality categories?

Section 75 category	NO	Yes	Provide Details
Religious belief	√		
Political opinion	√		
Racial group	√		
Age	√		
Marital status	√		
Sexual Orientation	√		
Men and women generally	√		
Disability	√		

Dependants	√		
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3.3 To what extent is the policy likely to impact on good relations between: people of different religious belief, political opinion or racial group?

Good relations category	No impact	Minor impact	Major impact	Details of policy impact
Religious belief	√			
Political opinion	√			
Racial group	√			

3.4 Are there opportunities to better promote good relations between people of different religious belief, political opinion or racial group?

Good relations category	NO*	YES*	Provide Details
Religious belief	√		
Political opinion	√		

Racial group	√		
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3.5 Additional considerations - Multiple identities

Please provide details of data on the impact of the policy on people with multiple identities and specify relevant Section 75 categories concerned.

The revised SEN framework applies to all children across the s75 categories regardless of multiple identities. It is envisaged that a revised SEN Code of Practice will emphasise the importance of schools and the Education Authority, in the context of their strengthened SEN framework duties, considering SEN provision for children in the round so that issues of multiple identity can be addressed in an holistic way.

4. SCREENING DECISION

Not to conduct an equality impact assessment because no equality issues have been identified.

Please provide details which support the decision

The revised SEN and Inclusion framework is positioned within the raising standards agenda of Every School a Good School and remains focussed on the individual need of the SEN child. The screening has concluded that a full EQIA is not required as, by its very nature, the policy promotes both equality of opportunity regardless of which group or groups of s75 category the child falls and good relations for all. It aims to remove or reduce the barriers to learning which could otherwise be faced by children with SEN and will work alongside other DE policies aimed at addressing barriers to learning. It represents a more equitable framework in which all children with SEN should be able to get the support they need, in a timely manner.

The revised framework will improve the capacity of mainstream schools to meet the needs of the majority of SEN children in their classes – a comprehensive capacity building programme has been developed to support staff through the disseminations of effective SEN teaching and learning strategies and a continuous professional development programme; require Boards to set out the level of supports they will ordinarily make available to pupils and schools; strengthen the existing duties on Boards of Governors to address the needs of pupil with SEN; reduce bureaucracy for schools and Boards and free up time spent on activities that have little or no impact on provision; utilise the expertise of key professionals to support children with the greatest level of need; focus resources on delivery of outcomes for children and frontline services; and maintain a range of educational settings for SEN pupils, including special schools, learning support centres in mainstream schools and mainstream classes.

5. TIMETABLING AND PRIORITISING – SCREENED OUT

5.1 If the policy has been ‘screened in’ for equality impact assessment, then please answer the following questions to determine its priority.

On a scale of 1-3, with 1 being the lowest priority and 3 being the highest, assess the policy in terms of its priority for equality impact assessment.

Criterion	Priority Rating
Effect on equality of opportunity and good relations	
Social need	
Effect on people’s daily lives	
Relevance to a public authority’s functions	
Total	

Details of the Department's Equality Impact Assessment Timetable will be included in a Quarterly Screening Report.

5.2 If the policy is affected by timetables established by other relevant Public Authorities please provide details

6. MITIGATION – SCREENED OUT

If you conclude that the likely impact is ‘**minor**’ and an equality impact assessment is not to be conducted, you should consider: mitigation to lessen the severity of any equality impact, or the introduction of an alternative policy to better promote equality of opportunity or good relations.

Why and how will the policy/decision be amended or changed or an alternative policy introduced to better promote equality of opportunity and/or good relations?

Not required. The screening has concluded that by its very nature, the policy promotes both equality of opportunity regardless of which group or groups of s75 category the child falls and good relations for all.

7. MONITORING – SCREENED OUT

Effective monitoring will help identify any future adverse impact arising from the policy, as well as help with future planning and policy development.

Please detail what data you will collect in the future in order to monitor the effect of the policy on any of Section 75 equality categories.

The Department will monitor the effect of the policy on Section 75 equality categories on an ongoing basis. Data collection exercises include the annual School Census exercise, the Summary of Annual Examination Results, the School Leavers’ Survey etc.

8. DISABILITY DISCRIMINATION

8.1 Please state if the policy/decision in any way discourages persons with disabilities from participating in public life or fails to promote positive attitudes towards persons with disabilities.

The revised SEN policy in no way discourages persons with disabilities from participating in public life or fails to promote positive attitudes towards persons with disabilities.

On the contrary, the revised SEN framework policy builds on: the existing inclusive framework, focusing on early identification, assessment and intervention for children with SEN and on increasing the capacity of the schools workforce. The definition of SEN includes children with 'a disability which either prevents or hinders him from making use of educational facilities of a kind generally provided for children of his age in ordinary schools'. The revised SEN legislation provides for: a duty on the Authority to seek and consider the views of the child in performing their functions within the SEN framework, rights of a child over compulsory school age within the revised SEN framework including the right to make a SEN appeal to SENDIST; and a right to a disabled pupil or prospective disabled pupil who is over compulsory school age to make a claim of unlawful discrimination to SENDIST. These are all positive steps in enshrining UNCRC Article 12 and also Article 7 of the UNCRPD in SEN legislation.

8.2 Please state if there is an opportunity to better promote positive attitudes towards persons with disabilities or encourage participation in public life by making changes to the policy/decision or introducing additional measures.

The inclusive framework introduced in 1996 and built upon in 2005 (SEND0) is further developed through this new framework. An underpinning aim of the revised SEN policy is that the educational needs of all children with SEN should be addressed and that the children should be integrated fully and accepted by all on an equal basis. In support of this and in order to promote cultural change with a focus on celebrating diversity, the SEN capacity building programme includes a project that will tackle the behaviours and attitudes that result in discrimination. A digital media resource (targeted at children, parents, teachers, ancillary staff, and BOGs) will be developed that will be effective in addressing the insight and understanding of disability. Without this full understanding, necessary behavioural and attitudinal change would not be achievable. The resource will aim to cover a range of disability issues portrayed from a variety of perspectives, experiences and views to enable scenarios depicting situations with potentially adverse impact. Similarly, scenarios that demonstrate best practice and exemplary behaviours and attitudes will enable individuals and organisations to identify with the role(s) most relevant to their circumstances. No similar resource has been identified as being available across the range of related organisations.

Please detail what data you will collect in the future in order to monitor the effect of the policy with reference to the disability duties.

From the 2015/16 school year the Department will include the collection of a disability indicator at voluntary and private pre-school centre, nursery school and special school level in addition to that currently collected at primary school, post primary. As at present it will use the definition for 'disability' used in statistical returns relating to the Annual Schools Census, and the School Leavers Survey will continue i.e. a child 'has a disability if he or she has a physical or mental impairment which has a substantial and long term (has or is likely to last 12 months or more) adverse effect on his or her ability to carry out normal day to day activities.' This must have been assessed by a medical professional. The Department will continue to assess the data requirements surrounding disability. `

9 CONSIDERATION OF HUMAN RIGHTS ISSUES

9.1 How does the policy/decision affect anyone's Human Rights?

I.E.

The Human Rights Act (1998)

The United Nations Convention on the Rights of the Child (UNCRC)

The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)

The United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

Positive Impact	√
Negative Impact (human right interfered with or restricted)	
Neutral Impact	

9.2 If you have identified a negative impact who is affected and how?

Not applicable

At this stage you should determine whether to seek legal advice and to refer to the issue to the Equality Team to consider:

- *whether there is a law which allows you to interfere with or restrict rights*
- *whether this interference or restriction is necessary and proportionate*
- *what action would be required to reduce the level of interference or restriction).*

9.3 Outline any actions which could be taken to promote or raise awareness of human rights or to ensure compliance with the legislation in relation to the policy/decision.

See Section 8.

The proposed Special Educational Needs and Disability Bill brings in to domestic legislation a number of aspects of the United Nations Conventions on the Rights of the Child (UNCRC) and on the Rights of Persons with Disabilities (UNCRC PD). The revised SEN framework will be supported by a revised SEN Code of Practice and regulations which will promote human rights awareness and the best interests of the child.

10 CONSIDERATION OF RURAL IMPACTS

10.1 Is there potentially a direct, or indirect, impact on rural areas?

YES	
NO	√

10.2 If YES please attach a DARD Rural Issues Statement Pro-forma (A Pro-forma can be found in TRIM Document DE1/14/117152)

11. APPROVAL AND AUTHORISATION

Screened By:	Position	Date
Jan Matthews	Special Education and Inclusion Review Team (SEIRT)	12/02/15
Approved BY:	Position	Date
Irene Murphy	Head of Special Education and Inclusion Review Team (SEIRT)	12/02/15

Note: A copy of the Screening Form must be approved and 'signed off' by a senior manager responsible for the policy.

FOR COMPLETION BY EQUALITY TEAM

Quality Assured by: Richard Magowan Date: 12/02/15

Screening Decision Agreed

Comments:

Date Directorate/Team Informed: 12/02/15

Placed on Internet by: Neil McCormick Date: 10 April 2015

Delegated powers in the Education (NI) Order 1996 (“the 1996 Order”) as amended by the Special Educational Needs and Disability (NI) Order (“SENDO”) 2005

Article 28(2) (Regulations and orders) of the 1996 Order provides:

“(1) Regulations and orders made by the Department under this Part (other than orders under Article 5(3)) shall be subject to negative resolution.

“(2) Regulations and orders made by the Department under this Part may contain such incidental, supplementary and transitional provisions as the Department thinks fit.”

The following are the delegated powers under Part II (Children with special educational needs) of the 1996 Order:

Article 7A (Education otherwise than in ordinary schools)

*“(1)(b) He remains admitted to a special school, **in prescribed circumstances**, following an assessment under Article 15 at that school”*

Article 14 (Duties of health and social services boards and health and social services trusts)

*“(5) **Regulations may provide** that, where a health and social services authority is under a duty by virtue of paragraph(4) to comply with a request to help a board in the making of an assessment under Article 15 or a statement under Article 16, it must, **subject to prescribed exceptions**, comply with the request **within the prescribed period.**”*

Article 16 (Statement of SEN)

*“(2) The statement shall be in such a form and contain such information **as may be prescribed**”*

Article 17(Appeal against decision not to make a statement)

*“(2A) A notice under paragraph (1) shall inform the parent of the right of appeal under paragraph (2) and **contain such other information as may be prescribed.**”*

*“(2B) **Regulations may provide** that where a board is under a duty under this Article to serve any notice, the duty must be **performed within the prescribed period.**”*

Article 18A (Unopposed appeals)

*“(4) Before the end of **the prescribed period**, the board shall-*

(a) in the case of an appeal under Article 17, make a statement under Article 16 of the child’s educational needs,

(b) in the case of an appeal under Article 20 and 20A, make an assessment of the child’s educational needs,

(c) in the case of an appeal under paragraph 11(3) of Schedule 2 against a determinations of the board not to comply with the parents request, comply with the request.”

Article 19 (Reviews of statements)

*“(2) **Regulations may make provision** –(a) as to the manner in which reviews of such statements are to be conducted, (b) as to the participation in such reviews of such persons as may be prescribed, and (c) in connection with such other matters relating to such reviews as the Department considers appropriate.”*

Article 20(3A) (Assessment of educational needs at request of child’s parent)

*“(3A) A notice under paragraph (3)(a) shall inform the parent of the right of appeal under paragraph (3)(b) and **contain such other information as may be prescribed.**”*

Article 20A (Review or assessment of educational needs at request of responsible body)

*“(9) A notice given under paragraph (8)(a) to the child’s parent shall – (a) inform the parent of his right to appeal, and (b) **contain such other information (if any) as may be prescribed.**”*

Article 23A (Compliance with orders)

“If the Tribunal makes an order, the board concerned must comply with the order before the end of the prescribed period beginning with the date on which it was made.”

Schedule 1

Paragraph 2(1) (Medical and other advice)

*“(1) **Regulations shall make provision** as to the advice which a board is to seek in making assessments.*

*(2) Without prejudice to the generality of sub-paragraph (1), the regulations shall, **except in such circumstances as may be prescribed**, require the board to seek medical, psychological and educational advice and **such other advice as may be prescribed.**”*

Paragraph 3 (Manner, and timing, of assessments, etc)

*“(1) **Regulations may make provision-***

(a) as to the manner in which assessments are to be conducted,

*(b) requiring the board, where, after conducting the assessment in respect of a child for whom a statement is maintained under Article 16, it determines not to amend the statement, to serve on the parent of the child **notice giving the prescribed information**, and*

(c) in connection with such other matters relating to the making of assessments as the Department considers appropriate.

*(3) **Regulations may provide –***

*(a) that where a board is under a duty under Article 15, 20 or 20A to serve any notice, the **duty must be performed within the prescribed period**,*

*(b) that where a board has served a notice under Article 15(1) or 20A(3) on a child's parent, it **must decide within the prescribed period** whether or not to make an assessments of the child's educational needs,*

*(c) that where a request has been made to a board under Article 20(1), it **must decide within the prescribed period** whether or not to comply with the request, and*

*(d) that where a board is under a duty to make an assessment, the **duty must be performed within the prescribed period.***

(4) provision made under sub paragraph (3)-

*(a) **may be subject to prescribed exceptions**, and*

*(b) does not relieve the board of the duty to serve a notice, or make a decision or assessment, which has not been served or made **within the prescribed period.**”*

Schedule 2

Paragraph 2 – Copy of proposed statement

“(2) the copy of the proposed statement shall not specify-

*(a) **any prescribed matter,***

(b) any matter in pursuance of Article 16(4).”

Paragraph 3 – Amendments to a statement

“(3) the copy of the proposed amended statement shall not specify-

*(a) **any prescribed matter,***

(b) any matter in pursuance of Article 16(4).”

Paragraph 4(3) – provision of additional information

*“(3) A notice under sub-paragraph (2) shall **contain such other information as may be prescribed.**”*

Paragraph 8 (Making the statement)

*“(5) **Regulations may provide** that, where a board is under a duty (subject to compliance with the preceding requirements of this Schedule) to make a statement, the duty, or any step required to be taken for performance of the duty, must, **subject to prescribed exceptions, be performed within the prescribed period.**”*

Paragraph 9 (Service of statement)

*“(3) A notice under sub-paragraph (2) must **contain such other information as may be prescribed.**”*

Paragraph 10 (Keeping, disclosure and transfers of statements)

*“(1) **Regulations may make provision** as to the keeping and disclosure of statements.*

*(2) **Regulations may make provision,** where a board becomes responsible for a child for whom a statement is maintained by another board, for the*

transfer of the statement to it for Part II of this Order to have effect as if the duty to maintain the transferred statement were its duty.”

Paragraph 11(Change if named school)

*“(4) A notice under sub-paragraph (3)(a) must inform the parent of a right of appeal under sub paragraph (3)(b) and **contain such other information as may be prescribed.**”*

*(6) **Regulations may provide** that, where a board is under a duty to comply with a request under this paragraph, the duty must, **subject to prescribed exceptions, be performed within the prescribed period.**”*

Paragraph 13 (Procedure for ceasing to maintain a statement)

*(3) A notice under sub-paragraph (2)(a) must inform the parent of the right of appeal under sub-paragraph (2)(b) and **contain such other information as may be prescribed.***

*(5) Except where the parent of a child appeals to the Tribunal under this paragraph, a board may only cease to maintain a statement under this paragraph **within the prescribed period** beginning with the service of the notice under sub-paragraph (2).*