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Dear Peter

SPECIAL EDUCATIONAL NEEDS AND DISABILITY BILL

I refer to your letter of 12 June 2015 seeking the Department's views on the benefits of the application of further statutory obligations on Health and Social Care Trusts (including Memorandum of Understanding or Service Levels Agreements with the Education Authority) in respect of the delivery of health services related to SEN and to establish if scoping work had been undertaken in order to determine the impact of additional statutory obligations etc. in this regard

In June 2012, when addressing the Education Committee, the Minister stated the view¹ that he would like to see a statutory duty on health, but highlighted that it was not in his power to impose such a duty on another department. This referred to a specific statutory duty, which would form part of the statutory assessment process. This would comprise a duty on a Health and Social Care Trust to provide the therapeutic or other provision, which the Trust has assessed as being required for an individual child, and has advised the Education Authority accordingly by way of the advice given by the Trust within the statutory assessment process.

Both the Department of Education (DE) and Department of Health and Social Services and Public Safety (DHSSPS) recognise and support the need for close co-operation between the two Departments and their associated agencies in addressing services and support for children with SEN. In this regard the Department can see

¹ Committee for Education (Hansard) - Special Educational Needs Review: Ministerial Briefing 13 June 2012
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merit and benefits of clarity and understanding that the development of such regional operational protocols between the health and social care sector bodies and the Education Authority would bring.

It is important to highlight the existing legislative requirements. The Children (NI) Order 1995 provides that health and social services authorities shall assist the Education Authority with the provision of services for any child with SEN. Health and Social Care Trusts (HSCTs) have statutory duties to provide services for children regarded as being “in need”, as defined in the Children (NI) Order 1995. Where such children have SEN, the Children Order allows an integrated approach to be taken in meeting their educational, health and welfare needs.

For the education sector, the **Education (NI) Order 1996** provides that:

- where it appears that a health and social services authority could, by taking any specified action, help in the exercise of any of the EA’s functions under this Part, the EA may request the help of the health and social services authority, specifying the action in question (Article 14 (3) refers); and
- requires a health and social services authority to comply with the request unless it considers that having regard to the resources available to it for the purpose of the exercise of its functions, it is not reasonable for it to comply with the request. (Article 14(4)(b) refers)

With regard to scoping work in order to determine the impact of additional statutory obligations etc. in this regard, I can advise that the original proposals in 2009, in the context of partnership between education and health, included proposals that *“in order to ensure the establishment of consistent partnership arrangements, it will be essential that the ELBs/ESA and the proposed RHSCB and the HSC Trusts are bound by further agreements (such as memorandum of understanding or service level agreements) to jointly and effectively plan, commission, deliver and monitor, within the resources allocated, joined up education and health and social care to children with barriers to learning. If these proposed agreements cannot deliver accessibility and consistent support, then the respective departments may need to consider placing an appropriate statutory duty on the relevant organisations”*.

Yours sincerely

Russell

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Departmental Assembly Liaison Officer