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Paper on a Possible Amendment to the Special Education Needs and Disability Bill

1 Introduction

The following paper examines the case for a possible Committee for Employment and Learning Amendment to the proposed Special Education Needs and Disability (SEND) Bill extending the provision of SEN to young people over the age of 19. The paper outlines the current system of Special Education Needs (SEN) support in Northern Ireland, before considering the systems in place in England, Scotland and Wales. This includes a discussion of the establishing legislation in each jurisdiction.

This information is provided to Members in support of their Assembly duties and is not intended to address the specific circumstances of any particular individual. It should not be relied upon as legal or professional advice, or as a substitute for it. A suitably qualified professional should be consulted if specific advice or information is required.

2 Key Points

Northern Ireland

- Legislation that is of note in Northern Ireland includes:
 - The Education (Northern Ireland) Order 1996;
 - The Special Education Needs and Disability Order (2005);
 - The Special Education Needs and Disability Bill (introduced in March 2015).
- Pupils who remain in school after the age of 16 are the responsibility of the Education and Library Boards (ELBs) until the end of the term during which they turn 19. For those aged over 19 a range of services are provided via DHSSPS and DEL;
- In Northern Ireland, children and young people are assessed for SEN based on the SEN Code of Practice. This has five stages of need in recognition that SEN operates along a continuum of ability;
- The source of SEN support depends on an individual's needs. For those with Stage 1, 2 or 3 SEN, support is school based, with those with stages 4 or 5 needs receiving additional support provided by their Education and Library Board;
- The Special Education Needs and Disability Order (SENDO) 2005 was designed to strengthen the rights of an individual with SEN. It also makes it unlawful for general qualifications bodies to discriminate against people with disabilities. SENDO brought NI law into line with that in England, Scotland and Wales;
- Support for people with post 19 SEN is provided by two Departments in Northern Ireland – The Department for Health, Social Services, and Public Safety, and the Department for Employment and Learning;
- DEL facilitates support to the FE colleges via funding for Students with a Learning Disability and/or Difficulty (SLDD). This Additional Support Fund (ASF) is intended to help colleges meet the additional cost of provision for these students;
- In correspondence with the Department of Education (DE) it was noted that both DE and Department for Employment and Learning (DEL) officials had discussions regarding increasing the SEN age.

England

- The system of support in place for people with learning disabilities under the age of 25 in England has a number of differences from that in Northern Ireland;
- The main difference is that support is available for SEN from birth to 25 both in school, further education and in training;
- Relevant legislation in England includes:
 - The Education Act 1996;
 - The Learning and Skills Act 2000;
 - The Apprenticeships, Skills, Children and Learning Act 2009; and
 - The Children and Families Act 2014

- Prior to 2014 support for people under the age of 25 with learning disabilities was provided in two main ways – via SEN provision in schools, and via Learning Difficulty Assessments (LDAs) for those post 16 and who were in further education;
- The Children and Families Act 2014 reformed the existing system, creating a single Education, Health and Care Plan (EHC Plan) that provided support from 0 – 25;
- Under the 2014 Act, local authorities must ensure that services work together to promote children and young people’s well-being. This is supported via a revised SEN Code of Practice;
- Local authorities must publish a “Local Offer” that lists all the services they have available, with the local offer required to include services such as special educational, health and social care provision;
- Colleges must also act in tandem with local authorities to ensure young people attending their courses receive the appropriate support;
- Apprenticeships, traineeships and supported internships are also included within the EHC plan;
- During initial testing of a EHC Plan monitoring tool, Lancaster University found that both parents/carers and practitioners were broadly positive about EHC plans.

Scotland

- Scotland uses Additional Support Needs (ASN) rather than SEN;
- ASN cover a broader spectrum than SEN and can include children and young people with behavioural and learning difficulties, those who have sensory impairments and those who are particularly gifted;
- Local authorities may support full-time and further education for a young person with ASN up to the age of 19, although here is no legal requirement to do this;
- For school age children, education authorities are responsible for identifying a child’s ASN and provide them with the relevant support;
- Responsibility for support for people with learning disabilities who are leaving secondary school lies with a number of bodies rather than a single overall organisation holding responsibility;
- For those entering further education, the college they attend will carry out a needs assessment and provide the necessary support for a student to meet their objectives and aspirations in FE.

Wales

- Wales has, currently, a similar system of support for children and young people with SEN as was previously in place in England;
- School age children are supported via SEN and those over 16 but not in secondary school are able to access support via LDAs;
- Relevant legislation for this is:

- The Education Act 1996; and
- The Learning and Skills Act 2000;
- Guidance for SEN is published by the Welsh Government in a SEN Code of Practice. There is no guidance in relation to learners with Learning Disabilities or Difficulties (LDD)¹;
- The Welsh Government is currently in the process of developing legislation to reform the existing SEN and LDA systems;
- The proposed system is similar to that which has been introduced in England and aims to provide a unified legislative framework to support children and young people aged 0 – 25 with Additional Learning Needs (ALN - a term being used in the new system which replaces SEN);
- The new system will introduce Individual Development Plans (IDPs) to replace statements of SEN, post-16 assessments and non-statutory Individual Education Plans and post-16 plans;
- The Bill has yet to be introduced to the Welsh Assembly although it is expected to be brought forward before summer 2015.

Discussion

- England has an expanded system of SEN in comparison to NI, with its EHC Plans providing support to people with learning disabilities from birth to age 25. This has grown out of legislative developments since the 1996 Education Act;
- England has a different system in place for delivery of the EHCPs. In NI, powers for education, transport and social care services remain within the remit of Government Departments. In England, however, these services are devolved to Local Authorities;
- The implementation of a similar system here may require a number of amendment to the SEND – for example, the governing legislation for the EHCP is based on a number of pieces of legislation and amendments (such as the Education Act 1996, the Apprenticeships, Skills, Children and Learning Act 2009 and The Learning and Skills Act 2000) which have developed into the current model of support;
- Due to the extent of the reforms introduced in England and currently being developed in Wales to introduce the EHC Plans, a Bill may be more appropriate rather than an amendment to take account of all the legislative changes necessary to not only increase the age of SEN support but to provide for the numerous structural changes needed;
- **It is recommended that:**
 - **If the Committee wishes to develop any legislative amendments specialists in the drafting of legislation should be consulted;**

¹ In broad terms LDD are the equivalent of SEN but at the post-16 level.

- **The Committee may wish to contact the Department of Education and the Department for Employment and Learning regarding the progress of current discussions between officials about increasing the extent of SEN provision and whether this may lead to similar legislation as adopted in England and being developed in Wales;**
- **The Committee may wish to contact the Department of Education and the Department of Employment and Learning for comment on any potential amendment and what impacts could occur as a result, especially in light of the ongoing budget squeeze;**
- **The Committee may wish to consider the changes needed to the existing NI system in order to increase the SEN age and subsequently support the change and/or introduce similar provision to that provided in England via the EHC plans; and**
- **The Committee may wish to monitor the outcomes of the financial assessment being carried out by the Welsh Government on the costs of the reform of the Additional Learning Needs system.**

3 Current NI SEN Support

Pupils who remain in school after the age of 16 remain the responsibility of the Education and Library Boards until the end of the term during which they turn 19.

For those aged over 19 support is then provided from a range of other Departments included the Department for Employment and Learning (for those who wish to continue into further and higher education, or who would like support in finding employment) and the Department for Health, Social Services and Public Safety (The DHSSPS provides support via frameworks such as the Learning Disability Service Framework which helps to improve the health and wellbeing of people with a learning disability, their carers and their families by promoting social inclusion, reducing inequalities in health and social wellbeing, and improving the quality of care).

In Northern Ireland, children and young people are assessed for SEN based on the SEN Code of Practice. This has five stages of need in recognition that SEN operates along a continuum of ability. The five stages are:

- **Stage 1:** teachers identify and register a child's special educational needs and, consulting the school's SEN co-ordinator, take initial action such as differentiated teaching or a period of special attention;
- **Stage 2:** the SEN co-ordinator takes lead responsibility for collecting and recording information and for co-ordinating the child's special educational provision, working with the child's teachers;
- **Stage 3:** teachers and the SEN co-ordinator are supported by specialists from outside the school;

- **Stage 4:** the Board considers the need for a statutory assessment of the child's SEN which may lead to a Statement (Stage 5) and, if appropriate, makes a multi-disciplinary assessment. The assessment may recommend support that will not necessitate a statement such as equipment which may meet the child's needs; and
- **Stage 5:** the Board considers the need for a statement of SEN; if appropriate, it makes a statement and arranges, monitors and reviews provision. A statement of special educational needs is a legal document that sets out a child's needs and the extra help required.

Stages 1, 2 and 3 are school based, with stages 4 and 5 dealt with by the relevant Education and Library Board.²

Once someone leaves secondary school provision they have a number of options available including further education colleges, training, employment, day care centres and supported employment.

However, once they leave school SEN support ceases. Instead, support is provided through a number of organisations in some cases dependent on what an individual's destination is.

For example, for those with learning disabilities who are entering into further education, DEL states that:³

Further Education colleges are responsible for determining their own provision and they make adjustments to allow people with learning difficulties and/or disabilities to access courses. All FE students, declaring a disability or learning difficulty, undergo a needs assessment, during which the course and level of additional support required to meet their particular needs is agreed.

DEL facilitates support to the FE colleges via funding for students with a learning disability and/or disability (SLDD). This Additional Support Fund (ASF) is intended to help colleges meet the additional cost of provision for these students.

As stated in the 2013 circular to FE Colleges:⁴

The key objective of the ASF is to widen access and increase participation of SLDD in FE provision.

For the academic year 2013/2014 DEL made £3.5 million of ASF funding available which can be used by colleges to fund support such as specialist tutors, support workers, note takers and technical support.⁵

² Contact a family, <http://www.cafamily.org.uk/media/380065/senni.pdf>

³ Department for Employment and Learning, Disability Strategy, <http://www.delni.gov.uk/index/key-external-strategies/cmt-2col-23.htm>

⁴ Department for Employment and Learning, July 2013, Funding for Students with a learning difficulty and/or disability/ Additional Support Fund, http://www.delni.gov.uk/asf_circular_fe08_13_-_final.pdf

⁵ Ibid

Under the ASF, colleges can also provide ‘discrete’ provision which is earmarked to provide additional lecturers or classroom assistants to facilitate smaller class sizes to help accommodate those students who, as a result of their particular learning difficulty and/or disability, are unable to participate in mainstream provision.

4 Relevant Legislation

The Education (Northern Ireland) Order 1996 established that:⁶

A child has “special educational needs” if he has a learning difficulty which calls for special educational provision to be made for him.

In NI, SEN are defined under The Education (NI) Order (1996) as when a child has:⁷

... a learning difficulty which calls for special educational provision to be made for him.

The Department of Education defines a child as having a learning difficulty:⁸

If he or she finds it much harder to learn than most children of the same age or has a disability which makes it difficult to use the educational facilities in the area.

It goes on to define a child as:

“Child” includes any person who has not attained the age of nineteen years and is a registered pupil at a school.

This is further qualified in Clause 3, Paragraph 8 as:

For the purposes of paragraph (7) a person who attains the age of nineteen years at any time during a school term at any school shall be deemed not to have attained that age until the day after the end of that school term.

As such, under the 1996 Order, a child with SEN could remain in school until they reached the age of 19, at which point they would leave at end of the school term in which they turned 19.

Provision in further education is also taken account of within legislation. Article 13 (2) of the Further Education (Northern Ireland) Order 1997 requires that:⁹

⁶ Legislation.gov.uk, The Education (Northern Ireland) Order 1996, <http://www.legislation.gov.uk/nisi/1996/274/part/II/crossheading/introductory>

⁷ The Education (NI) Order (1996) <http://www.legislation.gov.uk/nisi/1986/594>

⁸ Department of Education, Definitions, http://www.deni.gov.uk/index/support-and-development-2/special_educational_needs_pg/7-special_needs-a_guide_for_parents_pg/7-special_educational_needs_-_a_guide_for_parents-contents_pg/7-special_educational_needs_-_a_guide_for_parents-definitions_pg.htm

⁹ Correspondence with the Department of Employment and Learning, received 14 April 2015

The Governing Body of an Institution of Further Education (FE) shall have regard to the requirements of persons over compulsory school age who have learning difficulties.

The Special Education Needs and Disability Order (SENDO) 2005¹⁰ was designed to strengthen the rights of an individual with SEN. It also makes it unlawful for general qualifications bodies to discriminate against people with disabilities. SENDO brought NI law on this matter into line with that in England, Scotland and Wales.

It ensures that pupils with SEN but without a statement of SEN are educated in ordinary schools. It also ensures that those with a statement are educated in ordinary schools unless this is incompatible with parental choice or with the provision of efficient education for other children.

SENDO covers three main areas:

- Schools;
- Further and Higher Education; and
- General Qualifications Bodies.

The statutory responsibility for securing provision for pupils with SEN rests with both schools and the five Education and Library Boards (ELBs). They are responsible under special education legislation for identifying, assessing and in appropriate cases, making provision for children with SEN in their areas.¹¹

4.1 Special Education Needs and Disability Bill

The Department of Education (DE) introduced the Special Education Needs and Disability (SEND) Bill on the 2 March 2015.

The Bill was developed to:¹²

Ensure early identification, assessment and provision for SEN children in order for them to achieve their full potential with the child placed firmly at the centre of that process. In all matters within the framework it is expected that the grant-aided educational settings and the Education Authority ("the Authority") would have the best interests of the child at the centre of all actions taken to address the child's SEN.

The Bill includes a clause (Clause 13) that alters the definition of a child for the purposes of special education to enable a child reaching age 19 during a school year to

¹⁰ The Special Education Needs and Disability Order (2005), Explanatory Memorandum <http://www.legislation.gov.uk/nisi/2005/1117/memorandum/contents>

¹¹ Department of Education, Special Education Needs, http://www.deni.gov.uk/index/support-and-development-2/special_educational_needs_pg.htm

¹² Northern Ireland Assembly, Special Educational Needs and Disability Bill Explanatory and Financial Memorandum as Introduced, <http://www.niassembly.gov.uk/assembly-business/legislation/primary-legislation-current-bills/special-educational-needs-and-disability-bill/special-educational-needs-and-disability-bill-explanatory-and-financial-memorandum-as-introduced/>

remain in school until the end of that year subject to the authority maintaining their statement. Currently (as defined by the 1996 Order) children are deemed to reach that age the day after the end of the same school term in which they celebrate their birthday.¹³

As such this will extend, in some cases, the provision of support available to people with SEN within the School's system. It should be noted that DE has stated that:¹⁴

Clause 13 of the SEND Bill does not propose to increase the age range for special educational needs (SEN) provision but rather corrects an anomaly in current SEN legislation (the Education (NI) Order 1996).

In a briefing to the Committee for Education in June 2012, the Minister for Education was asked whether there had been any discussions with the Department for Employment and Learning about extending the statement for young people to the age of 24.¹⁵

...so that a young adult can have the statement through further or higher education?

The Minister replied that:¹⁶

No, there have not been any discussions with DEL on that issue. The review solely looks at the provision of special educational needs services and assessments for young people who are under the remit of the Department of Education. If the Committee wishes to raise the matter with DEL, that is a matter for the Committee. I am more than happy to raise it with the Minister for Employment and Learning. The issue has been raised with me, but it really comes under the remit of the Minister for Employment and Learning.

It should be noted that during the second stage debate on the SEND Bill the Minister for Education discussed the increase of the SEN age. With regards to the role of DEL, the Minister stated that:¹⁷

*I cannot make provisions on behalf of the Employment and Learning Minister. In 2012-13, there were discussions with him about having a statement in place up to 25 years of age. **However, the Minister for Employment and Learning and his Department felt that that was unnecessary.** There have been some discussions with officials in the*

¹³ Northern Ireland Assembly, RalSe, 5 March 2015, Perry, C, Special Education Needs and Disability (SEND) Bill, <http://www.niassembly.gov.uk/globalassets/documents/raise/publications/2015/education/3815.pdf>

¹⁴ Correspondence with the Department of Education, received 2 April 2015

¹⁵ Northern Ireland Assembly, Hansard, 13 June 2012, Committee for Education, Special Education Needs Review: Ministerial Briefing, <http://www.niassembly.gov.uk/globalassets/documents/official-reports/education/2011-2012/special-educational-needs-review-ministerial-briefing.pdf>

¹⁶ Ibid

¹⁷ NI Assembly, Hansard, 10 March 2015, Questions for urgent oral answer, <http://data.niassembly.gov.uk/HansardXml/plenary-10-03-2015.pdf>

intervening period. I am more than happy to raise the matter with the Minister for Employment and Learning again to see whether there has been a change of views or whether his Department believes that statementing up to 25 is appropriate and will deliver benefits for the young people involved, which is the most important thing.

When asked during NI Assembly questions as to why he had not included a section on children and young people with SEN or disabilities in the Work and Families Bill (replicating the provision provided in England under the Children and Families Act 2014), the Minister for Employment and Learning stated that:¹⁸

My Department's assessment regarding those provisions falling within its own remit is that there is no direct read-across to structures in Northern Ireland and that a birth to 25 education, health and care plan of the kind supported by the Act does not sufficiently recognise and respond to the changing needs of young people as they move into adulthood.

In response to a request for further information on this DEL provided the following information:¹⁹

Following informal discussions, both the FE and HE sectors indicated they did not consider extension of SEN statements to the age of 24 to be of any additional education benefit to students. It was also considered that statements flowing from schools were unlikely to reflect an individual's support needs as they move into adulthood and into an FE or HE environment. It was considered that the existing assessment procedures in place for both FE and HE are more appropriate and reflective of both the provision and support available to students enrolling in FE or HE courses."

It should be noted that DE went on to state that following the Second stage debate in the NI Assembly on the SEND Bill, in which a number of MLAs raised the matter of increasing the SEN age, DE and DEL officials have subsequently had initial discussions on the issue.²⁰

5 England

The system of support in place for people with learning disabilities under the age of 25 in England has a number of differences with that in operation in Northern Ireland.

There are two significant differences relevant to the discussion in this paper. Firstly, support for those in school and those attending FE College is provided by local authorities. Secondly, recent reform to the English system has introduced support from 0 to 25 years through Education, Health and Care Plans (EHC Plan).

¹⁸ NI Assembly, 23 October 2014, AQW 37871/11-15

¹⁹ Correspondence with the Department for Employment and Learning, received 14 April 2015

²⁰ Correspondence with the Department of Education, received 02 April 2015.

5.1 The introduction of Learning Disability Assessments

The Education Act 1996 sets in law that a child must receive special education provision if they have special education needs, with a child defined as:²¹

Any person who has not attained the age of 19 and is a registered pupil at a school.

This is similar to the provision available in Northern Ireland.

Learning Difficulty Assessments (LDAs) were introduced to England under the Learning and Skills Act 2000, Section 140.²²

This introduced an amendment to the Education Act that expanded provision for those who have left compulsory school and now included a statutory duty for LAs to carry out an assessment of needs for those who are under the age of 25, who appear to have a learning difficulty and who are receiving or are likely to receive post-16 education or training or higher education. This should be carried out during an individual's last year of compulsory school or for those who have left compulsory school but who are under 25.²³

As stated by the National Audit Office:²⁴

The Department for Education sets the policy framework for special education in England, including for young people aged 16–18 (and 19–25 for those with Learning Difficulty Assessments).

As such, support was now available for those aged up to 25. SEN for children in compulsory school and Learning Difficulty Assessments (LDAs) for those aged 16 - 25.

In 2012 approximately 250,000 children and young people in England had statements of SEN or an LDA at any one time.²⁵

For school age children, pupils with SEN were divided into three groups based on the level of provision needed:²⁶

- **School Action:** Where extra or different help is given from that provided as part of the school's usual curriculum;
- **School Action Plus:** Where the class teacher and the Special Education Needs Coordinator (SENCO)²⁷ receive advice or support from outside specialists (a

²¹ Education Act 1996, Section 312, subsection (5)

²² Learning and Skills Act 2000, Section 140

²³ Learning and Skills Act 2000, Section 140 Subsection (3)

²⁴ National Audit Office, 4 November 2011, Oversight of special education for Young people aged 16 – 25
<http://www.nao.org.uk/wp-content/uploads/2011/11/10121585.pdf>

²⁵ Department for Education, October 2013, Consultation on transition to Education, Health and Care plans and the local offer,
<https://www.education.gov.uk/consultations/downloadableDocs/Transitional%20arrangements%20document.pdf>

²⁶ Department for Education, 23 October 2013, Children with special educational needs 2013,

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/251728/SFR42-2013Introduction.pdf

²⁷ Special Education Needs Coordinator - a member of staff at school who has responsibility for

specialist teacher, an educational psychologist, a speech or language therapist or other health professionals); and

- **Statement:** A pupil has a statement of SEN when a formal assessment has been made. A document setting out the child's needs and the extra help they should receive is in place.

For those aged over 16, local authorities have a duty to carry out a Learning Difficulty Assessment (LDA) on anyone who previously had a SEN statement or whom they believe may need one. The definition of learning difficulties is similar to that of SEN for school aged children.²⁸

LDAs were the responsibility of local authorities, and:²⁹

Having determined that a young person requires a LDA a local authority must continue to support the young person up to the age of 25 if they stay in further education or training (provided they still have learning difficulties).

The Apprenticeships, Skills, Children and Learning Act 2009 introduced a further amendment to Section 13 of the Education Act 1996 which altered the provision for FE slightly with further education available to those who are aged 19 or over but under 25 and are subject to LDAs.³⁰

A House of Commons Library briefing paper states that:³¹

Local authorities must secure enough suitable education and training provision to meet the reasonable needs of all young people aged 19-25 with a section 139a LDA³². The majority of post – 16 FE students with learning difficulties and disabilities study in mainstream schools or colleges and most students study at their local provider.

5.2 The Children and Families Act 2014

In 2014, the Children and Families Act was introduced, overhauling the existing system for identifying children and young people in England with SEN.

coordinating special educational need provision within that school

²⁸ Department for Education, 9 March 2011, Support and Aspiration: A new approach to special educational needs and disability, <http://webarchive.nationalarchives.gov.uk/20130401151715/https://www.education.gov.uk/publications/eorderingdownload/green-paper-sen.pdf>

²⁹ Department for Education, Section 139A Learning Difficult Assessments Statutory Guidance for local authorities, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/271397/139a_guidance_2013_-_revised_23-4-13.pdf

³⁰ The Apprenticeships, Skills, Children and Learning Act 2009, Schedule 2: LEA Functions: Minor and consequential amendments

³¹ House of Commons Library, <http://www.parliament.uk/Templates/BriefingPapers/Pages/BPPdfDownload.aspx?bp-id=SN06341>

³² Learning and Skills Act 2000

The Act introduced a number of changes to the support provided to people with learning disabilities. Whilst it will be discussed in detail later in this paper, the Clauses most of note within the Act are discussed below.

The Act was developed following an extensive consultation period that included a Green Paper published in 2011 (Support and Aspiration: A new approach to Special Education Needs).³³

In the Government's response document to the consultation it states that:³⁴

For young people who would have a statement of SEN or a LD Assessment in the current system it proposes a single assessment process and an Education, Health and Care Plan covering the period from birth to 25 and spanning education, health, social care and support into employment. For those 19 – 25 year olds who need it, an EHC plan will allow more time for them to complete their education and to gain the skills they need to make a successful transition to independence. For some young people that may mean continuing in FE until 20 or 21, for others it may mean continuing until they are 25.

The response document goes on to state:

We are developing the Education, Health and Care Plan so that it will provide statutory protections comparable to those currently associated with a statement of SEN to young people aged 16 – 25 while they are in school or further education.

The Children and Families Bill was introduced in 2013 with the intention to:³⁵

Extend the SEN system from birth to 25, giving children, young people and their parents greater control and choice in decisions and ensuring their needs are properly met.

The reform programme introduced as part of the Act includes:

- Replacing old statements with a new birth to 25 EHC Plan;
- Offering families personal budgets; and
- Improving cooperation between all the services that support children and their families, particularly local authorities and health authorities to work together.

³³ Department for Education, 9 March 2011, Support and Aspiration: A new approach to special educational needs and disability, <http://webarchive.nationalarchives.gov.uk/20130401151715/https://www.education.gov.uk/publications/eorderingdownload/green-paper-sen.pdf>

³⁴ Department for Education, 15 May 2012, Support and Aspiration: progress and next steps, <https://www.gov.uk/government/publications/support-and-aspiration-a-new-approach-to-special-educational-needs-and-disability-progress-and-next-steps>

³⁵ Gov.UK, Children and Families Bill 2013, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/219659/Children_20and_20Families_20Bill_20Factsheet_20-20Introduction.pdf

The Education Select Committee examined the SEN aspects of the Bill through a pre-legislative scrutiny process.³⁶

It found that:

During our inquiry, we heard widespread and enthusiastic support for a statutory framework for SEN that works for children and young people from birth to 25 years of age.

The Committee did, however, raise some concerns with witness identifying that there may be issues regarding funding for the framework and its impact on post-16 education.

The Committee stated:³⁷

The Government must ensure that the extension of the statutory SEN framework from 16 – 25 is not allowed to extend provision for some at the expense of the quality and quantity of provision for all.

The Act also changes the definition of special education provision as stated in section 312 (5) of the Education Act 1996 and applies it to people over the compulsory school age.

Clause 72 of the Act also refines a number of definitions and includes a definition for a “Young Person” as:

A person over compulsory school age but under 25.

In 2014 the Children and Families Act became law.

As stated on GOV.UK:³⁸

EHC plans identify educational, health and social needs and set out the additional support to meet those needs.

Of note is that under the Children and Families Act 2014, local authorities have a statutory duty to make sure that services work together in promoting children and young people’s wellbeing.

The revised SEN code of practice states that:³⁹

³⁶ House of Commons, 12 December 2012, Education Committee, Pre-legislative scrutiny: Special Educational Needs, <http://www.parliament.uk/business/committees/committees-a-z/commons-select/education-committee/inquiries/parliament-2010/sen/>

³⁷ Ibid

³⁸ Gov.uk, Children with special educational needs, <https://www.gov.uk/children-with-special-educational-needs/extra-sen-help>

³⁹ Department for Education and Department of Health, January 2015, Special Educational Needs and Disability code of practice, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/398815/SEND_Code_of_Practice_January_2015.pdf

Local authorities must work with one another to assess local needs. Local authorities and health bodies must have arrangements in place to plan and commission education, health and social care services jointly for children and young people with SEN or disabilities.

Local authorities must publish a “Local Offer” which details in one place information on what provision they expect to provide in education, health and social care for children and young people with SEN or who are disabled.

As stated in the SEN Guidance, the Local Offer had two key purposes:

- To provide clear, comprehensive, accessible and up-to-date information about the available provision and how to access it; and
- To make provision more responsive to local needs and aspirations by directly involving disabled children and those with SEN and their parents, and disabled young people and those with SEN, and service providers in its development and review.

The Local Offer must include information such as:

- Special educational, health and social care provision for children and young people with SEN or disabilities – this should include online and blended learning;
- Details of how parents and young people can request an assessment for an EHC plan;
- Arrangements for identifying and assessing children and young people’s SEN – this should include arrangements for EHC needs assessments;
- Other educational provision, for example sports provision, arts provision and paired reading schemes;
- Post-16 education and training provision;
- Apprenticeships, traineeships and supported internships; and
- Support to help children and young people move between phases of education (for example from early years to school, from primary to secondary).

It must also cover:

- Support available to all children and young people with SEN or disabilities from universal services such as schools and GPs;
- Targeted services for children and young people with SEN or disabilities who require additional short-term support over and above that provided routinely as part of universal services; and
- Specialist services for children and young people with SEN or disabilities who require specialised, longer term support.

Under the Children and Families Act, support has to be provided by post-16 Colleges, with “Colleges” defined as including general FE colleges, specialist art and design and

land-based colleges, sixth form colleges, 16-19 academies and special post-16 institutions.

Under the Act, each of these bodies has the following specific statutory duties:

- The duty to co-operate with the local authority on arrangements for children and young people with SEN;
- The duty to admit a young person if the institution is named in an EHC plan; and
- The duty to use their best endeavours to secure the special educational provision that the young person needs.

The Code of Practice states that:

All students aged 16-19 (and students up to the age of 25 where they have an EHC plan) should follow a coherent study programme which provides stretch and progression and enables them to achieve the best possible outcomes in adult life.

If a young person has an identified SEN the college must discuss with the student their ambitions, the nature of support needed, the impact on progress and set a date for review. The support should be based upon the students' needs and aspirations and can include:

- Assistive technology;
- Personal care (or access to it);
- Specialist tuition;
- Note takers;
- Interpreters; and
- One-to-one and small group learning support.

It should be noted that colleges in England receive funding for students based on a national funding formula for core provision. Additional funding is provided for students with additional needs, including those with SEN.

However, this funding is not ring-fenced and is included within a college's main budget line. It is therefore up to colleges to plan and budget for supporting those with SEN.

Local Authorities are expected to top-up funding to colleges in cases where the costs of support for a young person with SEN exceeds the nationally prescribed threshold cost per student per year.

The SEN Guidance also states that:⁴⁰

It should be noted that colleges are funded by the Education Funding Agency (EFA) for all 16-18 year olds and for those aged 19-25 who have

⁴⁰ Ibid

EHC plans, with support from the home local authority for students with high needs. Colleges must not charge tuition fees for these young people.

In addition to the support provided by colleges and schools, young people with SEN can retain their EHC plan if they are involved in certain types of work experience, including:

- **Apprenticeships:** These are paid jobs that incorporate training, leading to nationally recognised qualifications;
- **Traineeships:** These are education and training programmes with work experience, focused on giving young people the skills and experience they need to help them compete for an apprenticeship or other jobs; and
- **Supported internships:** These are structured study programmes for young people with an EHC plan, based primarily at an employer. Internships normally last for a year and include extended unpaid work placements of at least six months.

EHC plans can also provide packages of support, with a number of providers and activities spread out across five days a week. Provided by local authorities, these can include a number of activities, such as:

- Independent study;
- Volunteering or community participation;
- Work experience; and
- Training to enable a young person to develop and maintain friendships and/or support them to access facilities in the local community.

For those aged 19-25 there are some additional duties and provisions. For example:

- 19- to 25-year-olds with EHC plans should have free access to further education in the same way as 16- to 18-year-olds. Colleges or training providers must not charge young people tuition fees for such places as the funding will be provided by the local authority and the Education Funding Agency (EFA);
- Apprentices aged 19 to 25 with EHC plans are fully funded on the same terms and funding rates as 16- to 18-year-old apprentices; and
- 19- to 25-year-olds with SEN but without EHC plans can choose to remain in further education. Colleges are funded by the Skills Funding Agency for all students aged 19 and over who do not have an EHC plan (including those who declare a learning difficulty or disability).

EHC plans can continue until the age of 25 but will stop if an individual:⁴¹

- Goes to university;
- Gets a job;

⁴¹ Department for Education, Education and Health Care Plans, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/346221/Education_health_and_care_plans.pdf

- Tells their local authority they no longer want an EHC plan; or
- The local authority thinks they no longer need it.

It should be noted that as EHC plans have only been recently introduced there have been no evaluations or reviews carried out of the new system.

However, Lancaster University, working with the Department for Education, has developed a Personal Outcomes Evaluation Tool (POET) to monitor the impact of the EHC and of the introduction of personal budgets. It has carried out initial testing of POET, with 133 people completing POET surveys. Of these 61 were practitioners working to implement EHC and 72 were parents/carers who had experience of them.⁴²

The survey found the following:

- Both parents/carers and practitioners were broadly positive about the process of EHC plans;
- Parents/carers were positive about the impact of EHC plans or personal budgets on the lives of their children. In five of the nine areas asked about, at least 80% of respondents said that things were better or a lot better;
- Parents/carers were positive about the impact of EHC plans or personal budgets on their own lives; and
- The majority (70%) of parents felt EHC plans or personal budgets met their child's needs.

6 Learning Disability Support in Scotland and Wales

This section of the paper will briefly consider the provision in Scotland and Wales of SEN support (and what is planned in the case of Wales). Scotland's system of support is broadly comparable to that offered in Northern Ireland, while the system in Wales is similar to that offered in England prior to its reform.

It should be noted that additional information on the legislation and strategies surrounding support for people with learning disabilities in Scotland and Wales can be found in NIAR 261-2014 "[Post-Secondary Support for People with Learning Disabilities in Great Britain](#)".⁴³

6.1 Scotland

In Scotland the Education (Additional Support for Learning) (Scotland) Act 2004:⁴⁴

⁴² Lancaster University, Summer 2014, Measuring the outcomes of EHC plans and personal budgets, <http://www.in-control.org.uk/media/167879/ehc%20poet%20report%20final.pdf>

⁴³ Available here: http://www.niassembly.gov.uk/globalassets/documents/raise/publications/2014/employment_learning/6614.pdf

⁴⁴ Education Scotland, Additional Support for Learning, <http://www.educationscotland.gov.uk/inclusionandequalities/additionalsupportforlearning/index.asp>

Places duties on local authorities, and other agencies, to provide additional support where needed to enable any child or young person to benefit from education.

As such, Scotland provides for Additional Support Needs (ASN) rather than SEN.

Enquire, the Scottish advice centre for additional support for learning, states that:

The law says that a child or young person may have additional support needs if they are unable to benefit from their school education without help beyond what is normally given to children or young people of the same age.

ASN fall under a broader spectrum than SEN, and children and young people can receive ASN if they are being bullied, have behavioural or learning difficulties, are deaf or blind or if they are particularly gifted.⁴⁵

Local authorities may support full-time and further education for a young person with ASN up to the age of 19, although there is no legal requirement to do this.⁴⁶

For school age children, education authorities are responsible for identifying a child's ASN and provide them with the relevant support. This can include:⁴⁷

- Adapting the curriculum;
- Individual or small group teaching;
- Specific support from a classroom assistant, ASN assistant or behaviour co-ordinator; and
- Differentiation of the curriculum, including resources and materials.

If a child's ASN arise as a result of complex or multiple factors (such as severe learning difficulties or a secondary impairment), they may need a Co-ordinated Support Plan (CSP).

This is a legal document that is designed to ensure children benefit from their education, bringing together services such as social work, Health Boards, and Education Authorities.

The CSP includes details on:

- A child's strengths;
- Why a child has ASN;
- A child's educational objectives; and
- The support needed for the child to achieve these objectives.

⁴⁵ Ibid

⁴⁶ Enquire, 2014, The parents' guide to additional support for learning <http://enquire.org.uk/20100622/wp-content/uploads/2014/10/parents-guide.pdf>

⁴⁷ Ibid

A CSP co-ordinator is appointed by the educational authority to be responsible for delivering the CSP.

In a similar manner to NI, responsibility for support for people with learning disabilities who are leaving the secondary school system lies with a number of bodies, rather than a single organisation holding overall responsibility (as with the local authorities in England).

For those entering further education, the college they attend will carry out a needs assessment and provide the necessary support for a student to meet their objectives and aspirations in FE.

Support in FE colleges can include:⁴⁸

- One-to-one help in the classroom;
- Accessible computer equipment;
- Help with going to the toilet;
- Help at lunch breaks; and
- A flexible timetable or extra time in exams.

The support can be provided by the College, social work departments of local authorities or the NHS.⁴⁹

Additional financial support can be applied for through the college. This bursary covers day to day living costs, with the college processing the application and deciding who is eligible.

An Additional Support Needs for Learning Allowance (ASNLA) is also available.

6.2 Wales

Wales has, currently, a similar system of support for people with learning disabilities as that previously in place in England, with school age children supported via SEN assessments and those over the age of 16 but not in secondary schools able to access support via LDAs.

The SEN support is based on Part IV of the Education Act 1996, with post-16 learners in FE with Learning Disabilities and/or Difficulties (LDD) legislated for via the Learning and Skills Act 2000. As stated in a Welsh Government White Paper:⁵⁰

The legislation on LDD relates to the statutory assessment (by the Welsh Ministers) of those children and young people with more complex needs who are leaving school and intend undertaking further education or training.

⁴⁸ Lead Scotland, Post-school learning choices in Scotland,
<http://www.lead.org.uk/images/upload/Learning%20Choices%20doc.doc>

⁴⁹ Ibid

⁵⁰ Welsh Government, 2014, Legislative proposals for additional learning needs
<http://gov.wales/docs/dcells/publications/140522-consultation-document-en.pdf>

Guidance for SEN is published by the Welsh Government in a SEN Code of Practice. The White paper notes that there is no guidance in relation to learners with LDD.

The Welsh Government is currently in the process of developing legislation to reform the existing SEN system.

In the 2014 White Paper “Legislative proposals for additional learning needs” the Welsh Government states that the current system is unsatisfactory, citing a number of reasons including:⁵¹

- The current terminology stigmatises children and young people and is associated with a system which needs fundamental reform;
- There is an unclear divide between those requiring statements of SEN and those who do not;
- The lack of clear criteria about when and for whom a statement should be made results in an inconsistent approach between local authorities; and
- The current arrangements for children and young people with LDD potentially disrupt their smooth transition between school and post-16 education and may make the system of post-16 provision less efficient than it should be.

The proposed system is similar in a number of ways to that introduced in England and in the 2014 White Paper the Welsh Government identifies its aims for the revised system:⁵²

- A unified legislative framework to support children and young people aged 0 to 25 with Additional Learning Needs (ALN);
- An integrated, collaborative process of assessment, planning and monitoring which facilitates early, timely and effective interventions; and
- A fair and transparent system for providing information and advice, and for resolving concerns and appeals.

To meet these aims, the government has proposed introducing a number of changes, including:⁵³

- Introduce the terms ‘additional learning needs’ and ‘additional learning provision’ to replace the existing terms ‘special educational needs’ and ‘special educational provision’;
- Introduce Individual Development Plans (IDPs) to replace statements of SEN, post 16 assessments (under section 140 of the Learning and Skills Act 2000) and non-statutory Individual Education Plans (IEPs) and post-16 plans;
- Require the Welsh Ministers to consult on and issue a Code of Practice on ALN;

⁵¹ Ibid

⁵² Ibid

⁵³ Ibid

- Set out the minimum requirements for information that must be included in an IDP, and require the Code to set out detailed mandatory requirements to underpin this;
- Require local authorities to prepare an IDP and ensure that any agreed additional learning provision set out in the IDP Action Plan is put in place for all children and young people aged 0-25 who have been determined as having ALN and who are receiving or wish to receive education or training;
- Require maintained schools, FE institutions, and Pupil Referral Units to use their best endeavours to secure that the additional learning provision set out in a child or young person's IDP is provided; and
- Require local authorities to secure specialist education provision for post-16 learners where the IDP indicates that this is necessary to meet a child or young person's needs.

The White Paper includes a brief section on what the potential financial costs of the reform of the Bill would be. Whilst it states that there will be a full assessment of the costs when the Bill is published, the White Paper found that:

It is likely that there will be some recurring costs associated with the inclusion of children and young people aged between 16 and 25 in the definition of ALN. In particular, there will be costs associated with local authorities taking on the responsibilities for the assessing post-16 learners (as part of the IDP process) and for securing specialist post-16 provision for them. There will be a transfer of funding between the Welsh Government and local authorities in order to fund this provision.

The Bill has yet to be introduced to the Welsh Assembly although it is expected to be brought forward before summer 2015.⁵⁴

7 Conclusion and Recommendations

If the Committee would like to pursue an amendment to the SEND it may wish to consider a number of issues.

England has an expanded system of SEN in comparison to NI, with its EHC Plans providing support to people with learning disabilities from birth to age 25. This has grown out of legislative developments since the 1996 Education Act, with the Department for Education and Local Authorities acting as delivery and support agents.

England has a different system in place for delivery of the EHC Plans. In NI, powers for education, transport and social care services remain within the remit of Government Departments. In England, however, these services are devolved to Local Authorities (albeit under strict guidelines published by the relevant government departments).⁵⁵

⁵⁴ Welsh Government, Legislative Programme 2014-15, <http://gov.wales/legislation/programme/2014-2015/?lang=en>

⁵⁵ GOV.UK, Understand how your council works, <https://www.gov.uk/understand-how-your-council-works/types-of-council>

This difference in structure means that rather than been transferred from one managing authority to another at specific transition points, the LA remains the main source of services and funding.

This reflects the Minister for Employment and Learning's comments in response to the AQW discussed earlier.

The implementation of a similar system here may require a number of amendments to the SEND – for example, the legislation governing EHC Plans is based on a number of pieces of legislation and amendments (such as the Education Act 1996, the Apprenticeships, Skills, Children and Learning Act 2009 and The Learning and Skills Act 2000) which have developed into the current model of support.

Areas which may need amendment include the definition of a child, the definition of a young person, where statutory responsibility lies on delivery of an NI equivalent of the EHCP and the expansion of SEN provision to FE Colleges.

An alternative amendment, specifically targeting an increase in SEN age may be focused on Clause 13 of the SEND. However, any increase in age provision could have a number of impacts, including on the funding for schools (for example instead of potentially providing support for someone with SEN for nine years, secondary schools would be providing this for eleven years).

Indeed, the current financial pressures NI Departments are currently facing should be considered.

NICCY, in its response to the "Every School a Good School" consultation stated that its review of the support provided to children and young people and SEN found that in mainstream schools teachers could find it difficult to understand and cope with the needs of SEN pupils:⁵⁶

Evidence gathered by NICCY's Review suggested that while there are pockets of good practice, the training and support of school staff in mainstream settings are, in the main, not being adequately addressed, nor indeed are the necessary modifications always being implemented.

This is exacerbated as a result of inadequate funding, training and support for schools.

In the NI Assembly during the second stage reading of the SEND, MLA Seán Rodgers stated that:⁵⁷

The reduction in the number of classroom assistants by 1,000 will have a major impact on effective special educational needs provision in schools.

⁵⁶ NICCY, January 2010, Response from the Northern Ireland Commissioner for Children and Young People to the Department of Education on "The Way Forward for Special Education Needs and Inclusion"

⁵⁷ NI Assembly, Hansard, 10 March 2015, Questions for urgent oral answer, <http://data.niassembly.gov.uk/HansardXml/plenary-10-03-2015.pdf>

Due to the extent of the reforms introduced in England and currently being developed in Wales to introduce the EHC Plans, a Bill may be more appropriate rather than an amendment to take account of all the legislative changes necessary to not only increase the age of SEN support but to provide for the numerous structural changes needed.

It is recommended that:

- **If the Committee wishes to develop any legislative amendments specialists in the drafting of legislation should be consulted;**
- **The Committee may wish to contact the Department of Education and the Department for Employment and Learning regarding the progress of current discussions between officials about increasing the extent of SEN and whether this may lead to similar legislation as adopted in England and being developed in Wales;**
- **The Committee may wish to contact the Department of Education and the Department of Employment and Learning for comment on any potential amendment and what impacts could occur as a result, especially in light of the ongoing budget squeeze;**
- **The Committee may wish to consider the changes needed to the existing NI system in order to increase the SEN age and subsequently support the change and/or introduce similar provision to that provided in England via the EHC plans; and**
- **The Committee may wish to monitor the outcomes of the financial assessment being carried out by the Welsh Government on the costs of the reform of the Additional Learning Needs system.**