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SEN legislation and policy in Northern Ireland

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This paper provides an overview of special educational needs (SEN) legislation and policy in Northern Ireland, including regulations and Codes of Practice. It details timescales in relation to SEN assessment and summarises arrangements for those with SEN over the age of 16. It also compares the SEND Bill with proposals published by the Department in 2012.

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Key Points

- The SEN framework in Northern Ireland comprises primary legislation supported by Codes of Practice and a range of regulations;
- The Education (NI) Order 1996 provides a framework for assessment and provision for SEN, and the Special Educational Needs and Disability (NI) Order 2005 enhances the rights of children with SEN to attend mainstream schools;
- The 1998 Code of Practice outlines a five stage process for SEN assessment; time limits apply only to stages four and five of the process;
- The Education Authority has 26 weeks to issue a final statement: in 2013/14 a majority (59%) of statements were issued after the statutory period of 26 weeks;
- The regulations state that annual reviews of statements from the age of 14 must include transition plans: however there is no duty to prepare a plan for children with SEN who do not have a statement;
- A recent review found that while transition works well for most people, there are serious concerns around provision for those with complex needs; it called for greater coordination between health and education and a review of transitions;
- The SEND Bill takes forward some of the actions agreed by the Executive in 2012, although many actions will be implemented through amendments to regulations, new regulations and a revised Code of Practice – these are yet to be developed;
- In this regard, further consideration could be given to:
 - The extent of the planned amendments to existing regulations, in addition to the significant powers for subordinate legislation provided for in the Bill;
 - When the revised regulations and Code of Practice will be available for scrutiny;
 - The lack of time limits for the completion of stages 1-3 in the current SEN framework and what time limits for each of the three stages are proposed for the new framework;
 - The proportion of statements issued beyond the statutory time limit of 26 weeks and the proposed reduction in the time limit to 20 weeks;
 - The lack of a statutory duty to prepare transition plans for pupils with SEN who do not have a statement; and
 - The need identified for greater cooperation between health and education in regard to transitions.

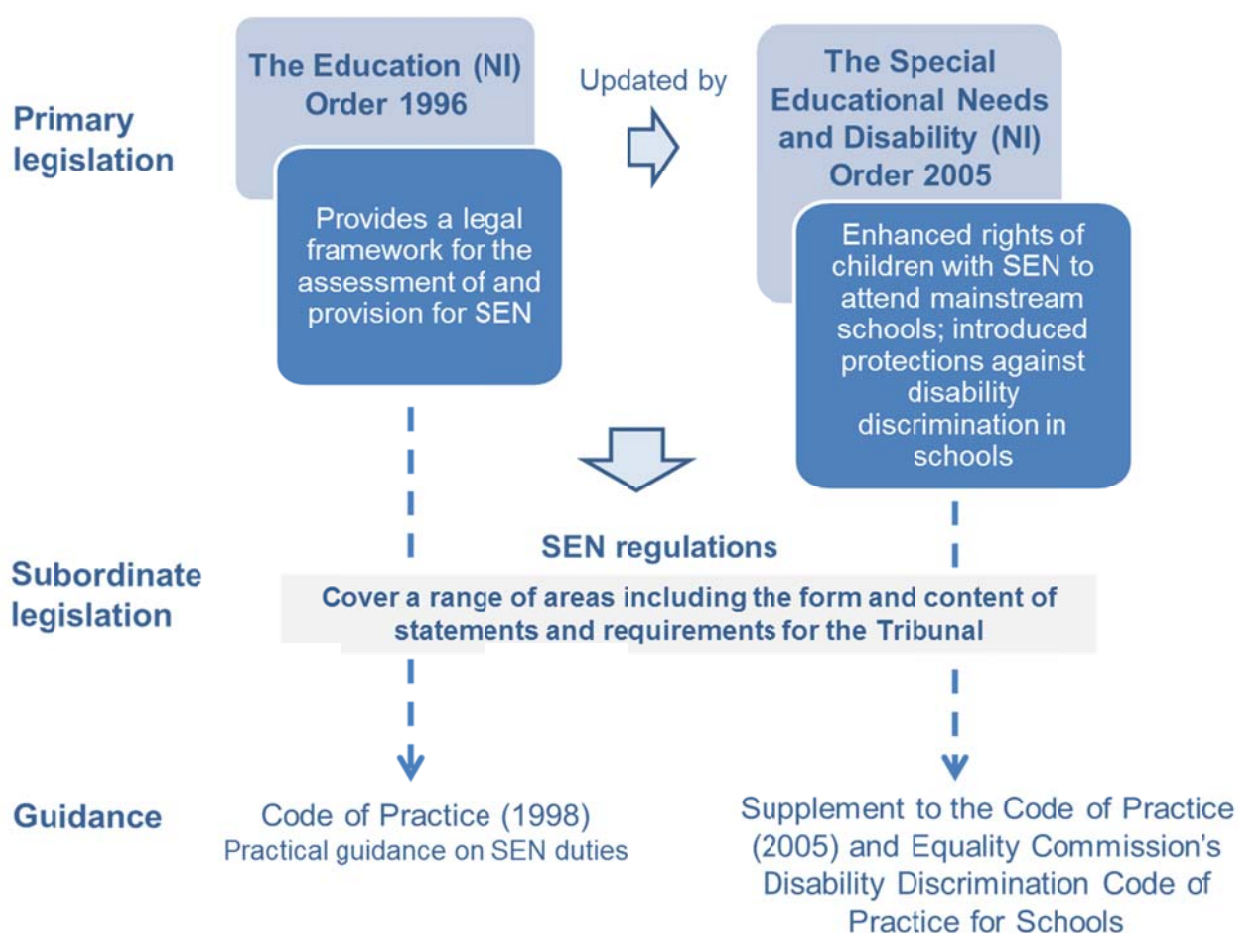
Executive Summary

This paper outlines the key legislation governing Special Educational Needs (SEN) in Northern Ireland. It also sets out timelines for SEN assessment, considers post-16 SEN arrangements and compares the Special Educational Needs and Disability (SEND) Bill currently before the Assembly to proposals agreed by the Executive in 2012.

SEN legislation and policy

The SEN framework in Northern Ireland comprises primary legislation supported by Codes of Practice, and a range of regulations, as illustrated in Figure 1.

Figure 1: Overview of SEN legislation and policy



The Code of Practice sets out five stages for assessing SEN. The first three stages are based within the school, and it is anticipated that most children's needs will be identified and provided during these stages. Indeed, 76% of pupils within the SEN framework were at Stages 1-3 in 2014/15. The school shares responsibility with the Education Authority (EA), formerly the Education and Library Boards (ELBs) during the final two stages.

Time limits

The Code states that assessments and statements should be made as quickly as possible. However, time limits only apply to completion of stages four and five. Broadly, the EA has 26 weeks to issue a final statement, although exceptions apply. The Department of Education (the Department) proposes reducing this period to 20 weeks.

In 2013/14 59% of statements (1,317) were issued outside the statutory 26 week limit, although the Department notes that nearly all cases were subject to valid exceptions. There were variations by ELB, with 71% of statements (347) issued by the BELB subject to delays compared to 51% at the NEELB (194). The Department states that *“nearly all cases that were issued outside the 26 weeks are subject to valid exceptions”* (page 16 details the exceptions).

Of the delayed statements, 73% (969) were issued within six to nine months, 22% (290) were issued in nine to 12 months and 2% were issued in 12-18 months, with the remainder taking more than 18 months.

Post-16 SEN arrangements

Children with a statement of SEN who continue to attend school remain the responsibility of the EA until they reach the age of 19 – this is deemed to occur after the end of the same school term in which they celebrate their Birthday. The SEND Bill alters the definition of a child to allow a young person reaching 19 to remain in school until the end of that year.

After reaching the age of 16 options for children with SEN may include staying on at school or studying at a college of further education. The Code notes that the EA should, where necessary, provide assistance for young people with SEN who do not have a statement, including link courses and work placements.

Transitions

The regulations require annual reviews of statements from the age of 14 to include transition plans. However, there is no statutory duty to prepare a transition plan for children with SEN who do not have a statement.

A recent review by the Education and Training Inspectorate (ETI) found that the process of transitioning to post-school provision was working well in the majority of cases. However, it highlighted serious concerns around transition for a small number of pupils at post-19. The Department of Health, Social Services and Public Safety (DHSSPS) is responsible for this group.

The report recommended a comprehensive review of transition for these young people, who often have complex needs and may live in areas with limited health provision. It also called for greater cooperation between health and education and more dedicated support.

The SEND Bill and proposals for SEN in 2012

In 2012 the Executive agreed a series of actions for SEN following a consultation process. The SEND Bill does not include a number of the proposals, and the Department advises that it will introduce many of these through a revised Code of Practice and amendments to regulations. However, these have not yet been developed.

An analysis of the 2012 proposals suggests that a broad range of amendments to existing regulations will be required. These include regulations in relation to pre-school; changing statements to Coordinated Support Plans; reducing timescales for statements and altering requirements for the review of statements.

In addition, the SEND Bill itself provides for a significant amount of subordinate legislation, including providing powers for the Department to make any transitional, transitory or consequential provisions it feels are appropriate.

Conclusion

This paper has provided an overview of SEN legislation and policy in Northern Ireland. It has shown that the Department plans to introduce wide-ranging amendments to existing regulations and guidance (that have yet to be developed) in order to support a revised SEN framework. Further consideration could be given to:

- The extent of the planned amendments to existing regulations, in addition to the significant powers for subordinate legislation provided for within the SEND Bill;
- When the revised regulations and Code of Practice will be available for scrutiny;
- The lack of time limits for the completion of stages 1-3 in the current SEN framework and what time limits for each of the three stages are proposed for the new framework;
- The proportion of statements issued beyond the statutory time limit of 26 weeks, and how the proposed reduction in the time limit to 20 weeks will work in practice;
- The lack of a statutory duty to prepare transition plans for pupils with SEN who do not have a statement; and
- The need for greater cooperation between health and education in regard to transitions.

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1 Introduction

This paper provides an overview of the special educational needs (SEN) legislation, the Department of Education's (the Department's) Code of Practice and the Equality Commission's Code of Practice. It also details timescales in relation to SEN, summarises arrangements for those with SEN over the age of 16 and compares the SEND Bill with proposals published by the Department in 2012.

2 Overview

Legislation for children with special educational needs (SEN) is contained within the Education (Northern Ireland) Order 1996 (the 1996 Order) and the Special Educational Needs and Disability (Northern Ireland) Order 2005 (the 2005 Order), supported by Codes of Practice and a number of Statutory Rules.

Policy and legislation has enhanced educational provision for those with SEN in mainstream schools, although the extent to which they are accorded their educational rights varies. SEN policy in Northern Ireland has been described as "overly bureaucratic."¹ Despite the extensive regulation and guidance, other concerns include:²

- Perceived inadequacy of resources for SEN;
- A perception that parents from more affluent and educated backgrounds are in a better position to negotiate and challenge decisions than those from disadvantaged backgrounds; and
- A pressing need for early intervention, with 'unacceptable' delays in the statementing process.

3 The Education (Northern Ireland) Order 1996

The current system for the identification, assessment and statementing of children with SEN was introduced in 1986, in line with legislation in England and Wales.³ It was updated by Part II and Schedules 1 and 2 of the 1996 Order.

The 1996 Order provides a legal framework for the assessment of, and provision for, SEN. It requires the Education Authority (EA), formerly the Education and Library Boards (ELBs), to identify, assess and make provision for children with SEN within their area. It also provides a definition of SEN.

¹ O'Connor, U., Hansson, U., Keating, S. (2012) *Capacity Building for Inclusion: The role and contribution of special needs assistants and classroom assistants in Ireland and Northern Ireland* Coleraine: UNESCO Centre

² Lundy, L., Kilpatrick, R. (2006) "Children's rights and special educational needs: findings from the research conducted for the Northern Ireland Commissioner for Children and Young People" *Support for Learning* Vol. 21, No. 2, pp. 57-63

³ O'Connor, U., McConkey, R., Hartop, B. (2005) "Parental views on the statutory assessment and educational planning for children with special educational needs" *European Journal of Special Needs Education* Vol. 20, No. 3, pp. 251-269

3. (1) For the purposes of the Education Orders, a child has “special educational needs” if he has a learning difficulty which calls for special educational provision to be made for him.

The Education (Northern Ireland) Order 1996 (Part II)

The 1996 Order contains a large number of provisions, including:

- Providing for a Code of Practice that the EA and schools must have regard to;
- Setting out the duties of health authorities in relation to children with SEN;
- Detailing requirements for the EA to inform parents in relation to SEN assessment and provision;
- Outlining the requirements for statements of SEN;
- Setting out the grounds for appeal in relation to statementing;
- Requiring the EA to keep statements under review;
- Giving parents a right to request an assessment; and
- Providing for a Special Educational Needs Tribunal.

4 The 2005 Order

The 2005 Order enhanced the rights of children with SEN to attend mainstream schools and introduced protections against disability discrimination to the education system for the first time.⁴ Discrimination is defined as the failure to make reasonable adjustments or providing less favourable treatment for a reason related to a child’s disability.

SEN provisions

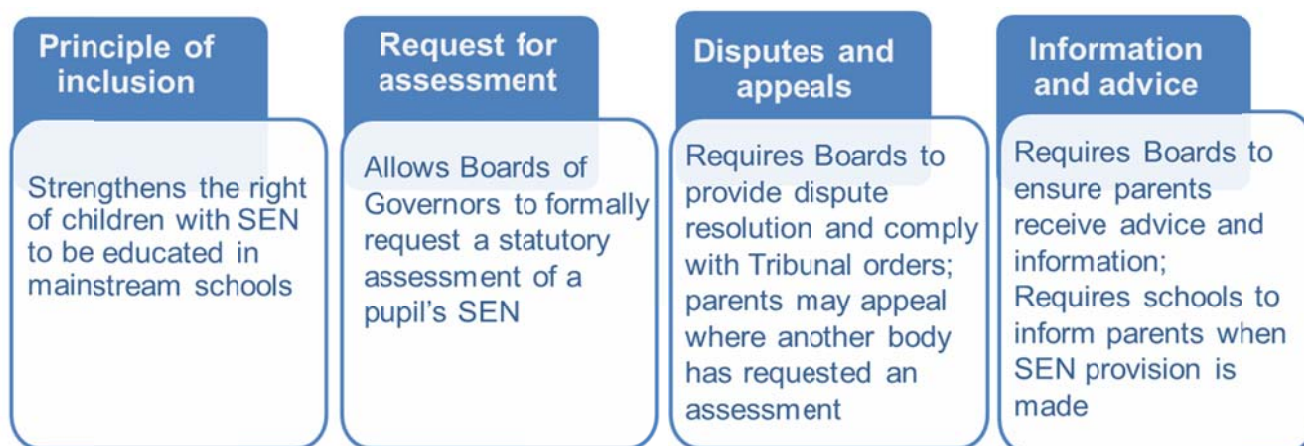
Figure 2 outlines the main provisions of the Order in relation to SEN. The Order contains a presumption in favour of inclusion; however some authors argue that this can be compromised where access to resources is not met.⁵

The literature also suggests that the principle of inclusion could present challenges for mainstream schools in coping with increased numbers of children with SEN, particularly in terms of dealing with issues such as bullying and child protection.⁶

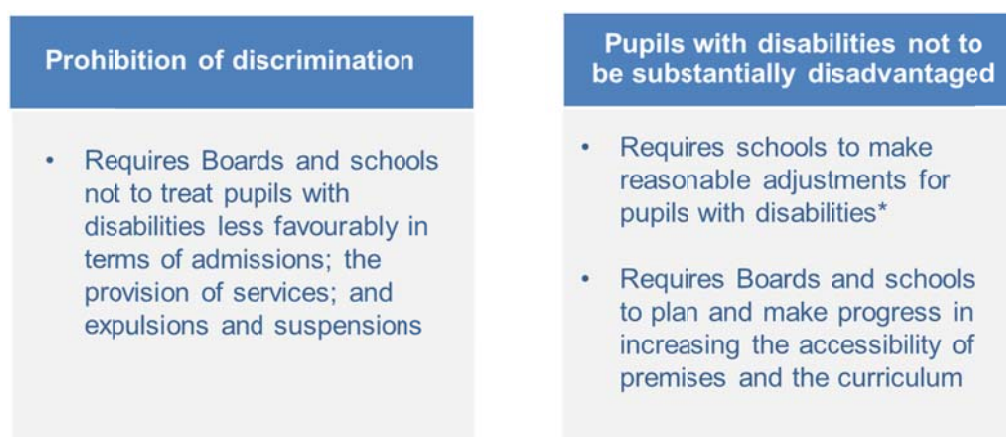
⁴ O’Connor, U., Hansson, U., Keating, S. (2012) *Capacity Building for Inclusion: The role and contribution of special needs assistants and classroom assistants in Ireland and Northern Ireland* Coleraine: UNESCO Centre

⁵ O’Connor, U., Hansson, U., Keating, S. (2012) *Capacity Building for Inclusion: The role and contribution of special needs assistants and classroom assistants in Ireland and Northern Ireland* Coleraine: UNESCO Centre

⁶ Lundy, L., Kilpatrick, R. (2006) “Children’s rights and special educational needs: findings from the research conducted for the Northern Ireland Commissioner for Children and Young People” *Support for Learning* Vol. 21, No. 2, pp. 57-63

Figure 2: Key provisions of the 2005 Order in relation to SEN**Disability discrimination provisions**

Part III, Chapter I of the 2005 Order extended similar provisions to those within the Disability Discrimination Act 2005 to schools in Northern Ireland for the first time. Within this Act a person is defined as having a disability if they have a physical or mental impairment which has a *“substantial and long-term adverse effect on his ability to carry out normal day-to-day activities.”*⁷

Figure 3: Key provisions of the 2005 Order in relation to disability discrimination

* Does not require the provision of auxiliary aids and services or the removal or alteration of physical features

5 SEN Statutory Rules

The primary legislation outlined previously is supported by a range of subordinate legislation, illustrated by Table 1.

⁷ Department of Education (2005) *Supplement to the Code of Practice on the Identification and Assessment of Special Educational Needs* Bangor: DE

Table 1: Statutory Rules for SEN

| Statutory Rule | Key provisions |
|--|--|
| Education (Special Educational Needs) Regulations (Northern Ireland) 1997 | <ul style="list-style-type: none"> Require Boards making an assessment to seek advice from a range of sources Prescribe the form and content of statements Detail how reviews of statements should be carried out |
| Education (Special Educational Needs) (Amendment) Regulations (Northern Ireland) 1998 | <ul style="list-style-type: none"> Amend the 1997 Regulations Set a time limit of 18 weeks for Boards to provide parents with a proposed statement |
| Education (Special Educational Needs Code of Practice) (Appointed Day) (Northern Ireland) Order 1998 | <ul style="list-style-type: none"> Appoint 1st September 1998 as the day on which the Code of Practice comes into operation |
| Special Educational Needs Tribunal Regulations (Northern Ireland) 1997 | <ul style="list-style-type: none"> Detail requirements for the Special Educational Needs Tribunal including for sittings, membership, notices, representation, witnesses, determination of appeals and reviews |
| The Education (Special Educational Needs) Regulations (Northern Ireland) 2005 | <ul style="list-style-type: none"> Revoke and replace with modifications the 1997 Regulations Provide for a child without a statement to be admitted to a special school for assessment Set time limits for assessments, statements and compliance with Tribunal orders |
| Special Educational Needs and Disability Tribunal Regulations (Northern Ireland) 2005 | <ul style="list-style-type: none"> Revoke the 1998 SENT Regulations Procedures broadly follow, with modifications, the procedures for SEN appeals under Part II and Schedule 2 of the 1996 Order |

6 The Code of Practice

Article 4 of the Education (Northern Ireland) Order 1996 requires the Department to issue a code of practice giving practical guidance on SEN duties. The 1996 Order states that the EA, Boards of Governors and the Tribunal must “have regard” to the code of practice.⁸

The Department’s SEN Code of Practice, in operation since 1998, addresses the identification, assessment and provision for children who may have SEN. It is based on a number of principles, including:⁹

- The needs of all pupils with learning difficulties must be addressed;

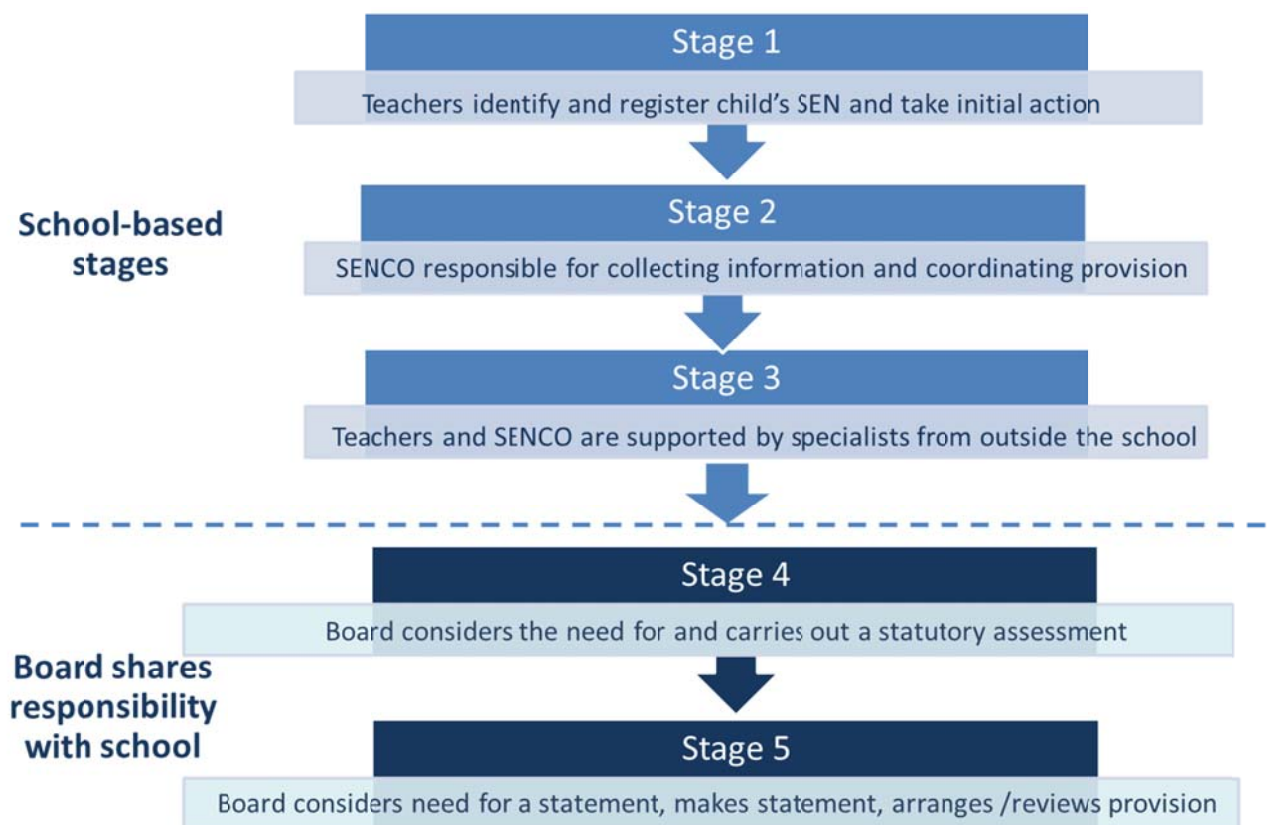
⁸ The Education (Northern Ireland) Order 1996 [online] Available at: <http://www.legislation.gov.uk/nisi/1996/274/article/4>

⁹ Department of Education (1998) *Code of Practice on the identification and assessment of special educational needs* Bangor: DE

- Children with SEN require a broad and balanced education;
- The needs of most children will be met in mainstream schools, and without a statutory assessment or a statement; and
- Parents' knowledge, views and experience are vital.

The Code standardised the procedures and timescales for undertaking an assessment and issuing a statement.¹⁰ It comprises five main stages, although it acknowledges that there is a continuum of SEN and that progress in response to action taken at one of the first three stages may mean that a pupil does not need to move to the next.¹¹ The proposals to change the current approach to SEN include reducing the number of stages to three.

Figure 4: Five stages of the SEN Code of Practice



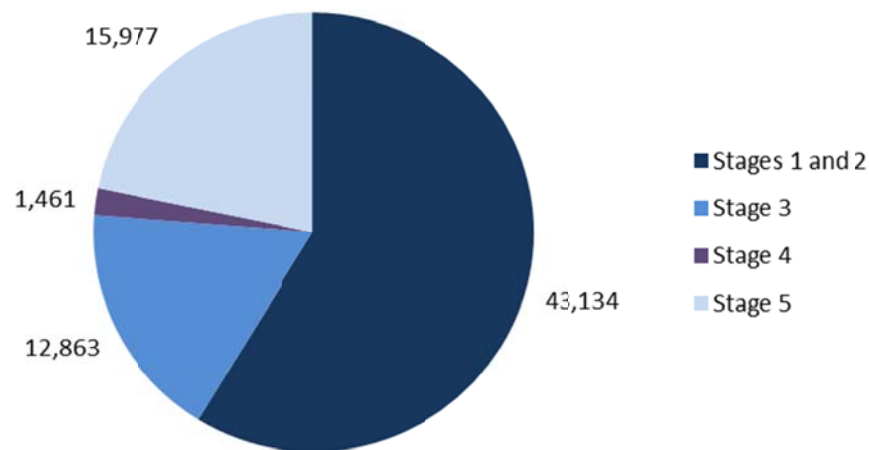
The Code emphasises identifying and responding to children's needs within schools, noting that more formal assessment and statementing processes should only

¹⁰ O'Connor, U., McConkey, R., Hartop, B. (2005) "Parental views on the statutory assessment and educational planning for children with special educational needs" *European Journal of Special Needs Education* Vol. 20, No. 3, pp. 251-269

¹¹ Department of Education (1998) *Code of Practice on the identification and assessment of special educational needs* Bangor: DE

commence when this approach is insufficient.¹² In 2014/15 over three-quarters (76%) of pupils within the SEN framework were at Stages 1-3, with 22% at Stage 5.¹³

Figure 5: Number of pupils at each stage of the Code of Practice in 2014/15¹⁴



Views on the Code of Practice

The SEN Code of Practice aimed to standardise provision, procedures and timescales in line with practice in England and Wales. Since its introduction, other jurisdictions have taken a more individualised approach to SEN.¹⁵

The literature suggests that the Code of Practice has limitations including a narrow conception of SEN relating primarily to literacy and numeracy difficulties and undeveloped ideas about how children with a wide range of SEN can be supported throughout the school.¹⁶

7 Supplement to the Code of Practice

The Department brought into operation a Supplement to the Code of Practice in 2005 in light of the 2005 Order and its regulations. It does not affect the status, coverage, principles, essential procedures and guidance contained in the 1998 Code of Practice. It aimed to provide guidance for schools, the EA and others in discharging their duties under the 2005 Order.¹⁷

¹² O'Connor, U., McConkey, R., Hartop, B. (2005) "Parental views on the statutory assessment and educational planning for children with special educational needs" *European Journal of Special Needs Education* Vol. 20, No. 3, pp. 251-269

¹³ Data provided by the Department of Education, March 2015

¹⁴ Data provided by the Department of Education, March 2015

¹⁵ O'Connor, U., Hansson, U., Keating, S. (2012) *Capacity Building for Inclusion: The role and contribution of special needs assistants and classroom assistants in Ireland and Northern Ireland* Coleraine: UNESCO Centre

¹⁶ Smith, R., Florian, L., Rouse, M., Anderson, J. (2014) "Special education today in the United Kingdom" *Advances in Special Education* Vol. 28 pp. 109-146

¹⁷ Department of Education (2005) *Supplement to the Code of Practice on the Identification and Assessment of Special Educational Needs* Bangor: DE

8 Equality Commission Code of Practice

The Equality Commission published a *Disability Discrimination Code of Practice for Schools* in 2006, explaining the provisions of the 2005 Order.¹⁸ The Code is issued under Article 54A of the Disability Discrimination Act 1995 which provides for the Equality Commission to prepare and issue codes of practice. Article 16(4) of the 2005 Order states that responsible bodies should have regard to any code of practice issued under the Disability Discrimination Act.

The Code does not impose legal obligations on schools, although it may be used in legal proceedings and the Special Educational Needs and Disability Tribunal (SENDIST) must take into account any relevant part of the code when dealing with disability discrimination cases.¹⁹

The Code's concept of disability discrimination is based on the Social Model principle whereby it is not the limitations arising from a person's disability that restrict their ability to participate fully in education. Rather, factors relating to the environment, attitudes, communication or a provider's practices lead to such restrictions. The Code:²⁰

- Aims to show that all pupils have a right to the same opportunities in the whole of educational life;
- Seeks to explain the requirements of the 2005 Order for providers;
- May help children with disabilities and their parents to understand the law and assist providers in avoiding complaints and litigation by adopting good practice; and
- Aims to give practical guidance on how to strengthen inclusive practices.

9 Time limits

The Department's Code of Practice states that assessments and statements should be made "*as quickly as possible*." It details the time limits that apply to SEN assessment at stages 4 and 5; however no time limits are given for completion of the first three stages.

Broadly, the EA has 18 weeks to issue a proposed statement following a parental request for an assessment or after notifying parents that it is considering making an assessment. It has a further eight weeks to make a final statement.²¹ The Department proposes reducing this period from a total of 26 weeks to 20 weeks.

¹⁸ Equality Commission for Northern Ireland (2006) *Disability Discrimination Code of Practice for Schools* Belfast: ECNI

¹⁹ Equality Commission for Northern Ireland (2006) *Disability Discrimination Code of Practice for Schools* Belfast: ECNI

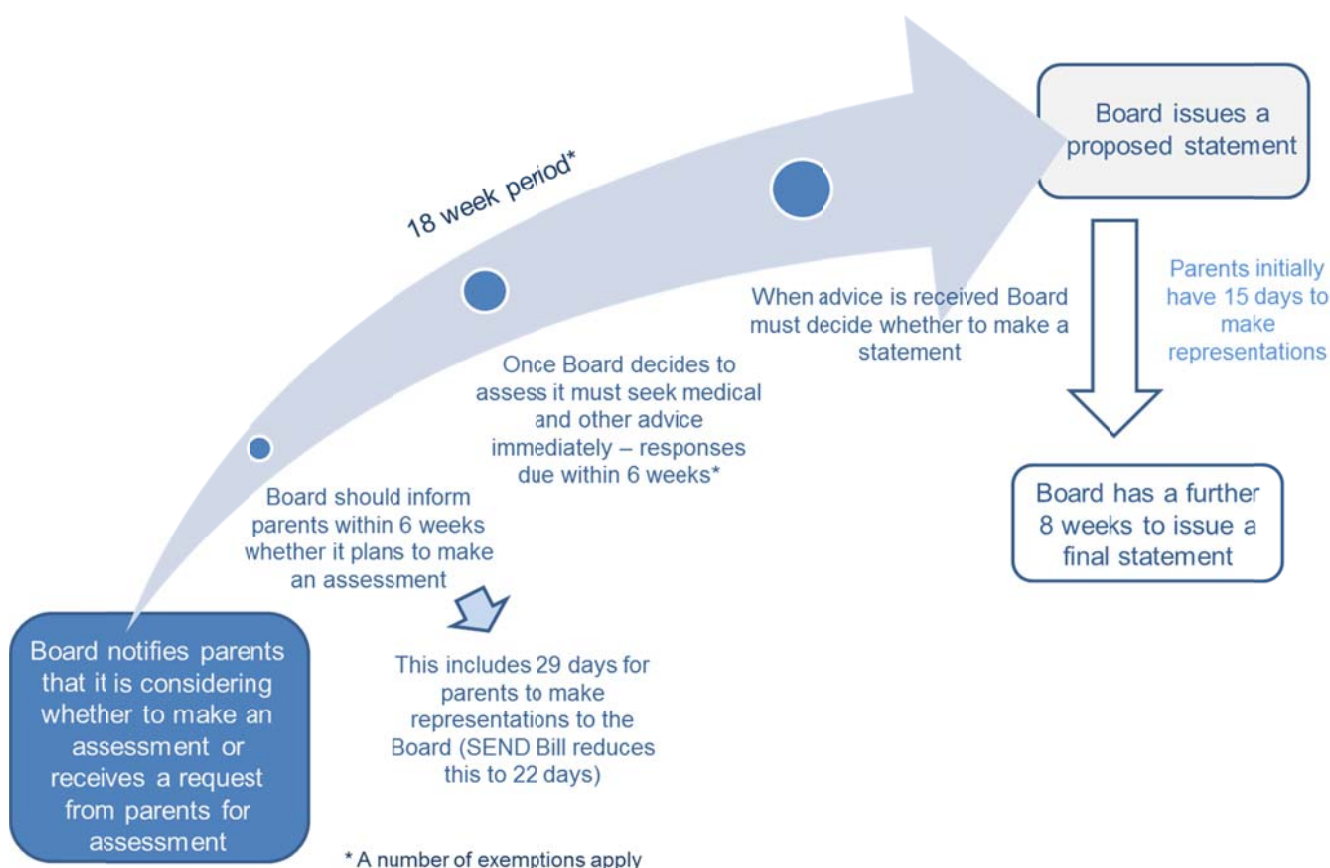
²⁰ Equality Commission for Northern Ireland (2006) *Disability Discrimination Code of Practice for Schools* Belfast: ECNI

²¹ Department of Education (1998) *Code of Practice on the identification and assessment of special educational needs* Bangor: DE

The Code of Practice details a number of exceptions to the statutory 18 week time limit for the EA to issue a statement, in cases where:²²

- Further advice needs to be sought by the EA to complete its assessment;
- Parents wish to provide advice to the EA more than six weeks after they were invited to do so;
- Advice from a principal is delayed because of school closure;
- Advice sought from a health trust has not been provided within six weeks;
- Exceptional personal circumstances affect the child or parent;
- The child or parent is away for at least four weeks during the 18 week period; or
- An appointment for examination or test is not kept.

Figure 6: Timescales for making and issuing a statement²³



Once the EA has issued a final statement, further time limits may apply, as outlined in the following paragraphs.

²² Department of Education (1998) *Code of Practice on the identification and assessment of special educational needs* Bangor: DE

²³ Adapted from Department of Education (1998) *Code of Practice on the identification and assessment of special educational needs* Bangor: DE

Change of EA region and annual review

An additional time limit applies when responsibility for a statemented child changes from one ELB (now EA region) to another. Where the EA chooses to review the statement or carry out a new assessment it is required to notify parents within six weeks.

For the annual review of a statement, the EA must ask the principal to convene a meeting and prepare a report. The principal must request written advice from the child's parents, all those specified by the EA and any others and is required to circulate this advice at least two weeks in advance of the meeting. In total, at least two months' notice must be given for the report to be returned to the EA.

Request for a change of school

Where parents request a change of school and the EA concludes that it cannot name the proposed school in the statement, it is required to inform parents within eight weeks of the initial request.

Amending or ceasing to maintain a statement

Where the EA proposes to amend a statement it must inform parents within 15 days of the proposal; it must then make any amendment within eight weeks of sending the letter of proposal to the parents. If the EA decides not to go ahead with the amendment, it must write to parents within eight weeks of the original letter.

The EA may not cease to maintain a statement until two months after it has written to parents to notify them of their decision. After the period of two months following the letter has passed the EA is required to cease to maintain the statement within a further four weeks.

Concerns around timescales

Research with parents in Northern Ireland in 2005 highlighted concerns around the time taken to complete assessments and issue a statement. Some parents also commented that the process was overly bureaucratic and that assessment procedures were not relevant or tailored to the specific needs of the child.²⁴

In 2013/14 across the five ELBs 59% of statements (1,317) were issued beyond the 26 week limit. The Department states that "*nearly all cases that were issued outside the 26 weeks are subject to valid exceptions*".²⁵

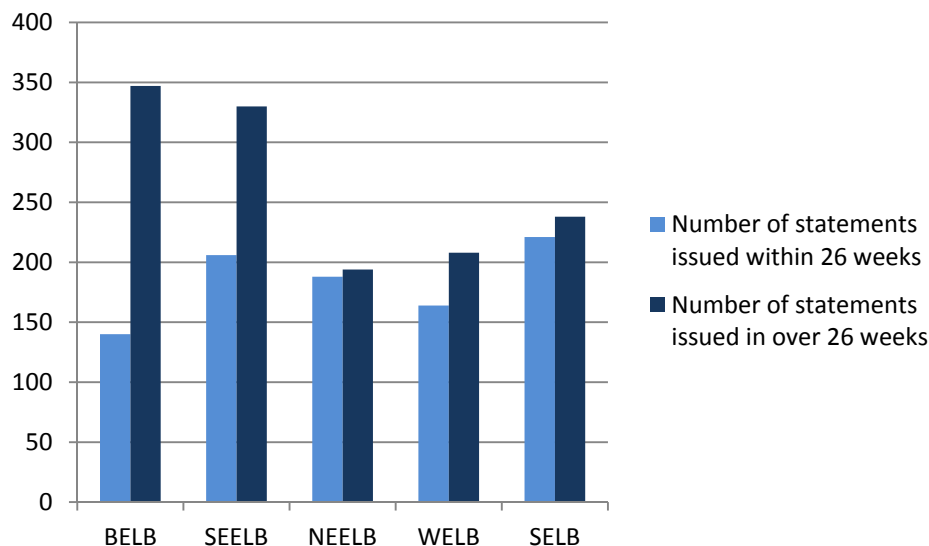
Of these statements, 73% (969) were issued within six to nine months, 22% (290) were issued in nine to 12 months and 2% were issued in 12-18 months, with the remainder

²⁴ O'Connor, U., McConkey, R., Hartop, B. (2005) "Parental views on the statutory assessment and educational planning for children with special educational needs" *European Journal of Special Needs Education* Vol. 20, No. 3, pp. 251-269

²⁵ Information provided by the Department of Education, May 2015

taking more than 18 months. There were variations according to ELB, as illustrated in Figure 7.²⁶

Figure 7: Number of final statements issued beyond the statutory time limit of 26 weeks by ELB



10 Post-16 SEN arrangements

Under Part II of the 1996 Order a child (for the purpose of special education) is deemed to reach 19 after the end of the same school term in which they celebrate their Birthday. Children with a statement of SEN who stay in school remain the responsibility of the EA until this time.²⁷

The SEND Bill alters the definition to enable a child reaching age 19 during a school year to remain in school until the end of that school year, subject to the EA maintaining their statement.

Post-16 education for children with SEN may be at school or a further education college. Some children with statements remain at school after reaching the age of 16. The Code recognises that some young people with SEN who do not have a statement will require support for further education, noting that the EA should provide assistance, including link courses and work placements.²⁸

Transitions

The Education (Special Educational Needs) Regulations (Northern Ireland) 1997 require annual reviews of statements from the age of 14 to include the preparation of a

²⁶ Information provided by the Department of Education, May 2015

²⁷ Department of Education (1998) *Code of Practice on the identification and assessment of special educational needs* Bangor: DE

²⁸ Department of Education (1998) *Code of Practice on the identification and assessment of special educational needs* Bangor: DE

transition plan. However, the regulations do not require transition plans for those without a statement of SEN. The Code of Practice suggests that schools “*may wish to*” prepare their own transition plans for such students.²⁹

A 2014 review of transitions from special schools and some mainstream schools to post-school provision found a well-organised process working well for the majority of pupils moving to further education and training. However, it highlighted “*ongoing serious concerns*” regarding transition provision for a small minority of pupils at post-19 (for whom DHSSPS is responsible). In particular, the review notes that:³⁰

- Young people with complex needs and those in areas with limited health provision require more dedicated support and greater cooperation between health and education;
- A comprehensive review of what transition should provide for such pupils is urgently required;
- Opportunities for young people offered by voluntary agencies are limited in rural areas, leading to additional disadvantage;
- There is a “glaring” need for improvement for pupils whose choice is confined to transition from special schools to post-19 provision in adult centres provided by DHSSPS.

11 The SEND Bill and the 2012 proposals

The Department of Education’s 2009 consultation *Every School a Good School: The Way Forward for Special Educational Needs and Inclusion* proposed extensive changes to provision for SEN, including introducing a new model based on Additional Educational Needs.³¹ However, many respondents criticised the proposals.³²

In 2012 the Minister for Education, John O’Dowd MLA, presented a proposed direction of travel to the Education Committee and in July 2012 the Executive agreed a series of actions within a Policy Memorandum Paper. Just four of the original 26 policy proposals were included within this (Personal Learning Plans, SENCos, a three phase SEN framework and statements to be set out as Coordinated Support Plans).³³

²⁹ Department of Education (1998) *Code of Practice on the identification and assessment of special educational needs* Bangor: DE

³⁰ Education and Training Inspectorate (2014) *A survey report on transition arrangements from special schools and mainstream learning support centres to post-school provision* Bangor: ETI

³¹ Department of Education (2009) *Every School a Good School – The Way Forward for Special Educational Needs and Inclusion* Bangor: DE

³² Department of Education (2012) *Summary Report of Responses to the Consultation on Every School a Good School – The Way Forward for Special Educational Needs and Inclusion and the associated Equality Impact Assessment* Bangor: DE

³³ Smith, R., Florian, L., Rouse, M., Anderson, J. (2014) “Special education today in the United Kingdom” *Advances in Special Education* Vol. 28, pp. 109-145

A recent article stated that this lengthy policy process had resulted in little in the way of fundamental change. Rather, the changes centred on formalising procedures in order to regulate identification and resource allocation.³⁴

SEND Bill, regulations and policy framework

The Bill, as drafted, does not include many of the proposals agreed by the Executive in 2012. Many of these are expected to be introduced through the revised Code of Practice and amendments to regulations.

The SEND Bill provides for a significant amount of subordinate legislation, and allows the Department to make any transitional, transitory or consequential provisions it feels are appropriate. It is also expected to be supported through a revised Code of Practice that has not yet been developed. For further information see [Paper 38/15: Special Educational Needs and Disability \(SEND\) Bill](#).

Revised Code of Practice

The revised Code of Practice aims to provide guidance to schools and the EA on the provisions of the SEND Bill and associated regulations. The Department advises that the work is underway to begin drafting the revised Code, which will follow similar structures to the existing Code and Supplement, but set out within a single document. It is likely to include a range of areas, including:³⁵

- Duties on Boards of Governors and the EA;
- Role of the Learning Support Coordinator;
- Views of the child;
- Three levels of SEN support;
- Personal Learning Plans;
- Statutory assessment, statementing and annual review arrangements;
- Pre-school settings;
- Transition planning;
- Dispute Avoidance and Resolution, appeals and mediation; and
- New rights for children over compulsory school age.

³⁴ Smith, R. (2014) "Changing policy and legislation in special and inclusive education: a perspective from Northern Ireland" *British Journal of Special Education* Vol. 41, No. 4. pp. 382-402

³⁵ Information provided by the Department of Education, May 2015

Extent to which 2012 proposals have been included within the SEND Bill

The Policy Memorandum in 2012 set out a total of 26 policy proposals, some of which relate to policy only. Table 2 considers the proposals for *legislative* change and whether they have been included in the SEND Bill.

Table 2 shows that some of the proposed legislative changes have been included in the SEND Bill, but that a broad range of amendments to existing legislation are planned by the Department in implementing the proposed SEN framework. On the 10th March the Minister for Education stated that there is “*considerable work left to be done on the regulations.*”³⁶

Table 2: Key legislative actions agreed in 2012 and the SEND Bill

| Proposed action(s) | SEND Bill |
|--|---|
| Boards of Governors: amend the 1996 Order to strengthen duty to identify, assess and make provision for children with SEN; and requiring teachers to take actions to identify and provide for SEN | <ul style="list-style-type: none"> • Includes a duty to make all those involved with a pupil’s education aware of their SEN |
| Personal Learning Plans (PLP): require Boards of Governors to ensure they are in place | <ul style="list-style-type: none"> • Requires Boards of Governors to ensure PLPs are in place, monitored and reviewed |
| Pre-school: consider mechanisms for placing children; amend the 1998 Order to require appropriate provision and support for children with SEN | <ul style="list-style-type: none"> • Does not refer to pre-school education • Code of Practice expected to include information on pre-school settings |
| Statements: amend regulations so statements can be set out as a Coordinated Support Plan (CSP); reduce timescales from 26 to 20 weeks | <ul style="list-style-type: none"> • Does not refer to CSPs or timescales for statements • Expected to be included in regulations and the Code of Practice |
| Statement Reviews: amend regulations to simplify process - annual reviews could be carried out in two steps other than at transition points or where provision is not thought to meet needs | <ul style="list-style-type: none"> • Does not detail approach to reviewing statements • Expected to be included in amendments to regulations and the Code of Practice |

³⁶ Northern Ireland Assembly (2015) *Official Report: Tuesday 10 March 2015* [online] Available at: <http://aims.niassembly.gov.uk/officialreport/report.aspx?&eveDate=2015/03/10&docID=226893>

| Proposed action(s) | SEND Bill |
|--|--|
| Transitions: full reviews to be required for pupils with CSPs at transition stages | <ul style="list-style-type: none"> • Does not refer to transitions • “Transition planning” to be included in the Code |
| Education and health: amend the 1996 Order to require that the EA requests help; guidance to emphasise that health bodies make recommendations for health provision in the CSP | <ul style="list-style-type: none"> • Requires the EA to request help from health bodies |
| Partnerships with children: Consider how existing provision can be amended to require that child’s views are sought | <ul style="list-style-type: none"> • Requires the EA to have regard to the views of the child and the Code of Practice is expected to provide guidance on this |
| Dispute Avoidance and Resolution Service (DARS): require Boards of Governors to inform parents of a dispute between the parent and school; require parents to avail of the DARS prior to the SENDIST; consider requiring all parties to participate in dispute resolution | <ul style="list-style-type: none"> • Requires parents to seek advice from a mediation advisor about the process and its potential benefits, prior to lodging an appeal with the SENDIST • However, engaging in mediation itself is not compulsory³⁷ |
| Transitional arrangements for CSPs: consider whether they should be included in SEND Bill or a statutory code | <ul style="list-style-type: none"> • Permits the Department to make any transitional provisions it feels are appropriate • No specific reference to how pupils currently with a statement will transition to CSPs |

12 Conclusion

The SEND Bill, together with a revised Code of Practice and new and amended regulations, aims to support a revised SEN and inclusion framework.

An analysis of the proposals agreed by the Executive in 2012 shows that the Department plans to make wide-ranging amendments to existing legislation and guidance. However, the regulations and the revised Code of Practice have not yet been developed, and the Bill itself gives the Department significant powers to make subordinate legislation. Further consideration could be given to:

³⁷ Information provided by the Department of Education, May 2015

- The extent of the planned amendments to existing regulations, in addition to the significant powers for subordinate legislation provided for within the SEND Bill;
- When the revised regulations and Code of Practice will be available for scrutiny;
- The lack of time limits for the completion of stages 1-3 in the current SEN framework and what time limits are proposed for each of the three stages proposed by the new framework;
- The proportion of statements issued beyond the statutory time limit of 26 weeks, and how the proposed reduction in the time limit to 20 weeks will work in practice;
- The lack of a statutory duty to prepare transition plans for pupils with SEN who do not have a statement; and
- The need for greater cooperation between health and education in regard to transitions.