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# Special Educational Needs (SEN) Regulations (Northern Ireland) 2026

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This Briefing Paper provides an overview of the Special Educational Needs (SEN) Regulations (Northern Ireland) 2026. It outlines the key changes to the SEN Framework enabled by the proposed draft Regulations 2026 and the strategic, operational and demand context within which the draft Regulations 2026 will operate. Potential areas which may merit further consideration are highlighted throughout.

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## Key Points

- This paper has been written to inform scrutiny of the [Special Educational Needs \(SEN\) Regulations \(Northern Ireland\) 2026](#) (hereafter ‘the draft Regulations 2026’).
- SEN provision in Northern Ireland is shaped by a statutory framework of primary legislation, Regulations and a Code of Practice.
- The Special Educational Needs and Disability Act (Northern Ireland) 2016 (SEND Act 2016) amends the existing primary legislation for SEN (the Education (Northern Ireland) Order 1996), however, the majority of its provisions cannot be commenced without the necessary secondary legislation. Such provisions include:
  - new statutory duties on Boards of Governors of grant-aided schools to designate a Learning Support Coordinator (LSC) and for each child with SEN to have a Personal Learning Plan (PLP);
  - new statutory duties on the EA, including to establish a plan of its arrangements for special educational provision, and provide an independent mediation service for those appealing to the Tribunal;
  - new cooperation duties on the EA and Health and Social Care authorities in the identification, assessment and provision for children with SEN;
  - giving children with SEN over compulsory school age rights previously exercisable by parents, e.g. to request a statutory assessment, make representations within the assessment process, or right of appeal.
  - a new right to appeal where the EA does not make changes to a statement following annual review; and for parents of children with SEN under the age of two to appeal against statement contents or the failure to make a statement.
- The draft Regulations 2026 relate to, and supplement, the statutory procedures for the assessment of SEN and preparation of statements. An accompanying draft Code of Practice provides practical guidance on the existing statutory duties with regard to SEN and the statutory duties introduced under the SEND Act 2016. It is structured in line with the three

stages of special educational provision that schools, the EA and other relevant bodies are required to follow.

- Provisions under the draft Regulations 2026 include the experience requirements of LSCs; the advice to be sought, and the timescales, for statutory assessment and statements; the format and content of statements; procedures for annual review and transition planning; arrangements for mediation; issues related to the capacity of children over compulsory school age including the procedures to be followed when a request for a capacity determination has been made; and compliance with Tribunal decisions.
- The draft SEN Regulations 2026 reflect over a decade of policy development, with consultation undertaken on two occasions; initially, between February and May 2016 following the passage of the SEND Act 2016, and again between September 2020 and March 2021 on updated draft Regulations and a draft Code of Practice. Feedback to the first consultation led to revisions to the draft regulations 2016, however, respondents to the 2020-21 consultation continued to raise concerns about the proposed format and content of statements, feasibility, workforce capacity, capacity concerns within the EA and HSCT affecting assessment timescales, and support availability to implement the new duties on schools under the Framework.
- Since that consultation ended, a series of scrutiny reports have identified critical issues with the SEN system in Northern Ireland. The DE and EA have subsequently completed an End-to-End Review of SEN, and published a SEN Reform Agenda and delivery plan. Key reform mechanisms within that plan, including the establishment of Local Impact Teams to support at stages 1 and 2 of the Code of Practice, will interface with the draft Regulations 2026. More recently, the EA launched a consultation on the Enhanced Support Model, aimed at improving classroom support and outcomes for pupils with SEN. The proposals represents significant reform to the current model of classroom support, including the roles and responsibilities of classroom assistants and teaching staff in supporting pupils with SEN. Phased implementation is proposed to start at the same time as the commencement of the draft Regulations.

- In a recent open letter to the Minister of Education endorsed by 14 organisations including unions, the Children’s Law Centre raised significant concerns about the proposed reforms, citing serious capacity and resource issues, including the Local Impact Teams, and increased pressure on schools. It called for a halt on “potentially damaging” revisions to the SEND Framework.
- Section 2 of this paper considers the broader strategic and operational context within which the new draft Regulations are intended to operate, the potential interplay between the key reform mechanisms and the new legislative framework, and poses some considerations regarding system readiness and capacity for both.
- The remainder of this section is structured around the key changes proposed by the draft Regulations 2026 with a focus on the substantive regulations. See section 4 of this paper for a more comprehensive overview and issues which may merit further consideration.

### **New duties for schools**

- The regulations require Boards of Governors to ensure that LSCs working in mainstream schools have a minimum of three years’ (full time equivalent) experience of working with children with SEN. For special schools, this requirement has been broadened so that one of the three years may now be gained in either a special school **or a specialist provision setting**.
- The LSC remit is more strategic and systematic than the current SENCo role, with expanded duties and new responsibilities, some of which stem from provisions in the SEND Act 2016, e.g. overseeing of procedures to seek pupil views, and leading on Personal Learning Plans. Responses to the most recent consultation highlighted concerns about capacity and resource to fulfil the functions of the LSC role, and a need for ongoing professional development and regular review of LSC training needs.
- The draft Code of Practice 2026 contains further new and expanded responsibilities on schools in meeting the needs of pupils who have, or may have, SEN, and places a renewed emphasis on whole school responsibilities for SEN. Schools are expected to map the types of special educational provision they will deliver to support the three SEN stages.

## Assessment

- Amongst the key changes introduced by the draft SEN Regulations 2026 are a reduction to the overall statutory timescale for assessment through to the making of a statement (if appropriate) from 26 to 22 weeks, and an upper limit of 34 weeks where exceptions apply.
- Where the EA has requested advice from a HSC Trust, and valid exceptions apply, the six week timeframe for a HSC Trust to provide advice shall be extended by a further six weeks. The draft 2020-21 regulations required the HSC Trusts to request an extension to the timeframe from the EA in the case of a valid exception. There is no longer a provision for the HSC to seek an extension by the EA. Instead, the HSC Trust shall advise the EA that it is applying an extension of up to six weeks and which exception is being applied. The EA must complete the assessment within a maximum timeframe of 14 weeks, with or without advice from a HSC Trust.
- Stakeholders raised significant concerns during the 2020–21 consultation that the proposed maximum timeframe of 34 weeks, where valid exceptions apply, is too long; that exceptions could be relied upon too frequently; and that robust monitoring and oversight mechanisms are necessary to ensure transparency and accountability.
- DE states that it has provided clear guidance on the use of valid exceptions and currently undertakes monthly monitoring of compliance with statutory timescales across each stage of the process.
- Stakeholders to the 2020-21 consultation expressed serious concern about the proposed advice to be sought by the EA for the purposes of making a statutory assessment including the removal of ‘other health advice’ related to any treatment or service likely to be of benefit in addressing the SEN of a child as per the 2016 draft. The draft Regulations 2026 have been updated to distinguish between mandatory advice to be sought, i.e. educational, psychological, and medical advice, and that which is now discretionary, i.e. social work advice and ‘other’ healthcare advice deemed appropriate by the relevant HSC Trust. There is no longer reference to parental advice in the list of advice to be sought, although the EA is required to consult with parents and children when making an assessment, and a new provision

prohibits advisors from making recommendations on matters beyond the scope of the advice sought.

### Statements

- The draft regulations prescribe the format of statements that must be followed and set out the procedures for periodic (annual) reviews, transition planning and restriction on disclosure of statements.
- In the 2020-21 consultation, particular issue was raised with the proposed format of a statement, specifically that classifying health and social care provision in Part 6 of the statement as non-educational provision would place it outside the scope of Tribunal appeal and the statutory requirements for specificity and quantification that apply to Part 3 'special educational provision'. Comments also suggested that this is inconsistent with the legislature's intention when passing the SEND Act 2016.
- DE has since cited legal advice received that health-related provision may fall within both Part 3 and/or Part 6 of a statement, depending on individual circumstances. Accordingly, the proposed statement has been updated to reflect that health and social care provision which is educational in nature is to be recorded in Part 3, while non-educational provision, including relevant HSC treatment or services, is to be set out in Part 6, with determinations made on a case-by-case basis by the EA.
- The draft Regulations no longer require a meeting to be held each year to inform an annual review of a statement. Whilst statements must continue to be reviewed annually, meetings are required to be held at defined intervals. Parents or young people over compulsory school age can ask for a meeting in a year where one is not proposed to be held.
- The draft Regulations 2026 introduce a four-week timeframe for the EA to make a determination about a statement following completion of the annual review (whether the statement remains appropriate, requires amendment, or should cease).
- Where children attend school, principals will assume the responsibility for preparing transition plans for pupils with a statement from year 10, rather than the EA who currently hold this responsibility.

## **Children over compulsory school age**

- Part 6 of the regulations facilitate the transfer of rights from the parent to the child over compulsory school age. If a child is assessed as lacking capacity, their rights transfer to the parent, who is required to act in the child's best interests. This represents a change from the 2020–21 draft Regulations, which had also allowed for an alternative person to exercise the rights on a young person's behalf if they were found to lack capacity.
- The consultation highlighted queries about the grounds on which a request for a determination of capacity may be made, how young people's capacity will be determined, and by whom. The regulations have been subsequently updated to clarify that the capacity determination will be completed by an EA Educational Psychologist, and must be undertaken within four weeks of the request. The format for the capacity determination is now included at Schedule 3.

## **Mediation and Appeals**

- Part 7 of the regulations make provisions in relation to mediation; in particular, about giving notice; imposing time limits for a mediation adviser to issue advice, information and certificates; who may attend mediation; about the training and experience of mediators; and mediation agreements. It includes a new provision where mediation has taken place and the parties fail to reach agreement. The draft Code of Practice states that an appeal to the Tribunal must be made within three months of having received the relevant Notification from the EA, not two months as per the Special Educational Needs and Disability Tribunal Regulations (Northern Ireland) 2005.
- When the draft regulations were consulted on in 2020-21, some respondents expressed issue with the timescales associated with some of the requisite steps in the mediation process.
- The DE has acknowledged this issue and adjusted processes and timeframes accordingly.

**Compliance with Tribunal Orders and Unopposed Appeals**

- Part 8 and Schedule 4 of the regulations prescribe time limits for compliance with Tribunal Orders and unopposed appeals.
- Some of the timescales for compliance under the draft Regulations 2026 have been extended from those under the existing framework and as previously consulted on.

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# 1 The legislative context

In Northern Ireland, specific primary legislation, along with a set of Statutory Regulations and an accompanying Code of Practice, outline what schools and the Education Authority (EA), as well as health and social services agencies, must consider when making a decision on provision for children with special educational needs (SEN).

Part II and Schedules 1 and 2 of the [Education \(Northern Ireland\) Order 1996](#) (the 1996 Order), as amended by the [Special Educational Needs and Disability \(Northern Ireland\) Order 2005](#) (SENDO) and [the Special Educational Needs and Disability Act \(Northern Ireland\) 2016](#) (the SEND Act 2016), provide the main primary legislation for the SEN Framework.

The [Education \(Special Educational Needs\) Regulations \(Northern Ireland\) 2005](#) set out the detailed statutory processes and timescales that Boards of Governors, the Education Authority (EA), and Health and Social Care (HSC) authorities must follow when identifying, assessing and determining the special educational provision required for a child with SEN.

As required by [Article 4](#) of the 1996 Order, an associated [Code of Practice](#) provides practical guidance for the EA, schools and HSC Trusts in the discharge of their statutory functions. The current SEN Code of Practice is in operation since 1998. A [supplementary document](#) was issued in 2005 to address new obligations under SENDO. This did not change the core principles or procedures of the 1998 Code but provided guidance to schools, the EA and others on their additional responsibilities under SENDO.

The SEND Act 2016, when fully commenced, will introduce a three-stage continuum of need replacing the five-stage approach to identification, assessment and provision of SEN in the 1998 Code. This change was initiated

on the Schools Information Management System (SIMS) in 2021 in anticipation of commencement of the SEND Act 2016.<sup>1</sup> The three stages are as follows:

- **Stage One:** school-delivered special educational provision
- **Stage Two:** school-delivered provision plus external provision from EA and / or Health Trusts
- **Stage Three:** school delivered special educational provision plus special educational provision as set out in a statement

Aside from the recording of children with SEN under the new three stages, schools currently must continue to have regard to the 1998 Code and its 2005 supplement.

## 1.1 The new SEN Framework

The SEND Act 2016, new Regulations and a new Code of Practice will form the basis for a new SEN legislative Framework. The SEND Act 2016 introduces changes to the current primary legislation for SEN and places new duties on Boards of Governors, the EA, and health and social services authorities. However, as reflected in the table below, the majority of the Act's provisions have not yet commenced as they require the supporting statutory regulations to be in place.

**Table 1: Summary of key changes introduced by the SEND Act**

Commenced	Not commenced
The EA is required to seek and listen to the views of the child – <u>commenced 18 December 2020.</u>	The EA is required to produce an annual plan of its arrangements for SEN provision, including resources, advisory and support services and training
The timeframe for parents and young people over compulsory school age to submit representations is reduced	Boards of Governors must appoint a Learning Support Coordinator (LSC) (a new role replacing the SEN Coordinator)

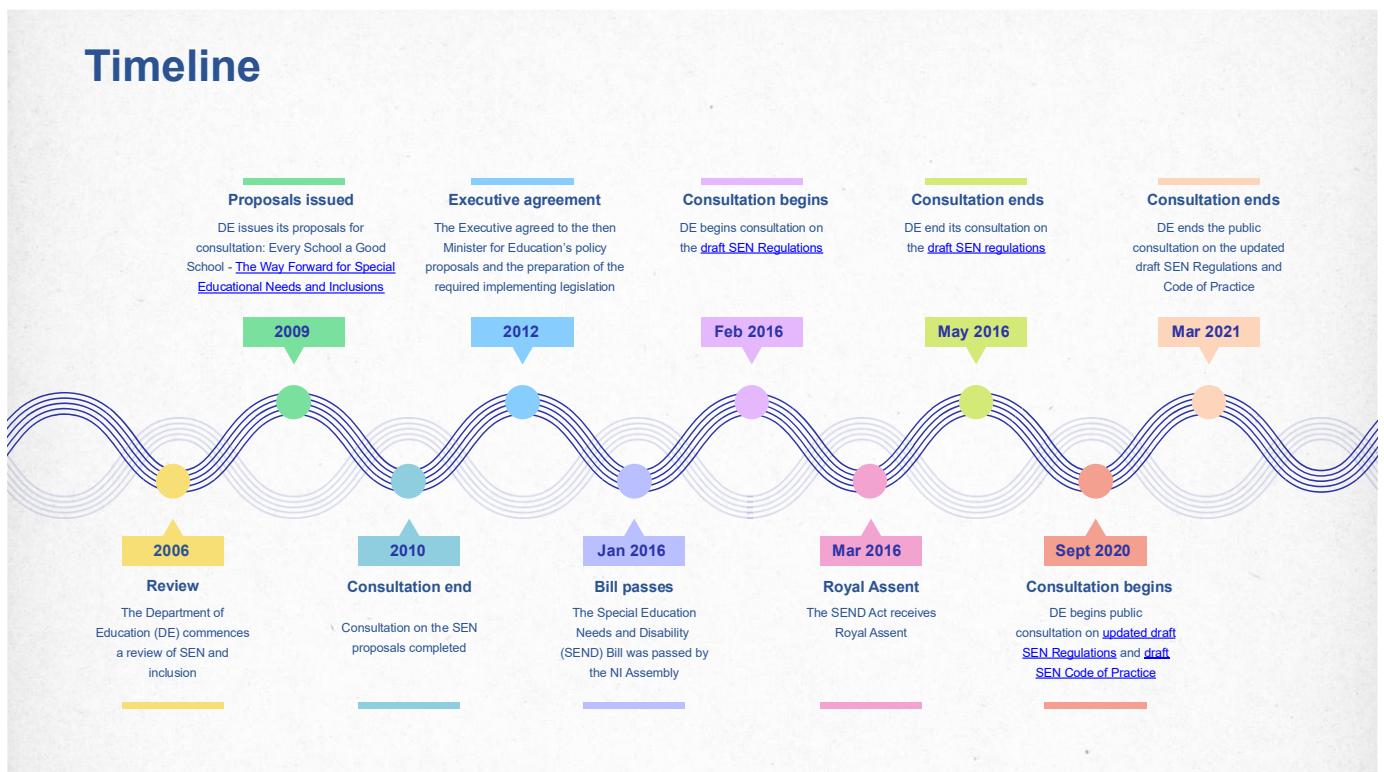
<sup>1</sup>Department of Education, [Circular 2021/06 - Recording Children with Special Educational Needs \(SEN\) in Schools – New Guidance - Move to Three Stages of Special Educational Provision](#) (2021)

<p>from 29 to 22 days, and, with consent, the EA can initiate the statutory assessment before the 22 days have elapsed – <u>commenced 30 September 2016</u></p>	<p>with responsibility for coordinating provision</p>
	<p>Each child with SEN must have a Personal Learning Plan (PLP) replacing the previous Individual Education Plan</p>
	<p>The EA and health and social services bodies will be required to co-operate in regard to identifying, assessing and providing for children with SEN including in the preparation of a transition plan (to prepare a child with a statement for adulthood)</p>
	<p>If a health and social services authority identifies any relevant treatment or service likely to be of benefit in addressing a child's SEN at statutory assessment, the health and social services authority is required to provide that treatment or service to the child</p>
	<p>Children with SEN over compulsory school age will have their own rights previously exercisable by parents</p>
	<p>A new right to appeal where the EA does not make changes to a statement following annual review; and for parents of children with SEN under the age of two to appeal against statement contents or the failure to make a statement</p>
	<p>Strengthened independence from the EA with regard to arrangements for dispute avoidance and resolution, and an independent mediation service for those appealing to the Tribunal</p>

## 1.2 The transition to the new SEN Framework

As reflected in the timeline below, the origins of the SEND Act 2016 lie within a review of SEN and inclusion undertaken in 2006. The Act was passed by the NI Assembly in January 2016, and the Department of Education (DE) consulted on [draft SEN Regulations](#) between February and May 2016. The consultation feedback resulted in the DE proposing several changes to the regulations as first drafted. DE intended to implement a new SEN Framework during the 2018-19 academic year, however, this was delayed due to the suspension of the NI Assembly.

The relevant milestones associated with the development of the new SEN Framework are presented below:



**Timeline produced by the NI Assembly Research and Information Service (RaISe)**

As noted in the timeline, the DE more recently re-consulted on [updated draft SEN Regulations](#) and a [draft SEN Code of Practice](#) between September 2020 and March 2021. The scope of the consultation focused primarily on those aspects of the draft regulations that the DE indicated had been revised in response to the findings of the 2016 consultation. However, stakeholders raised concern with various aspects of both and questioned whether they were

sufficient in facilitating the improvements required of the system. Consultation responses highlighted a number of issues which are elaborated on at various parts of Section 4 of the paper. This included workload and feasibility of new school-level duties; capacity concerns within the EA and HSCT affecting assessment timescales and support availability; and concerns about the proposed format of a statement.

Feedback also highlighted the perceived need for widespread training to support the implementation of the new SEN Framework particularly for LSCs, senior staff, Boards of Governors, and the wider teaching staff, including on the use of PLPs.<sup>2</sup> The EA SEND Implementation Team has received funding from the DE since 2017-18 (see section 5.1 of this paper for more detail) to deliver training and resources for schools in readiness for the implementation of the new SEN Framework. In December 2020, DE officials noted a significant awareness and training programme delivered to school principals and SENCos.<sup>3</sup> EA officials more recently noted that training has been undertaken with schools since 2018 in an evidence session with the Committee for Education on 25 February 2026. Monitoring information shared with NICCY revealed the delivery of annual review cluster training throughout February 2022<sup>4</sup> and a “significant training programme in relation to the PLP” by 2024.<sup>5</sup>

The EA Professional Development Portal contains training for teaching and non-teaching staff on the legal and statutory landscape underpinning SEND provision,<sup>6</sup> and a dedicated page with resources for SENCos.<sup>7</sup>

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<sup>2</sup> Department of Education, [Summary Report of Consultation Responses - Draft Code of Practice \(2021\)](#)

<sup>3</sup> Northern Ireland Assembly Committee for Education, [Official Report: Minutes Of Evidence - SEN Framework: DE Briefing](#) (2 December 2020)

<sup>4</sup> NICCY, ['Too Little, Too Late' Report Recommendations: Progress Monitoring Table](#) (2022) p51

<sup>5</sup> NICCY ['Too Little, Too Late' Report Recommendations: Progress Monitoring Table](#) (2024) p47

<sup>6</sup> Education Authority, [SEND Implementation and Development](#)

<sup>7</sup> Education Authority, [SENCo Support - Resources](#)

### Potential scrutiny points

- Members may wish to seek views on the readiness of the education workforce to implement the new SEN Framework, and perceptions of the effectiveness and sufficiency of training/resources provided to date.
- Can the DE / EA provide a breakdown of the type and number of training sessions and resources provided, when the training was delivered, and the number and profile (role/sector) of individuals who have received training to date? What proportion of nursery, primary, post-primary and special schools have received training to date?
- Has the training been updated to reflect the wider SEN reform agenda and revisions to the draft Regulations and Code of Practice?

## 2 The evolving SEN system in Northern Ireland

In the ten years since the SEND Act 2016 passed, the SEN system has been subject to significant review and reform. Amidst this wider context for reform, the number and profile of children with SEN has changed considerably in recent years. This section considers the scale and profile of SEN in Northern Ireland, and recent reform planned or underway. It reflects the strategic, operational and demand context within which the draft Regulations 2026 will operate.

### 2.1 The scale of SEN in Northern Ireland

The data shows a five per cent increase in total SEN pupils between 2019-20 and 2025-26, but this understates the more significant shift taking place within the overall numbers. While the total SEN population has grown relatively modestly, the number of pupils without a statement has fallen by 19 per cent,

from 48,046 to 38,752, while the number with a statement has risen by 66 per cent, from 19,208 to 31,954.<sup>8</sup>

The more notable trend is therefore not the overall growth in SEN identification but the movement within it. A greater proportion of pupils on the SEN register now hold a statement, indicating that the balance between non-statutory and statutory support has shifted considerably over this period.

**This pattern is relevant to the draft Regulations 2026. The rising volume of statutory assessments represents the demand context in which the new timeframes will operate, and the data suggests that pressure on the statutory assessment system is likely to remain significant in the near term.**

Furthermore, the evidence suggests an increase in the complexity of the profile of pupils' needs<sup>9</sup>. Pupils with SEN on average have more than one presenting need. Analysis by the DE highlights that there are 24,500 post-primary pupils with 35,000 recorded needs. The pattern of need across both sectors has implications for workforce planning. The categories recording the most significant growth, including Speech, Language and Communication Needs and Social, Behavioural, Emotional and Wellbeing, require specialist professional input that is distinct from classroom teaching capacity. **However, significant workforce gaps within these specialisms persist and may have implications for the delivery of support for these types of need.**<sup>10</sup>

The data also shows a steady shift in where SEN pupils are educated over the past decade.<sup>11</sup> Mainstream settings have fallen from 90.8 per cent of placements in 2015-16 to 81.6 per cent in 2025-26, a reduction of 9.2

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<sup>8</sup> Department of Education, [Annual enrolments at schools and in pre-school education in Northern Ireland, 2019/20](#) (2020) Table 7; Department of Education and Northern Ireland Statistics and Research Agency, [Annual enrolments at grant-aided schools in Northern Ireland, 2025/26: Final Figures](#) (2026) Table 7a

<sup>9</sup> Department of Education, [Special Educational Needs Reform Agenda](#) (2025) p10

<sup>10</sup> Department of Education, [Special Educational Needs Reform Agenda](#) (2025) p10

<sup>11</sup> Department of Education, [Annual enrolments at schools and in funded pre-school education in Northern Ireland 2025/26](#) (2025)

percentage points. That movement has been absorbed by growth in both special schools and specialist provision in mainstream schools (SPiMs), with SPiM growth particularly notable given the small starting base in 2015/16.

The number of SPiM classes increased from 230 in 2017 to 471 by June 2023, with pupil numbers rising by 55 per cent over the same period and over 4,000 pupils supported across the region.<sup>12</sup> By 2024-25, enrolment had reached 4,560 pupils across 221 schools, representing 6.5 per cent of all SEN pupils in schools and pre-school settings.<sup>13</sup> They now represent one of the primary placement options available to the EA when making a statement.

Stakeholders have highlighted concern about increasing complexity of need within SPiMs, limited access to allied health professionals and significant transition challenges, particularly at key stage changes and post-16, as areas of concern.<sup>14</sup> There are no agreed regional standards or quality assurance arrangements governing SPiMs.<sup>15</sup>

## 2.2 Financial pressures

Combined expenditure by the EA and the DE on SEN provision has more than doubled in less than a decade, rising from £254 million in 2017-18 to £622 million in 2024-25.<sup>16</sup> The Northern Ireland Audit Office (NIAO) noted in 2019-20, when spending stood at £311 million, that SEN funding was not financially sustainable.<sup>17</sup> Expenditure has continued to rise sharply in the years since.

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<sup>12</sup> Education and Training Inspectorate (ETI), [Specialist Provisions in Mainstream Schools – Part 1](#) (2024) p12

<sup>13</sup> Department of Education and Northern Ireland Statistics and Research Agency, [Annual Enrolments at Grant-Aided Schools in Northern Ireland, 2024/25: Final Figures](#) (2025), Table 7b

<sup>14</sup> NICCY, [Specialist Provisions in Mainstream Schools \(SPiMs\): Briefing Report](#) (2025), p6, 10–11, 13

<sup>15</sup> Partnership for Inclusive Education, [Response to the SEN Reform Agenda and Delivery Plan 2025–2030](#) (2025) p18

<sup>16</sup> Department of Education, [Special Educational Needs Reform Agenda](#) (2025) p7

<sup>17</sup> Northern Ireland Audit Office, [Impact Review of Special Educational Needs](#) (2020) p4

The DE reports that at current rates of growth, SEN expenditure risks consuming an unsustainable share of the education budget with projections that could see SEN absorb up to 34 per cent of education's total budget.<sup>18</sup>

The Partnership for Inclusive Education, a coalition of members from Children in Northern Ireland (CiNI) who represent organisations working directly with children, families and schools, has cautioned that investment in SEN and policy design should be determined by what is necessary to meet legal obligations and achieve equitable outcomes, rather than budgetary constraints.<sup>19</sup>

### 2.3 The SEN Reform Agenda, Delivery Plan and Outcomes Framework 2025-2030

Successive scrutiny reports<sup>20</sup> have been published since 2017 which have reinforced critical issues with the current SEN system and highlighted the need for radical change. Collectively, the reviews generated over 200 recommendations for systemic improvement.

Between 2023 and 2024, the DE and EA undertook an [End-to-End Review](#) of SEN to explore the landscape of SEN provision and the recommendations identified through the various scrutiny reports. The findings of the Review informed the [SEN Reform Agenda](#) and [five-year Delivery Plan](#) announced by the Minister for Education in early 2025. The Reform Agenda identifies a range of issues including delays in statutory assessment, insufficient early intervention, workforce capacity gaps and a schools estate under pressure from a changing pupil profile. Reform is organised around four pillars: the right support, the right people, the right time and the right place.<sup>21</sup>

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<sup>18</sup> Department of Education, [Special Educational Needs Reform Agenda](#) (2025) p7

<sup>19</sup> Partnership for Inclusive Education, [Response to the SEN Reform Agenda and Delivery Plan 2025–2030](#) (2025) p6

<sup>20</sup> NIAO Impact Review of SEN ([2017](#)) and ([2020](#)); NICCY '[Too Little, Too Late](#)' (2020); EA [SEN Learner Journey Project](#) (2019); Public Accounts Committee [Impact Review of SEN](#) (2021); [Landscape Review of the EA](#) (2022); [Independent Review of SEN](#) (2023); [Independent Review of Education](#) (2023)

<sup>21</sup> Department of Education, [Special Educational Needs Reform Agenda](#) (2025) p15

The accompanying Delivery Plan 2025–2030 translates those objectives into 24 action areas with a five-year implementation timeline, identifying delivery partners and distributing actions across yearly phases.<sup>22</sup> The [SEN/D Reform Agenda Outcomes Framework](#), published in June 2025, sets out the population indicators against which progress will be monitored and introduces a performance reporting structure to be applied to each action as it is implemented. The Partnership for Inclusive Education has expressed concern that the Outcomes Framework relies heavily on ‘aspirational indicators’ without ‘mechanisms for revealing system strain’.<sup>23</sup>

The plan carries a high-level estimated cost of £570 million over five years. The DE reported in November 2025 that it had secured £27.5 million from the Public Sector Transformation Board (PSTB) and £4 million from the Early Learning and Childcare budget to progress early actions detailed in the delivery plan.<sup>24</sup> Amongst the commenced projects by the end of 2025 were the digitisation of the statutory assessment and review process, publication and implementation of the Graduated Response Framework, and implementation of Local Impact Teams.<sup>25</sup> On 22 April 2026, DE Officials briefed the Committee for Education that a number of issues emerged in relation to delivery of the PSTB-funded SEN Reform projects in Autumn 2025 and, subsequently a stocktake review and recalibration of the projects has been completed. However, the aforementioned actions already commenced should not be affected.

## 2.4 Key reform mechanisms and their interface with the Regulations

There are three key mechanisms within the Reform Agenda: the Graduated Response Framework (GRF), Local Impact Teams (LITs), and SPiMs. The

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<sup>22</sup> Department of Education, [Special Educational Needs Reform Agenda – Delivery Plan 2025–2030](#) (2025)

<sup>23</sup> Partnership for Inclusive Education, [Response to the SEN Reform Agenda and Delivery Plan 2025–2030](#) (2025) p23

<sup>24</sup> Northern Ireland Assembly, Written Answer, [AQW 34327/22-27](#) (2025)

<sup>25</sup> Department of Education, [Special Educational Needs Reform Agenda – Delivery Plan 2025–2030](#) (2025)

extent to which the Regulations deliver consistent outcomes across assessment, statements and review will depend in part on how these mechanisms develop and function in practice. Stakeholders have noted that all three are still developing and unevenly resourced. Furthermore, in March 2026, the EA launched a consultation on an Enhanced Support Model which marks significant reform to current classroom-based supports. This section considers the interface between the GRF, LITs and the Enhanced Support Model, and the proposed legislative framework.

### 2.4.1 The Graduated Response Framework

The [GRF](#) published by the EA, sets out a structured approach for schools to identify and support children with SEN through the IPAMER cycle (Identify, Plan, Act, Monitor, Evaluate, Review) across the five overarching SEN categories<sup>26</sup>, and at each stage of the new draft Code of Practice.

The purpose of the GRF is to enable earlier, more proportionate intervention and to reduce reliance on statutory assessment as the primary route to specialist support. However, the legal status of the GRF has attracted sustained criticism from legal and advocacy bodies. The Children's Law Centre (CLC) has characterised it as the unpublished draft revised Code of Practice transplanted into operational guidance without legal force.<sup>27</sup> The Partnership for Inclusive Education similarly questions whether the GRF is in effect the draft Code in operational form, carrying its structure and content into practice without the statutory footing that a formally commenced Code of Practice would provide.<sup>28</sup>

### 2.4.2 Local Impact Teams

The EA's 28 locality-based LITs became operational in September 2025, bringing together eight previously separate pupil support services into a unified

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<sup>26</sup> Cognition and learning; social, behavioural, emotional and wellbeing; speech, language and communication needs; sensory; physical needs

<sup>27</sup> Partnership for Inclusive Education, [Response to the SEN Reform Agenda and Delivery Plan 2025–2030](#) (2025) p10–11

<sup>28</sup> Partnership for Inclusive Education, [Response to the SEN Reform Agenda and Delivery Plan 2025–2030](#) (2025) p12

model aligned with the five Health and Social Care Trust boundaries.<sup>29</sup> The LITs operate across two tiers: 20 school-age LITs and eight Early Years LITs. Staffing levels vary considerably across the Trust areas. As of 30 September 2025, 161.1 full-time equivalent (FTE) teacher-grade staff were deployed across the 20 school-age LITs, with a further 33.26 FTE across the eight Early Years LITs.<sup>30</sup> The DE advised at that point that an additional cohort of approximately 30 FTE specialist teachers would be required before the LIT network reaches its intended long-term operating capacity.<sup>31</sup>

The intent of the LITs is to provide a single point of referral for schools, accessed through a digital Request for Involvement (RFI) form via the SENCo Portal; removal of the Educational Psychology function that previously controlled access to specialist services; and earlier and more proportionate intervention at Stages 1 and 2 of the Code of Practice, ahead of any statutory assessment process. RFIs are assessed individually by EA moderation panels using a 'Support Pathway Framework'. The EA has described this as a holistic, needs-led process that takes into account child, family, and school factors alongside Graduated Response evidence, stating that the panel does not apply fixed criteria and that there is 'no definitive list of factors that automatically influence decision-making'.<sup>32</sup> The criteria and scoring matrix used by the panel have not been published, meaning schools have no clear basis on which to understand why a child has been declined support or directed to a lower level of involvement.<sup>33</sup> Concern has also been expressed about the lack of health representation within the LIT model.<sup>34</sup>

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<sup>29</sup> Education Authority, [Local Impact Teams: Model Overview](#)

<sup>30</sup> Northern Ireland Assembly, Written Answer, [AQW 33484/22-27](#) (2025)

<sup>31</sup> Northern Ireland Assembly, Written Answer, [AQW 31021/22-27](#) (2025)

<sup>32</sup> Northern Ireland Assembly, Written Answer, [AQW 34101/22-27](#) (2025)

<sup>33</sup> Children's Law Centre, [Inquiry into a Strategic Review of Current SEN Provision and Transformation Agenda: Briefing](#) (December 2025) p11

<sup>34</sup> Children's Law Centre, [Inquiry into a Strategic Review of Current SEN Provision and Transformation Agenda: Briefing](#) (December 2025) p11

The EA has advised that the LIT model remains in its initial stages of development, with a focus on establishing 'consistent processes, clearer referral pathways and stronger coordination of early support across all areas', and that it will continue to be refined as development progresses and feedback from schools and families is gathered.<sup>35</sup>

In its recent open letter to the Minister for Education, the CLC expressed serious concerns based on its advice and casework about the capacity of LITs to respond to the level of need presenting, and stated that the “situation for children who need support may in fact have worsened as a result of this reform.”<sup>36</sup>

### 2.4.3 The Enhanced Support Model

On 24 March 2026, the EA launched a consultation on the Enhanced Support Model, a significant reform programme aimed to improve classroom support and outcomes for pupils with SEN. It seeks to move away from the current classroom support model by giving schools greater autonomy to determine the most effective support(s) for children with statements of SEN.

Under the current system, funding is allocated based on child-specific requirements detailed in statements. Typically, these resources are described in terms of hours of classroom assistant (CA) time based on the current CA pay scales. However, schools will not receive allocated CA hours under the proposed Enhanced Support Model. Rather, a school’s SEN resource will be based on the school’s SEN population, and schools will have flexibility to determine how to use their SEN resource to best meet pupil needs<sup>37</sup> to “offer a multi-tiered, multi-specialist response to pupils with a statement of SEN”.<sup>38</sup> This provision is to be delivered within a framework of essential standards developed by the EA to ensure equity in support across schools.

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<sup>35</sup> Northern Ireland Assembly, Written Answer, [AQW 42424/22-27](#) (2026)

<sup>36</sup> Children’s Law Centre, [SEND Reform Risks Repeating Mistakes of the Past](#) (22 April 2026)

<sup>37</sup> Education Authority, [Enhanced Support Model - Draft Funding Model](#) (2026)

<sup>38</sup> Education Authority, [Enhanced Support Model - Public Consultation Document](#) (2026) p10

The EA proposes investment in staff to ensure that schools have a core workforce equipped to meet pupils' needs across the five SEN categories. Schools can also choose to bring in external specialist support. Resource allocation is proposed across three areas:

- Strand 1: Core SEN Support Resource – a predictable annual allocation based on SEN profile, deprivation, complexity patterns, and school type. This is proposed to include recognition of the workload relating to the management of SEN support by SENCos and schools.
- Strand 2: Specialist Workforce Support – investment in specialist teaching, pedagogy and CA roles and multi-disciplinary support.
- Strand 3: Targeted Need / Complex Provision – specific funding for a small number of children with high-level needs.<sup>39</sup>

The consultation documentation states that the Enhanced Support Model will not change the right to refer for a statutory assessment, the criteria for assessment or statement, or the right to appeal the outcome of the statutory assessment and statementing process. Nor will it result in changes to the legislation or Code of Practice.<sup>40</sup>

However, there will be changes to the provision made in statements so that functional needs and the specialist actions required are specified, rather than individual classroom assistant hours. The EA states that statements will not be overly prescriptive about classroom support options to ensure flexibility for schools.<sup>41</sup> The consultation is due to close on 22 May 2026. Subject to the outcome of the consultation, it is proposed that the model will be finalised, and new guidance for statutory assessment and statements provided, by June 2026. Phased implementation will commence in September 2026. New statements

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<sup>39</sup> Education Authority, [Enhanced Support Model - Draft Funding Model](#) (2026) p3

<sup>40</sup> Education Authority, [How a Child or Young Person with SEN is Supported Today vs Under the Enhanced Support Model](#) (2026)

<sup>41</sup> Education Authority, [Consultation begins on classroom support reforms](#) (2026)

are proposed to adopt the Enhanced Support Model from that point too. Roll-out is proposed to continue in 2027-28 and 2028-29.<sup>42</sup>

The proposed new Enhanced Support Model represents significant reform to the model of classroom support, and a marked shift in the roles and responsibilities of classroom assistants and teaching staff in supporting pupils with SEN. Whilst it is not intended to change legislation or the Code of Practice, it will have implications on statements. Phased implementation is proposed to start at the same time as the commencement of the SEN Regulations.

#### **Potential scrutiny point**

- Members may wish to further consider the interface between the proposed Enhanced Support Model, the new Regulations and Code of Practice, and system readiness and capacity for implementation of both. This may include consideration of the capacity of the education workforce and the LITs, the timing of the consultation, and the proposed timeline for finalisation of the model and phased commencement.

### **3 The draft SEN Regulations and Code of Practice 2026**

The DE wrote to the Committee for Education on 13 February 2026 outlining its proposal to lay The [Special Educational Needs Regulations \(Northern Ireland\) 2026](#) (hereafter 'the draft Regulations 2026') before the Assembly. The DE proposes that the Regulations will come into force on 1 September 2026, subject to affirmative resolution procedure. These Regulations revoke and replace, with modifications, [The Education \(Special Educational Needs\) Regulations \(Northern Ireland\) 2005](#), exercising powers conferred by the 1996 Order. In its proposal ([SL1 letter](#)) the DE referred to the key changes enabled

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<sup>42</sup> Education Authority, [Enhanced Support Model - Public Consultation Document](#) (2026) p16 - 17

by the Regulations, some of the concerns raised by the 2020-21 consultation, and some of the revisions made to the draft Regulations in the intervening period. The draft SEN Regulations 2026 are divided into nine parts containing 48 regulations and four Schedules.

On 23 March 2026, the DE provided the Committee for Education with the [draft Code of Practice](#) to accompany the draft Regulations 2026. The draft Code reflects both the existing statutory duties with regard to SEN and the statutory duties introduced under the SEND Act 2016. It is a considerable document, amounting to around 400 pages, comprising 14 sections and detailed annexes.

The following section of this paper outlines the key changes to the SEN Framework enabled by the proposed draft Regulations 2026 with a focus on the substantive regulations. Where relevant, it compares the draft Regulations 2026 with those consulted on in 2020-21; considers the draft regulations in the context of consultee feedback; and draws on relevant information from the Code of Practice. Throughout, potential areas which may merit further Committee consideration are highlighted.

## 4 The key changes introduced by the Regulations

### 4.1 EA Plan of Arrangements for Special Educational Provision

The new SEN Framework introduces a duty on the EA to prepare, publish and consult on its plan of arrangements for special educational provision on or before 31 July each year. Under [Section 2](#) of the SEND Act, the plan must set out the resources and the advisory or support services that the EA intends to provide each academic year in order to fulfil its duties relating to special educational provision, and its arrangements for securing training for staff in grant-aided schools.

Regulation 3 sets out the required content of the Plan, which is to include the SEN to be supported, the associated provision to be made, and the access arrangements for resources and services. Regulation 4 outlines the process the EA must follow when creating, updating, or revising its plan. This includes a

requirement to consult with stakeholders and to publish a draft plan for consultation by the end of March prior to the school year in which it will apply.

The DE's consultation on the draft Regulations 2020–21 did not include specific questions relating to the proposals for the EA Plan of Arrangements.

Nonetheless, stakeholders indicated that the Plan is central to the overall effectiveness and responsiveness of the new Framework, and emphasised that it should provide clear, transparent information on the support to be delivered and the criteria governing children's access to each service. Some respondents expressed concern that the draft SEN Code can only operate effectively if the EA has the capacity to provide timely advice, support and guidance across the system.<sup>43</sup>

Section 2 of the Code of Practice sets out the required contents, and the requisite procedures for preparing, reviewing or revising, and publishing the Plan. It is expected to include arrangements for specific types of SEN; arrangements for providing Educational Psychology services, supporting transitions into adulthood for pupils with a statement, and services for mediation and independent dispute avoidance and resolution. Section 2.22 outlines the expected features of access arrangements for services including clear criteria, timely consideration of requests, and timely provision of support where needed.<sup>44</sup>

The Code also states that the EA is expected to have suitable monitoring and review arrangements in place. In addition, the DE will request key performance information on the EA's fulfilment of its statutory duties and the effectiveness of its arrangements for delivering special educational provision.

## 4.2 New duties for Boards of Governors (BoG)

[Section 3](#) of the SEND Act places a new statutory duty on grant-aided schools to appoint a teacher in their school to the role of Learning Support Co-ordinator

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<sup>43</sup> Department of Education, [Summary Report of Consultation Responses - Draft Code of Practice \(2021\)](#)

<sup>44</sup> Department of Education, [Draft Code of Practice \(2026\)](#) para 2.22

(LSC) with responsibility for coordinating provision for pupils with SEN. The LSC role will replace that of the existing SEN Co-ordinator (SENCo).

#### 4.2.1 Experience requirements of LSCs

Currently, there is no requirement for a SENCo to have experience of working with children with SEN.<sup>45</sup> The new regulations (6 and 7) require Boards of Governors to ensure that LSCs working in mainstream schools have a minimum of three years' (full time equivalent) experience of working with children with SEN. In special schools, at least one of the three years must have been gained in a special school or specialist provision setting. Specialist provision is defined as special educational provision within an ordinary school for pupils with a statement which indicates that specialist teaching within a small group setting is most appropriate.<sup>46</sup>

Regulation 8 requires Boards of Governors to ensure that the LSC is provided ongoing training, is given reasonable time to effectively carry out their duties, and is provided opportunity at least once each term to report to the Board on pupils' SEN, the special educational provision being made, and any related services. Boards of Governors are required to have regard to, but not be limited by, the training arrangements set out under the EA Plan of Arrangements.

The DE consultation on the 2020-21 Regulations sought views on the minimum experience requirements of LSCs. Fifty five per cent of 185 respondents to the public consultation agreed with the proposed LSC experience thresholds, while 33% disagreed. A further targeted consultation of parents found that 43% were not satisfied with the three years' experience for an LSC in a mainstream school, and that 72% were not content that one of the three proposed years is required to be obtained in a special school in the case of LSCs working in special schools, with parents noting the diversity and complexity of pupil need.<sup>47</sup>

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<sup>45</sup> Department of Education, [Consultation on draft SEN Regulations](#) (2020)

<sup>46</sup> [The draft Special Educational Needs \(SEN\) Regulations \(Northern Ireland\) 2026](#), regulation 2

<sup>47</sup> Department of Education, [Summary Report of Consultation Responses - new draft SEN Regulations](#) (2021) p10-11

Qualitative feedback to the consultation suggested the need for ongoing professional development and regular review of LSC training needs, and called for schools to have adequate resources and funds to ensure the ongoing development of both the role and skills. The CLC advised that the experience requirements for LSCs should be underpinned by mandatory continuous professional development (CPD) on both SEN and disability equality issues relevant to the LSC role and through regular review of LSC training needs.<sup>48</sup> NICCY recommended that DE's and EA's role in supporting schools with the necessary funding and professional development should be explicitly highlighted within the Regulations and the Code.<sup>49</sup> Stakeholders further highlighted concerns about capacity and resource to fulfil the functions of the LSC role, including in smaller schools where staff may not have the requisite experience to fulfil the minimum experience requirements.

Within the Explanatory Memorandum and SL1 letter to accompany the draft Regulations 2026, DE states that the requirement for a minimum of three years' teaching experience aligns with the professional competences set out by the General Teaching Council for Northern Ireland (GTCNI).<sup>50</sup> Associated publicly available GTCNI documents<sup>51, 52</sup> do not specify any minimum teaching-experience requirements but do refer to teachers' knowledge and understanding of SEN and related provision, and outline teachers' responsibilities to meet the diverse needs of all learners including those with SEN.

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<sup>48</sup> Children's Law Centre, [Response to the Department of Education's Consultation on the Draft SEN Regulations](#) (2021) p3

<sup>49</sup> NICCY, [Advice to the Department of Education on its Consultation on Draft Special Educational Needs \(SEN\) Regulations](#) (2021) P10

<sup>50</sup> The draft Special Educational Needs (SEN) Regulations (Northern Ireland) 2026, [Explanatory Memorandum](#), p4; [SL1](#), p8

<sup>51</sup> General Teaching Council for Northern Ireland, [Digest of the Teacher Competences](#)

<sup>52</sup> General Teaching Council for Northern Ireland, [Teaching: the Reflective Profession](#)

**Potential scrutiny points**

- Members may wish to consider stakeholders' views on the broadening of the experience requirement for LSCs in special schools, noting that it now allows one of the required three years' experience to be gained in either a specialist provision setting or a special school.
- Members may wish to seek further information on how the proposed minimum experience requirements for LSCs are consistent with the GTCNI competence framework.
- Has DE considered the impact of the experience requirements on staff availability and progression?

**4.2.2 Roles and responsibilities of LSCs**

Section 2.56 of the Code of Practice sets out the areas of responsibility for LSCs under the new SEN Framework. Whilst there is some similarity in the LSC role and that of the SENCo under the 1998 Code of Practice, the LSC remit is more strategic and systematic, with expanded duties and several new responsibilities. These include strategic planning with senior leaders and governors, provision mapping, supporting the implementation of external professional advice, and a more substantial role in providing staff support, guidance and capacity building, including incorporating SEN-related training needs within school development plans. Other new duties on LSCs stem from provisions in the SEND Act 2016. This includes the overseeing of procedures to seek pupil views, and leading on Personal Learning Plans.

The Code of Practice reiterates the requirements on Boards of Governors, under the SEN Regulations, to ensure that the LSC receives the necessary training and time to conduct the role effectively. It recommends consideration of LSC's teaching commitments and flexibility to allow the LSC release time. The Code further recommends that the LSC should, where possible, be a member

of the senior leadership team (SLT) and, if not, should be regularly supported by the principal or senior leadership.<sup>53</sup>

The 2020-21 consultation highlighted concerns about the capacity to perform LSC's duties and queried the funding, training and support to be made available. Feedback commonly referred to the need for sufficient time to enable LSCs to perform their role effectively.<sup>54</sup> An essence of the feedback points are presented below:

- the Controlled Schools Support Council (CSSC) noted inconsistencies in relation to the time allocated for the LSC to perform their role and that this is largely dictated by school budgets.<sup>55</sup>
- The Irish National Teachers' Organisation (INTO) called for a workload impact assessment of the role and responsibilities of the LSC to fully understand how the demands of the role can be managed.<sup>56</sup>
- Some principals suggested that a formula be agreed by DE in relation to the time allocated for the LSC to perform their role and that this could be based on the number of children on the SEN register.<sup>57</sup>
- A number of respondents raised concern as to how the LSC job role can be fulfilled in a small school, where the role may fall to a principal with teaching responsibilities. Other respondents felt that the LSC role could be unmanageable in medium and large schools with a higher SEN population, and sought clarity on an appropriate Pupil-LSC ratio.

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<sup>53</sup> Department of Education, [Draft Code of Practice](#) (2026) para 2.55

<sup>54</sup> Department of Education, [Summary Report of Consultation Responses - Draft Code of Practice](#) (2021) p12-13

<sup>55</sup> Controlled Schools Support Council, [CSSC response to the Department of Education Consultation on the draft SEN Code of Practice](#) (2021) p2

<sup>56</sup> INTO, [Response to the Department Of Education consultation On Draft Special Educational Needs Code Of Practice](#) (2020) p5

<sup>57</sup> Controlled Schools Support Council, [CSSC response to the Department of Education Consultation on the draft SEN Code of Practice](#) (2021) p3

- Several respondents commented that the LSC role would apply to every teacher in a special school and that this is unworkable.<sup>58</sup>

The draft Code has since been updated to reflect that there may be a SEN co-ordinating or learning support team in larger schools. It now notes that, in special schools, aspects of the monitoring and co-ordinating role of the appointed LSC may be shared with the school principal and SLT.<sup>59</sup>

The DE states that it will develop and implement a dedicated Leadership Programme to further support LSCs in fulfilling their statutory responsibilities as part of the wider SEN Reform Agenda.<sup>60</sup>

### Potential scrutiny points

- Can the DE provide information on the planned leadership programme for LSCs, including the envisaged content, implementation timeline, and whether refresher or follow-up training will be provided?
- What, if any, further resource, training and/or guidance will be provided to support LSCs and the wider school staff in the delivery of responsibilities under the new SEN Framework?
- How do the DE and EA seek to address the concerns raised regarding workload pressures and release time for LSCs, especially in smaller schools and/or those with a high number of pupils with SEN, to avoid inconsistencies across the system?

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<sup>58</sup> Department of Education, [Summary Report of Consultation Responses - Draft Code of Practice \(2021\)](#) p12 - 13

<sup>59</sup> Department of Education, [Draft Code of Practice](#) (2026) para 2.55

<sup>60</sup> The draft Special Educational Needs (SEN) Regulations (Northern Ireland) 2026, [Explanatory Memorandum](#), p4; [SL1](#), p7-8

### 4.2.3 Personal Learning Plans

The PLP replaces the current Individual Education Plan and will be the primary source of educational evidence used by the EA when schools request pupil support services or when considering a statutory assessment. The PLP will be a module on SIMS. The LSC has responsibility for ensuring PLPs are prepared and implemented, and for supporting staff, as appropriate, on the creation, monitoring and review of PLPs.<sup>61</sup>

The class teacher is required to complete the PLP in nursery, primary and special schools in consultation with the LSC. A collaborative approach is required in post-primary schools but it is expected to be led by those with regular involvement in a child's education and strong knowledge of their needs.<sup>62</sup>

When consulted on in 2020-21, the draft Code of Practice contained a comprehensive [annex](#) which set out the summary content for PLPs in nursery, primary, post-primary and special schools, and PLP templates for use in the respective settings. The draft content received mixed views, with 40% agreeing and 46% disagreeing with the proposed content. Respondents expressed concern about the size of the template, that it is too detailed, "overwhelming" and time intensive. The hosting of the PLP on SIMS was welcomed, however, it was noted that standalone nurseries do not have access to SIMS.<sup>63</sup>

The draft Code of Practice appears to have been updated to address consultee concerns about the required number of PLP reviews in nursery and primary schools; this has been reduced from termly to at least twice yearly for all settings.<sup>64</sup> The various templates have been removed from the draft Code of Practice 2026; rather, schools are advised that further guidance can be found

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<sup>61</sup> Department of Education, [Draft Code of Practice](#) (2026) para 2.56

<sup>62</sup> Department of Education, [Draft Code of Practice](#) (2026) 2.58 and 4.87

<sup>63</sup> Department of Education, [Summary Report of Consultation Responses - Draft Code of Practice](#) (2021) p22-23

<sup>64</sup> Department of Education, [Draft Code of Practice](#) (2026) para 4.89

on the [CCEA PLP microsite](#) or through EA guidance to support the Code and the SEN Framework.<sup>65</sup>

The DE acknowledges that the initial creation of the PLP may have a short-term impact on the workload of LSCs as they transition from their existing individual education plans to creating PLPs on the school system. It notes that schools have been advised through SEND Implementation training to adopt a phased approach in advance of the statutory commencement date in order to manage this transition effectively.<sup>66</sup>

#### **Potential scrutiny points**

- Can the DE provide further detail on the guidance provided to schools regarding the phased implementation of PLPs? E.g. is it expected that this will be by year, key stage, and/or school stage? What are the expected implementation timelines?
- What is the structure and required content of the PLPs for nursery, primary, post-primary and special schools? Have the PLP templates been updated in response to consultee feedback?
- Have stakeholder concerns been addressed regarding lack of SIMS access by standalone nurseries?

#### **4.2.4 Other school responsibilities under the draft Code of Practice**

The draft Code of Practice 2026 contains further new and expanded responsibilities on schools in meeting the needs of pupils who have, or may have, SEN, and places a renewed emphasis on whole school responsibilities for SEN. Whilst schools have current duties under the existing framework for SEN

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<sup>65</sup> Department of Education, [Draft Code of Practice](#) (2026) para 4.87

<sup>66</sup> [SL1](#), p5

policy and planning, including accessibility planning, the draft 2026 Code more explicitly integrates SEN into whole-school planning, governance and review.

SLT is responsible for ensuring the whole school application of the practical guidance set out in the Code. They are responsible for the development, implementation and monitoring of the whole school delivery and effectiveness of a school's SEN Policy, Accessibility Plan, School Development Plan (SDP), and special educational provision mapping - a new requirement under the draft Code. Section 2 of the Code further sets out the responsibilities of the Principal; Boards of Governors; Department, Year Heads and Form Teachers; teachers; and support staff in implementing the requirements of the new SEN Framework and fulfilling their respective duties.

The following paragraphs briefly reflect on the school responsibilities under the new draft Code.

### ***Whole school provision and the continuum of SEN provision***

Section 4 of the Code sets out the approach required by grant-aided schools in the identification and assessment of pupils who have, or may have, SEN and for making special educational provision for children with SEN.

It places a strong emphasis on whole-school educational provision as the starting point for the continuum of educational provision, with schools expected to provide a differentiated curriculum, general learning support and reasonable adjustments, such as adapting teaching methods, to meet the diversity of need in the classroom. Schools are advised to reference the Graduated Response Framework for guidance and examples of whole school educational provision.<sup>67</sup>

Special educational provision sits alongside and beyond whole-school provision on the continuum. Where whole-school provision has been implemented appropriately and a pupil continues to experience significant difficulties and lack of progress, the school may move to Stage 1 and implement special educational provision i.e. provision which is additional to, or otherwise different

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<sup>67</sup> Department of Education, [Draft Code of Practice](#) (2026) para 4.15

from, educational provision for pupils the same age.<sup>68</sup> Schools should review the adequacy of school-level provision before submitting a Request for Involvement for Stage 2 provision to their Local Impact Team (LIT). The LIT's moderation panel then applies a framework to determine whether to accept the referral and at what level.

The Code contains flow charts and checklists to support schools' evidence gathering and decision making at each of the stages such as whether a child no longer requires special educational provision or should be moved to another stage of support.

At all stages, the school remains responsible for identifying, planning, taking action, monitoring, evaluating and reviewing provision, with increasing EA and health support where required, in line with the IPAMER Cycle under the Graduated Response Framework.

### ***Special educational provision mapping***

Schools are expected to map the types of special educational provision they will deliver to support the three SEN stages. This is a new responsibility for schools under the new draft Code. The map is to be a key resource for a school to draw from in determining the appropriate special educational provision for a child under five overarching SEN Categories. Schools are expected to draw provision from the map at Stage 1, use it to develop a child's initial PLP, and demonstrate that they have provided and evaluated the impact of the support on a child's progress before transitioning to a Stage 2 service. The Code sets out a four step approach to provision mapping (audit, plan, implement, review). The map should be updated at least annually.<sup>69</sup>

### **Enhanced Support Model**

Schools are also proposed to assume new responsibilities under the Enhanced Support Model (see section 2.4.3 for more detail). The consultation

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<sup>68</sup> Department of Education, [Draft Code of Practice](#) (2026) Para 4.80 key point; Annexes 3, 4, 5

<sup>69</sup> Department of Education, [Draft Code of Practice](#) (2026) Para 4.19 – 4.22

documentation acknowledges the additional responsibilities on SENCOs and principals:

*With increased authority to determine how best to allocate resources to support the needs of their children and young people with a statement of SEN, school principals and SENCOs will require additional support. This may include removing teaching hours from SENCOs and providing additional training and support to improve wellbeing.<sup>70</sup>*

#### **Potential scrutiny point**

- Members may wish to explore the views of teaching unions on the capacity and readiness of the workforce to deliver on the new and expanded responsibilities of schools under the new SEN Framework, including the Graduated Response Framework, and the proposed Enhanced Support Model.

### 4.3 Assessments

Under the existing system, the EA has a statutory duty to complete the assessment and statementing process within 26 weeks. However, stakeholders consistently highlight that the actual time taken to complete an assessment takes considerably longer. These delays have also been a recurring concern across multiple independent reviews of SEN provision in Northern Ireland. The NIAO reported in 2020 that the proportion of statements exceeding the 26-week statutory timeframe had worsened, rising from 79% in 2015/16 to 85% in 2018-19.<sup>71</sup> This was corroborated by NICCY's 2020 review, which found that 88.8%

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<sup>70</sup> Education Authority, [Enhanced Support Model - Public Consultation Document](#) (2026) p10

<sup>71</sup>Northern Ireland Audit Office, [Impact Review of Special Educational Needs](#) (2020)

of statement requests in 2018-19 exceeded the statutory limit, with the average waiting time reaching 40 weeks.<sup>72</sup>

The subsequent DE commissioned Independent Review of SEN Services and Processes by Ipsos<sup>73</sup>, found that targeted intervention by the EA through the Statutory Assessment Improvement Project, initiated in early 2020, had reduced the proportion of statements exceeding 26 weeks from 85% to 9% by the end of the 2020-21 academic year. However, the review noted that this improvement had not been sustained as of September 2022.

The review attributed the deterioration to several factors. First, assessment requests surged by 52% in 2021-22. Second, Educational Psychology staffing fell significantly over the same period: the EA had 23 fewer psychology staff than in 2017-18, while caseloads per staff member increased by 35%. Third, the EA lacked the recurring funding needed to maintain the expanded staffing structure on a sustainable basis. The review estimated that sustaining the staffing levels required for compliance would cost approximately £6 million per annum. It also expressed doubt about the EA's capacity to meet a reduced 22-week timeframe without significant additional resourcing.

#### 4.3.1 The proposed new timeframe

The draft Regulations 2026 reduce the standard timeframe from 26 to 22 weeks. The CLC noted that the DE's original proposal had been for a 20-week timeframe and that this was revised to 22 weeks following engagement with health colleagues to reflect the additional time required for the provision of health advice at the assessment stage.<sup>74</sup> Stakeholders broadly welcomed the reduction in principle whilst expressing reservations about the capacity of the system to deliver it in practice.

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<sup>72</sup> NICCY, [‘Too Little, Too Late’ A Rights Based Review of Special Educational Needs Provision in Mainstream Schools](#) (2020) p10

<sup>73</sup> Ipsos UK, [Independent Review of Special Educational Needs Services and Processes](#) (2023)

<sup>74</sup> Children's Law Centre, [Response to the Department of Education's Consultation on the Draft SEN Regulations](#) (2021) p4

### 4.3.2 Concern about advice to be sought

The 2005 SEN Regulations outline a range of advice that is to be sought for the purposes of making a statutory assessment, including parental, educational, medical, psychological, and social services advice, alongside any other advice the EA considers relevant. In contrast, the draft Regulations 2026 distinguish between mandatory advice to be sought, i.e. educational, psychological, and medical advice, and that which is now discretionary, i.e. social work advice and 'other' healthcare advice deemed appropriate by the relevant HSC Trust. The broader provision allowing the EA to seek 'any other advice it considers appropriate' for a satisfactory assessment has now been removed. The draft Regulations 2026 add a new provision prohibiting advisors from making recommendations on matters beyond the scope of the advice sought.<sup>75</sup>

Notably, the draft Regulations 2026 no longer refer to parental advice amongst the list of requisite advice to be sought by the EA when carrying out a statutory assessment. It may be noted that input from parents and young people over compulsory school age was retained among the advice sources to be sought in the 2020–21 draft regulations, but categorised as *information* rather than *advice*. Some stakeholders expressed concern that this could reduce the weight and consideration given to parents' and children's views within the statutory assessment.<sup>76</sup> It has now been removed entirely from the list of advice to be sought at regulation 9.

The EA remains required under Article 15(1)(d) and 20A(3)(d) of the 1996 Order to seek parental representations, and those of the child where the child is over compulsory school age, when determining whether to undertake a statutory assessment. Under regulation 12, the EA is required to consult the child (if over compulsory school age) or the parent and child (in any other case) when making an assessment, and to consider any representations made, and any evidence submitted in accordance with Article 15(1)(d), Article 20A(3)(d) or

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<sup>75</sup> [The draft Special Educational Needs \(SEN\) Regulations \(Northern Ireland\) 2026](#), regulation 9(7)(b)

<sup>76</sup> NICCY, [Advice to the Department of Education on its Consultation on Draft Special Educational Needs \(SEN\) Regulations](#) (2021) p6

otherwise. However, a valid exception to the statutory assessment timeline under the 2005 Regulations, which enables parents to provide advice to the EA after the current six-week requisite timeframe, should the EA agree to it,<sup>77</sup> is not provided for in the draft Regulations 2026.

The 2005 Regulations require for the EA to share parental representations and supporting evidence with the professionals providing advice for the assessment. In contrast, the draft Regulations 2026 allow the EA to share representations or evidence with advisers **if it considers it necessary**.<sup>78</sup>

The 2005 Regulations enable the EA to rely on existing advice only where it is obtained within the last 12 months and all parties agree it remains valid. The draft Regulations 2026 similarly permit the EA not to seek updated advice, if all relevant parties (the EA, parent or child over compulsory school age, and advisor(s)) are satisfied that the earlier advice is sufficient. However, the draft Regulations 2026 remove the requirement that previous advice be limited to the last 12 months.<sup>79</sup> CLC argues that this change weakens the quality and relevancy of information, as older advice may no longer accurately reflect the child's current needs, and there is no clear mechanism to ensure that parents or young people are satisfied that the earlier advice is sufficient.<sup>80</sup>

The 2020–21 consultation raised concerns about a new draft regulation allowing the EA to obtain non-written information from school principals (or equivalent) when deciding whether to carry out a statutory assessment. The draft Regulations 2026 remove this provision.

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<sup>77</sup> [The Education \(Special Educational Needs\) Regulations \(Northern Ireland\) 2005](#), regulation 11(7)(b)

<sup>78</sup> [The draft Special Educational Needs \(SEN\) Regulations \(Northern Ireland\) 2026](#), regulation 9(8)

<sup>79</sup> [The draft Special Educational Needs \(SEN\) Regulations \(Northern Ireland\) 2026](#), regulation 9(9)

<sup>80</sup> Children's Law Centre, [Response to the Department of Education's Consultation on the Draft SEN Regulations](#) (2021) p16

### Potential scrutiny points

- What is the rationale and implication for removing reference to the input of parent and child (if over compulsory school age) at the list of advice to be sought at regulation 9?
- On what grounds could the EA determine if it is necessary or unnecessary to share parental or child (over compulsory school age) representations or evidence with advisers as per regulation 9(8)?
- Can the DE provide further detail on the rationale and intended effect of the new regulation which prevents advisers from making recommendations on matters beyond the scope of the advice sought?
- How does the DE respond to stakeholder concerns about the removal of the 12 month limit on previous advice at regulation 9(9)?

#### 4.3.3 Valid exceptions: a key area of concern

A significant area of stakeholder concern in the 2020-21 consultation is the proposal that where valid exceptions apply, the 22-week timeframe can be extended by a further 12 weeks, bringing the maximum to 34 weeks. Both CLC and NICCY oppose this:

- NICCY describes 34 weeks as “an unacceptable delay constituting the vast majority of a school year” and queries whether the extent of the delay is warranted.<sup>81</sup>

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<sup>81</sup> NICCY, [Briefing to the Education Committee on the New SEN Framework](#) (2021) p2

- CLC argues the proposal "flies in the face of the original intent of the policy" and is contrary to the principle of early intervention.<sup>82</sup>

CLC stated that any delay should be kept to an absolute minimum and only legally permissible when strictly necessary and of constructive benefit to the child. NICCY states that, where an extension is necessary, it should be capped at no more than six weeks, giving a maximum of 28 weeks.

#### 4.3.4 Calls for monitoring and transparency

Consultation feedback stresses that valid exceptions must not become the norm. Key recommendations are:

- Robust evidence should be required before any exception is granted.
- A centrally-held record of all exceptions should be maintained and monitored by the DE.
- Feedback suggests that statistics should be published at least quarterly, broken down by category, by the relevant party that sought the extension and by the length of the delay.<sup>83, 84</sup>

#### 4.3.5 What has changed? Statutory assessment timelines under the draft Regulations 2026

Table 2 compares the statutory assessment timelines under the draft Regulations 2026<sup>85</sup> with those in the 2005 Regulations.<sup>86</sup> As with the 2005 Regulations, the DE recognises that there will be circumstances where the standard timelines cannot be met. Exceptions are provided for at each stage and are set out in detail in the following section. The most significant structural

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<sup>82</sup> Children's Law Centre, [Response to the Department of Education's Consultation on the Draft SEN Regulations](#) (2021) p4

<sup>83</sup> Children's Law Centre, [Response to the Department of Education's Consultation on the Draft SEN Regulations](#) (2021) p5 - 6

<sup>84</sup> NICCY, [Advice to the Department of Education on its Consultation on Draft Special Educational Needs \(SEN\) Regulations](#) (2021) p13

<sup>85</sup> [The draft Special Educational Needs \(SEN\) Regulations \(Northern Ireland\) 2026](#)

<sup>86</sup> [Education \(Special Educational Needs\) Regulations \(Northern Ireland\) 2005 \(SR 2005 No. 384\)](#)

change introduced by the draft Regulations 2026 is the imposition of a statutory upper time limit of 34 weeks where exceptions apply. Under the 2005 Regulations there is no upper limit: once an exception is triggered there is no point at which the process is required to conclude. In practice this means that assessments can, and frequently do, extend indefinitely. The draft Regulations 2026 therefore introduce, for the first time, an absolute deadline by which the statutory assessment process must be completed regardless of the exceptions that have applied.

**Table 2: Comparison of statutory assessment timelines under the 2005 and draft 2026 Regulations**

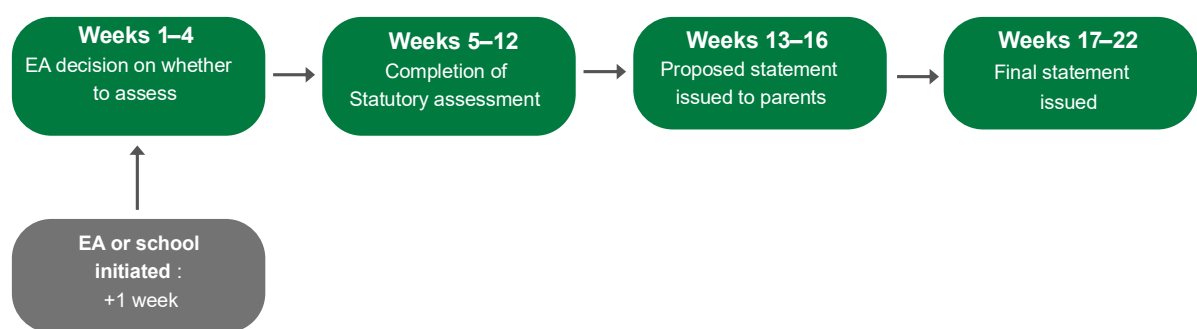
Stage	2005 Regulations	2026 Regulations	Change	Reg reference
EA decision on whether to assess	6 weeks (Reg 11(1)–(4))	4 weeks (Reg 13((2),(4))	-2 weeks	Reg 13(2),(4)
Completion of assessment	10 weeks (Reg 11(6))	8 weeks (Reg 13(8))	-2 weeks	Reg 13(8)
Proposed statement served	2 weeks (Reg 17(1))	4 weeks (Reg 14(1))	+2 weeks	Reg 14(1)
Final statement issued	8 weeks (Reg 17(3))	6 weeks (Reg 14(6))	-2 weeks	Reg 14(6)
<b>Total standard pathway</b>	<b>26 weeks</b>	<b>22 weeks</b>	<b>-4 weeks</b>	
<b>Maximum where exceptions apply</b>	<b>No ceiling, process could run indefinitely</b>	<b>34 weeks</b>	<b>New ceiling</b>	<b>Reg 15</b>

#### 4.3.6 The standard 22-week pathway

The draft Regulations 2026 set out a standard uninterrupted pathway of 22 weeks for the commencement and completion of the statutory assessment process, divided into four sequential stages. Each stage has a defined starting point and a fixed deadline. All four stages are subject to regulation 15 (Exceptions), which is addressed in the following section.

The standard 22-week pathway reflects the parent- or child-initiated route under Article 20(1) of the 1996 Order.<sup>87</sup> The four-week decision window at regulation 13(2) applies specifically to that route.<sup>88</sup> Where the process is initiated by the EA under Article 15(1), or by a school under Article 20A(1), an additional one-week notification step precedes the four-week decision window,<sup>89</sup> giving an effective period of five weeks from the point at which the EA forms its opinion or receives the school's request.

**Figure 1: Standard 22-week pathway - Regulations 13(2-4), 13(8), 14(1) and 14(6)**



#### 4.3.7 When the standard timelines can be extended

Regulation 15 provides for exceptions at the decision notice, assessment completion and final statement stages. The proposed statement stage carries no exceptions. Key changes are noted below:

- **34 week ceiling introduced for the first time:** Under the 2005 Regulations, once an exception is triggered the process can run indefinitely. The draft Regulations 2026 introduce an absolute ceiling of 34 weeks across the entire process regardless of how many exceptions apply or at which stages they are triggered.

<sup>87</sup>[The Education \(Northern Ireland\) Order 1996](#), article 20(1)

<sup>88</sup>[The draft Special Educational Needs \(SEN\) Regulations \(Northern Ireland\) 2026](#), regulation 13(2)

<sup>89</sup>[The draft Special Educational Needs \(SEN\) Regulations \(Northern Ireland\) 2026](#), regulations 13(1), (3), (4)

- **HSC Trust delays now subject to structured escalation:** The open-ended Trust exception in the 2005 Regulations is replaced with a four-step mechanism: the Trust's advice window can be extended from six to 12 weeks on one of four specific grounds (see section 4.3.8); the EA's timeline for assessment completion is consequently extended from eight to 14 weeks.<sup>90</sup> There is no longer a provision for the HSC to seek an extension by the EA, as per the draft Regulations consulted on in 2020-21. Instead, the HSC Trust shall advise the EA that it is applying an extension of up to six weeks and which exception is being applied. If Trust advice remains outstanding at week-14 the EA must proceed without it.<sup>91</sup> None of these features exist under the 2005 Regulations.
- **EP capacity remains unaddressed in the Regulations:** Despite EP delays being identified by the Ipsos Review as the primary cause of statutory timeframe breaches, the draft Regulations 2026 provide no structured escalation mechanism for EP delays equivalent to the HSC Trust chain mentioned above. The only relevant exception is the school holiday provision.<sup>92</sup>
- **Scope of the 'further advice' exception broadened at the assessment stage:** Under the 2005 Regulations, the EA can only seek further advice after receiving initial assessment advice where the circumstances were exceptional. The draft Regulations 2026 remove this qualifier; the extension is now available whenever the EA considers it necessary to seek further advice,<sup>93</sup> without any requirement that the circumstances be out of the ordinary. The extended deadline in such cases is 12 weeks.<sup>94</sup> This represents a broadening of a ground that applies at the assessment stage, where delays have historically been

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<sup>90</sup> [The draft Special Educational Needs \(SEN\) Regulations \(Northern Ireland\) 2026](#), regulation 15(12)

<sup>91</sup> [The draft Special Educational Needs \(SEN\) Regulations \(Northern Ireland\) 2026](#), regulation 15(13)

<sup>92</sup> [The draft Special Educational Needs \(SEN\) Regulations \(Northern Ireland\) 2026](#), regulation 15(8) and (9)

<sup>93</sup> [The draft Special Educational Needs \(SEN\) Regulations \(Northern Ireland\) 2026](#), regulation 15(7)(d)

<sup>94</sup> [The draft Special Educational Needs \(SEN\) Regulations \(Northern Ireland\) 2026](#), regulation 15(6)

most acute. This revision has been made since the regulations were previously consulted on in 2020-21.

#### **Potential scrutiny points**

- Can the DE explain the rationale and implication for removing the 'exceptional circumstances' qualifier for when the EA is permitted to seek further advice during statutory assessment?
- In cases where a Trust is unable to provide advice by the EA's 14-week deadline (where exceptions apply), what processes will be established for investigating delays, recording advice received outside the statutory period, and managing any subsequent communications with affected parties?

#### **4.3.8 The exceptions in detail**

Regulation 15 sets out the circumstances in which the EA may extend the standard stage deadlines. There is a fixed list of exceptions, the EA may only rely on a ground specifically named in regulation 15 for that stage and cannot extend a deadline for any other reason. The following describes these exceptions, what the position is under the 2005 Regulations, and what is proposed to change.

##### ***Decision notice stage - Regulation 15(2)-(5)***

Where an exception applies at this stage, it extends the four-week deadline for the EA to serve its decision notice (confirming whether it will assess, or declining to do so). The regulation reference in the table below pertains to the draft Regulations 2026.

**Exception 1: Exceptional circumstances or absence, Regulation 15(2)-(3)**

- **Currently (2005 Regulations):** If the child or parent is affected by exceptional personal circumstances during the six-week decision period, or is absent from the board's area for four or more continuous weeks, the EA is not required to meet the deadline. No replacement deadline is specified - the process simply pauses without any fixed point at which to resume.
- **Proposed (2026 Regulations):** The same two grounds apply: exceptional circumstances affecting the relevant party, or continuous absence. However, the absence period is now two or more continuous weeks. A fixed extended deadline of six weeks replaces the previous open-ended position.

**Exception 2: School closure - Regulation 15(4)-(5)**

- **Currently (2005 Regulations):** If the EA requests advice from a school principal in the week immediately before a school closes for four or more continuous weeks, it is not required to meet the six-week decision deadline. No fixed replacement deadline is set.
- **Proposed (2026 Regulations):** The same ground applies, the EA requests school advice in the week before a closure, but the closure threshold is reduced from four to two continuous weeks. A fixed replacement deadline of three weeks from the date the school reopens is introduced.

***Assessment completion stage - Regulation 15(6)-(13)***

Where an exception applies at this stage, it extends the eight-week deadline for the EA to complete the statutory assessment. The deadline in the 2005 Regulations is ten weeks. The regulation references in the table below pertains to the draft Regulations 2026.

**Exception 1: Exceptional circumstances, absence or missed appointment - Regulation 15(6)–(7)**

- **Currently (2005 Regulations):** Three grounds permit the EA to miss the ten-week assessment deadline: exceptional personal circumstances affecting the child or parent; absence from the board's area for four or more continuous weeks; or the child failing to keep an examination or test appointment. No replacement deadline is specified for any of these grounds.
- **Proposed (2026 Regulations):** The same three grounds remain. The absence threshold stays at four continuous weeks however the geographic area is Northern Ireland. A fixed extended deadline of 12 weeks total replaces the open-ended position.

**Exception 2: Further advice needed after receipt of initial advice - Regulation 15(6)–(7)**

- **Currently (2005 Regulations):** Where it is necessary, in exceptional cases, for the EA to seek further advice after receiving the initial assessment advice, the ten-week deadline does not apply.
- **Proposed (2026 Regulations):** The "in exceptional cases" qualifier is removed. The extension is now available whenever it is simply necessary to seek further advice, without any requirement that the circumstances be exceptional. The extended deadline is 12 weeks total.

**Exception 3: School or EP advice requested before a school closure - Regulation 15(8)–(9)**

- **Currently (2005 Regulations):** If the EA requests advice from a school principal in the week before a school closes for four or more continuous weeks, the ten-week assessment deadline does not apply. No fixed replacement deadline is set. The exception does not expressly cover requests for Educational Psychologist advice.
- **Proposed (2026 Regulations):** The closure threshold is reduced to two or more continuous weeks. The exception is extended to cover explicitly

both advice from the school principal or proprietor and advice from the Educational Psychologist. The replacement deadline is three weeks from the date the school reopens.

**Exception 4: HSC Trust advice outstanding - Regulation 15(10)–(13)**

- **Currently (2005 Regulations):** The HSC Trust has six weeks to provide health and social services advice following the EA's request. If the Trust fails to comply within that period, the EA is not required to meet its ten-week assessment deadline. There is no requirement for the Trust to notify the EA of a delay, no structured escalation mechanism and no hard endpoint: the process can continue indefinitely while awaiting Trust advice.
- **Proposed (2026 Regulations):** A four-step structured escalation mechanism replaces the open-ended position. First, the Trust's standard six-week window to provide advice runs from the date the EA requests it. Second, the Trust may extend this to 12 weeks in total, but only on one of four specific grounds (exceptional circumstances, absence, missed appointment, or the Trust having no prior records for the child) and only by actively notifying the EA which ground applies. Third, where the relevant HSC Trust has informed the EA of an extension, the EA's assessment deadline extends from eight to 14 weeks in total. Fourth, if Trust advice is still not received when the EA's 14-week deadline arrives, the EA must proceed and complete the assessment without it. None of the notification requirement, the four specific grounds, the EA extension, or the obligation to proceed without Trust advice exist under the 2005 Regulations.

***Final statement stage - Regulation 15(14)-(18)***

Where an exception applies at this final statement stage, it extends the six-week deadline for the EA to serve the final statement. The deadline in the 2005 Regulations is eight weeks.

**Exception 1: Parent makes representations or requests a meeting - Regulation 15(14)**

- **Currently (2005 Regulations):** If a parent wishes to make representations about the content of the proposed statement after the standard 15-day representations period has expired, or if meetings between the parent and EA officers are ongoing, the EA is not required to meet the eight-week final statement deadline. No replacement deadline is specified.
- **Proposed (2026 Regulations):** The same grounds remain, parent representations and meetings but a fixed endpoint is introduced in the draft Regulations 2026. The final statement must now be served no later than two weeks after the last representations are received, or two weeks after the last meeting is held, whichever is the later.

**Exception 2: Exceptional circumstances, absence or school closure - Regulation 15(15)–(16)**

- **Currently (2005 Regulations):** Exceptional personal circumstances affecting the child or parent, or absence from the board's area for four or more continuous weeks during the eight-week period, permit the EA to miss the deadline. No replacement deadline is specified.
- **Proposed (2026 Regulations):** The same grounds apply. The absence threshold stays at four continuous weeks but the geographic scope is Northern Ireland. A new school closure ground is added: where the EA has consulted an affected body (typically a school being considered for naming in the statement) in the week before that body closes for two or more continuous weeks. A fixed extended deadline of ten weeks replaces the open-ended position.

**Exception 3: Independent school placement or placement outside Northern Ireland - Regulation 15(17)-(18)**

- **Currently (2005 Regulations):** A single provision applies where the EA needs DE consent to place the child at an institution other than a grant-

aided school. If consent is not received within three weeks of the request, the EA is not required to meet the eight-week deadline.

- **Proposed (2026 Regulations):** This is split into two distinct provisions, each with an explicit nine-week extended deadline: Regulation 15(17) covers cases where the EA is making arrangements for a child in an institution outside Northern Ireland under Article 10(1)(a) of the 1996 Order; Regulation 15(18) covers cases where the EA has sought DE consent for an independent school placement under Article 10(1)(b) and a response has not been received within three weeks of the DE receiving the request. The separation into distinct provisions clarifies the applicable route and introduces fixed deadlines in both cases.

#### 4.3.9 What the DE and EA have said about assessment timelines

The DE has acknowledged the operational challenges with regard to assessment timelines in its SEN Reform Agenda Delivery Plan 2025–2030.

Two actions relating to assessment timelines are explicitly categorised as immediate actions in the Delivery Plan's Early and Priority Year One Actions table, meaning they were intended to begin in Year 1 without waiting for additional funding: the digitisation of the statutory assessment and review process, and the streamlining of that process to meet statutory timeframes and facilitate timely confirmation of school placements. Neither action was contingent on the outcome of the NICS Transformation Fund bid, unlike a number of other reform actions which were subject to that funding. However, the Delivery Plan does not define what either commitment means in practice, nor does it set any measurable milestone against which progress on either action can be assessed.<sup>95</sup> On 22 April 2026, an EA Official informed the Committee for Education that reforms to the statutory assessment process have resulted in time efficiencies and that the current average timeframe is 24 weeks.

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<sup>95</sup> Department of Education, [Special Educational Needs Reform Agenda – Delivery Plan 2025–2030](#) (2025) p7, p9-10

Over the five-year period of the Delivery Plan, the EA is also committed to reviewing its time allocation model for access to Educational Psychology support and assessing its impact on children with SEN and unmet need. A further action commits the DE to scoping options for the prioritisation of requests for statutory assessment, suggesting consideration is being given to some form of triage mechanism to manage demand.<sup>96</sup>

In the SL1 letter to accompany the draft Regulations, the DE states its expectation that the majority of cases will be completed within the standard 22-week timeframe but acknowledges the potential risk of over-reliance on valid exceptions by both the EA and the Department of Health. To address this, the DE states that it has provided clear guidance on the use of valid exceptions and currently undertakes monthly monitoring of compliance with statutory timescales across each stage of the process.<sup>97</sup>

#### **Potential scrutiny points**

- What evidence can the DE provide to demonstrate that the system now has the capacity to deliver the new statutory timeframes given documented compliance issues?
- What evidence can the DE provide to assure Members that its guidance on the use of valid exceptions will prevent any over-reliance on these exceptions by the EA and the Department of Health?
- What specific information is assessed through the DE's monitoring? Do current monitoring mechanisms assess the nature of exceptions applied and the length of delays? Will

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<sup>96</sup> Department of Education, [Special Educational Needs Reform Agenda – Delivery Plan 2025–2030](#) (2025) p9-10

<sup>97</sup> [SL1](#), p5

the DE continue to undertake monthly monitoring under the new SEN Framework?

#### 4.3.10 Other jurisdictions – timelines and process

The DE states that the 22-week timeline aligns with practice in other jurisdictions.<sup>98</sup> It is worth noting at the outset that direct comparison with the three other UK jurisdictions and the Republic of Ireland is not straightforward: each operate distinct legislative frameworks, with different names for statutory plans, different eligibility thresholds and different distributions of responsibility between education, health and other agencies. Differences in what each timeline covers should therefore be borne in mind when making comparisons.

- England operates the most structurally similar process. Under the Children and Families Act 2014 and the Special Educational Needs and Disability Regulations 2014, the statutory timeframe from request for an EHC needs assessment to the issue of a final plan is 20 weeks.<sup>99</sup> England's SEND system is currently subject to proposed reform. The Schools White Paper *Every Child Achieving and Thriving*, published on 23 February 2026, sets out a new tiered model of support including the introduction of Individual Support Plans for most children with SEND, while retaining EHCPs for those with the most complex needs.<sup>100</sup> However, legislative change is not expected until September 2029, with no changes to EHCP support until at least September 2030.<sup>101</sup>
- Wales operates a materially different system under the Additional Learning Needs and Education Tribunal (Wales) Act 2018. Local authorities take responsibility for children whose needs are more complex and require provision that the school cannot reasonably be

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<sup>98</sup> [SL1](#), p3

<sup>99</sup> [Children and Families Act 2014](#), section 42; [Special Educational Needs and Disability Regulations 2014](#) (SI 2014/1530), regulation 13

<sup>100</sup> Department for Education, [Every Child Achieving and Thriving: Schools White Paper](#) (2026)

<sup>101</sup> Department for Education, [Every Child Achieving and Thriving: Schools White Paper](#) (2026)

expected to secure alone.<sup>102</sup> The relevant timeframe for local authorities is 12 weeks.

- Scotland's Co-ordinated Support Plan process has a standard timeline of eight weeks for the local authority to confirm whether it will assess, followed by a further 16 weeks to decide and complete the plan, giving a combined total of 24 weeks in standard circumstances.<sup>103</sup>
- The Republic of Ireland does not have a functioning statutory educational assessment process comparable to a statement of SEN. The relevant sections of the Education for Persons with Special Educational Needs (EPSEN) Act 2004 providing for individual education plans have not been commenced.<sup>104</sup> The only available statutory process is the health-led Assessment of Need under the Disability Act 2005, which carries a statutory entitlement to completion within six months of application.<sup>105</sup> This process is not directly comparable to a statutory educational assessment.<sup>106</sup> On 25 June 2025, the Department of Education and Youth (Ireland) published its review of the EPSEN Act 2004. The Department is considering the findings to determine how best to revise and modernise the Act.<sup>107</sup>

#### 4.4 Statements

The draft regulations prescribe the format of statements that must be followed and set out the procedures for periodic (annual) reviews, transition planning and restriction on disclosure of statements. This section contains detail relative to

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<sup>102</sup> Welsh Government, ['Additional Learning Needs and Education Tribunal \(Wales\) Act 2018: Explanatory Notes'](#)

<sup>103</sup> Enquire, ['Co-ordinated Support Plans \(CSPs\)'](#)

<sup>104</sup> [Education for Persons with Special Educational Needs Act 2004 \(Ireland\)](#), sections 3–8 (not commenced)

<sup>105</sup> [Disability Act 2005 \(Ireland\)](#), section 9

<sup>106</sup> Department of Children, Disability and Equality (Ireland), [Government moves to improve Assessment of Need process for children and families](#) (2025)

<sup>107</sup> Department of Education and Youth (Ireland), [Review of the EPSEN Act 2004'](#)(2025)

the format of statements, and the proposed changes to the annual review and transition planning processes.

#### 4.4.1 Format of statements

Consultation feedback gathered in 2020-21 revealed significant concern at the proposed format for a statement. Specific issues were raised regarding the fact that health and social care provision was proposed to be included at Part 6 of the statement 'non-educational provision', and as such not appealable to Tribunal nor subject to the same legislative requirements for specificity and quantification as the provisions made in Part 3 'special educational provision'.<sup>108</sup>

Consultation responses also suggested that the distinction between education and health and social care provision in the statement undermines the statutory duty for the EA and HSC to cooperate in the identification and assessment and provision of services for children who have, or may have, SEN, as per [Section 4](#) of the SEND Act. [Section 5](#) requires a HSC Trust to provide any treatment or service that it identifies during the statutory assessment as likely to be of benefit in addressing a child's SEN. The proposal to locate relevant HSC treatment or services in Part 6 differs from the 2016 consultation, which had provisionally proposed including 'any treatment or service provided by a health and social care trust' within Part 3 (special educational provision).

Both the CLC and NICCY strongly called for the Regulations and Code of Practice to be revised to ensure that Health and Social Care provision is required to be detailed at Part 3 of the statement, with CLC noting that the proposal to reflect any relevant HSC treatment or service at Part 6 was "*contrary to the intention of the legislature when it passed the SEND Act into law*".<sup>109</sup>

In the SL1 letter and Explanatory Memorandum to accompany the draft Regulations, the DE acknowledges the concerns raised but states that the

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<sup>108</sup> Department of Education, [Summary Report of Consultation Responses - new draft SEN Regulations](#) (2021) p31

<sup>109</sup> Children's Law Centre, [Response to the Department of Education's Consultation on the Draft SEN Regulations](#) (2021) p14

proposed format and content of the statement reflects the existing approach, and that no changes are proposed that are inconsistent with current law. The DE further notes legal advice received which recognised that health-related provision may appropriately fall within both Part 3 and/or Part 6 of a statement, with such decisions requiring case-by-case consideration based on the individual needs of the child.<sup>110</sup>

Updates have accordingly been made to the proposed statement at Schedule 2 of the new draft Regulations to require that, “any provision made by a health and social services authority which is educational in nature” is to be included at Part 3 of the statement. Provision of a non-educational nature made by a health and social services authority should be recorded separately in Part 6. This is to include any ‘relevant treatment or service’ identified by the HSC Trust as beneficial to the child’s SEN, consistent with the requirements of Section 5 of the SEND Act.

The Code of Practice explains that non-educational provision is that which does not relate to a child’s teaching or instruction, and that each case should be considered individually on its own merits. Ultimately, the EA is legally responsible for deciding how the provision should be classified.<sup>111</sup>

In the Explanatory Memorandum and SL1 letter, DE suggests that parents may appeal under [Article 18\(1A\) of the 1996 Order](#) if they believe a provision should more appropriately be included in Part 3 of a statement.<sup>112</sup> However, CLC expressed strong opposition to a similar inference made in the draft Code of Practice 2020-21, noting the resultant likelihood of an overburdened Tribunal and unnecessary delay. CLC also stressed that case law takes a broad view of what constitutes “educational” provision, extending beyond services delivered directly by the EA or schools:

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<sup>110</sup>The draft Special Educational Needs (SEN) Regulations (Northern Ireland) 2026, [Explanatory Memorandum](#), p4; [SL1](#), p7

<sup>111</sup> Department of Education, [Draft Code of Practice](#) (2026) para 6.22 and 6.24 (including the associated key point)

<sup>112</sup>The draft Special Educational Needs (SEN) Regulations (Northern Ireland) 2026, [Explanatory Memorandum](#), p4; [SL1](#), p7

*“The Department may wish to consider carefully that the reason the SENDIST orders inclusion of health and other services be specified in Part 3, when the EA have refused to do so, is that Article 16 of the 1996 Order requires all special educational provision to be specified in Part 3 and case law is clear in terms of the breadth of provision that may be defined as “educational”. It is not limited either in statute or in case law to services which the EA or schools provide.”<sup>113</sup>*

The draft Code of Practice 2026 has been updated to suggest that dissatisfied parties avail of the dispute avoidance and resolution service, not Tribunal.<sup>114</sup>

In the 2020-21 consultation, stakeholders expressed opposition to the proposal that ‘primary need’ be recorded at Part 2 of the statement, in case it led to a child’s other needs being overlooked. The instruction at Part 2 of the statement has now been revised to remove the previous requirement to identify a child’s ‘primary need’.

#### **Potential scrutiny points**

- What is the proposed criteria for EA determinations on whether any relevant HSC provision should be recorded at Part 3 and/or Part 6 of the statement?
- How will the DE and EA ensure transparency and consistency in determinations made?
- What is the DE response to stakeholder concerns about its proposed recourse (i.e. appeal to Tribunal) if a relevant party believes that provision at Part 6 of the statement should more appropriately be placed at Part 3?

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<sup>113</sup> Children's Law Centre, [Response to the Department of Education's Consultation on the Draft SEN Regulations](#) (2021) p18

<sup>114</sup> Department of Education, [Draft Code of Practice](#) (2026) para 6.23

#### 4.4.2 Periodic review of a statement

Under the 1996 Order, a child's statement must be reviewed annually.<sup>115</sup> Currently, a meeting involving parents and others must be held each year to inform this review. Before the meeting, the principal must seek written advice from the child's parent and any other person that the principal or EA considers appropriate, on various matters including whether the statement continues to be appropriate, should be amended, or whether the EA should cease to maintain the statement. The advice received is to be circulated to all relevant parties by the principal no less than two weeks before the meeting. Following the meeting, the principal (or the EA, if the child is being educated otherwise than at school) must prepare and circulate to all concerned a report summarising outcomes and setting out any educational targets for the coming year. The EA is required to review the statement in light of the report and any other information or advice which it considers relevant, and make recommendations including whether it will continue, amend or cease to maintain the statement.<sup>116</sup>

The DE's SEN Reform Agenda notes weaknesses in the current Annual Review process:

*"...a lack of meaningful monitoring of progress and/or active implementation of the Annual Review process, can result in the vast majority of statements remaining in place without an active assessment as to whether the nature of the support should change or indeed if the statement continues to be needed."*<sup>117</sup>

A thematic evaluation of SEN by the Education and Training Inspectorate (ETI) found that 23% of the statements reviewed as part of the evaluation were amended following the annual review process. In some cases, statements contained outdated and inappropriate objectives.<sup>118</sup>

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<sup>115</sup> [The Education \(Northern Ireland\) Order 1996](#), Article 19

<sup>116</sup> [The Education \(Special Educational Needs\) Regulations \(Northern Ireland\) 2005](#), Regulation 18

<sup>117</sup> Department of Education, [Special Educational Needs Reform Agenda](#) (2025) p10

<sup>118</sup> As cited in Department of Education, [Special Educational Needs Reform Agenda](#) (2025) p10

Under the draft Regulations 2026, a meeting to inform the annual review process will not be required each year. Rather, a meeting must be held at least once in every key stage; if a child is in year 10 of compulsory school education; and when a child is preparing to transfer to another school or institution. The principal must continue to seek representations and advice to complete an annual review report every year. The EA must continue to review each statement annually, informed by the principal's report. In a year that an annual review meeting is not required, a parent or young person or the EA can ask for one.<sup>119</sup>

The majority of respondents (79%) to the 2020-21 consultation agreed that a parent or young person over compulsory school age should be able to ask for a meeting in a year where it is not required. Fifty-two percent of parents agreed that they should be able to ask for a meeting, while 20% were not sure. Some parents requested a proactive invite from schools to a meeting. Other stakeholders expressed concern that parents will be required to opt-in to have a meeting rather than opt-out.<sup>120</sup>

Comments noted the value of the annual reviews in giving parents a voice on their child's progress, and therefore recommended that the process and any associated guidance be clear and unambiguous regarding the right of parents and young people to request a meeting and that schools must comply with such requests.<sup>121</sup>

The draft Code of Practice states that the EA should provide guidance to schools on annual reviews, including the role of parents and children over compulsory school age, how to make written representations, and the right to request a meeting where one is not otherwise required.<sup>122</sup> The EA is also required to make available clear and easily understood advice and information

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<sup>119</sup> [The draft Special Educational Needs \(SEN\) Regulations \(Northern Ireland\) 2026](#), regulation 18

<sup>120</sup> Department of Education, [Summary Report of Consultation Responses - new draft SEN Regulations](#) (2021) p14-15

<sup>121</sup>As cited immediately above

<sup>122</sup> Department of Education, [Draft Code of Practice](#) (2026) para 8.13

on the SEN process, including annual review arrangements, for parents and children.<sup>123</sup>

#### Potential scrutiny point

- Can the EA clarify when the guidance on the Annual Review process will be available for (i) schools and (ii) parents/children?

Regulation 18 includes the detailed procedures for how a school principal must carry out an annual review of a statement. This includes specifying who must be invited to any review meeting<sup>124</sup> and that the principal must seek representations from the child and/or parent, and written advice from relevant staff, and any other appropriate individuals before completing the review report.<sup>125</sup> It reflects the issues to be covered by the annual report, which include information on progress and recommendations on whether the EA should amend, not amend or cease to maintain a statement.<sup>126</sup> Where a review meeting takes place, additional matters are to be included in the report including, where applicable, a note of any differing recommendations regarding the status of a statement.<sup>127</sup> As a meeting is required to be held each year under the 2005 Regulations, the additional matters referred to above, including any difference in attendees' views on the status of the statement, are currently to be included in the annual review report each year.<sup>128</sup> Under the draft Regulations 2026, any differing recommendations regarding statements will only be recorded where a meeting takes place.

<sup>123</sup> Department of Education, [Draft Code of Practice](#) (2026) para 8.7

<sup>124</sup> [The draft Special Educational Needs \(SEN\) Regulations \(Northern Ireland\) 2026](#), regulation 18(6)

<sup>125</sup> [The draft Special Educational Needs \(SEN\) Regulations \(Northern Ireland\) 2026](#), regulation 18(9)

<sup>126</sup> [The draft Special Educational Needs \(SEN\) Regulations \(Northern Ireland\) 2026](#), regulation 18(11)

<sup>127</sup> [The draft Special Educational Needs \(SEN\) Regulations \(Northern Ireland\) 2026](#), regulation 18(12)

<sup>128</sup> [The Education \(Special Educational Needs\) Regulations \(Northern Ireland\) 2005](#), regulation 18(9) and 18(10)

Under regulation 19, the responsibilities regarding periodic review are transferred from the principal to an EA designated officer in the case where a child does not attend a school.

Regulation 18(7) further enables the EA to obtain professional advice specifically for the purpose of the annual review, including psychological, medical, social work, or other registered healthcare-professional advice. The associated statutory timeframes require that psychological advice be provided within four weeks, and medical, social work, or other healthcare-professional advice within six weeks of the EA's request.

The draft Code of Practice reflects that schools are required to inform the EA whether updated HSC Trust advice or other advice may be required due to a change in a child's circumstances. If the EA has requested updated HSC Trust advice, and it has not been practicable for the Trust to meet the six week timeframe, the EA must make its annual review determination in the absence of the updated advice.<sup>129</sup>

#### **Potential scrutiny point**

- In cases where a Trust is unable to meet the six-week timeframe for providing updated advice, what processes will be established for investigating delays, recording advice received outside the statutory period, and managing any subsequent communications with affected parties?

There are currently no timescales set for the EA to inform the parent about the outcome of the annual review i.e. whether the EA will maintain, amend or cease a SEN statement. Under the draft Regulations 2026, the EA is required to make a determination about a statement (whether it remains appropriate, requires amendment, or should cease) within four weeks of receiving the school's report<sup>130</sup> or, where further advice is required, within four weeks of receipt of that

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<sup>129</sup> Department of Education, [Draft Code of Practice](#) (2026) para 8.12, 8.15, 8.52

<sup>130</sup> [The draft Special Educational Needs \(SEN\) Regulations \(Northern Ireland\) 2026](#), regulation 18(14)

advice.<sup>131</sup> If the decision is not to amend the statement, then the EA is required to notify the parent, or the young person if they are over compulsory school age, within 14 days of its decision.<sup>132</sup>

The majority of respondents to the 2020–21 consultation expressed support for the introduction of statutory time limits. However, some respondents, including parents, noted current non-compliance with annual review processes, and highlighted the need for clear, accessible information to young people and parents on timelines and appeal processes.<sup>133</sup> Some suggested that compliance with the new timescales should be monitored.<sup>134</sup> The draft Code of Practice states that the EA should ensure appropriate arrangements are in place to accurately record the date of receipt of reports for each child with a statement.<sup>135</sup>

#### **Potential scrutiny point**

- Members may wish to seek clarity from the DE on how it will monitor EA's compliance with the new statutory timeframes to make a determination on a statement, and inform the relevant party of the outcome. What specific processes/arrangements will the EA put in place to record receipt dates of school reports, how will delays be identified and escalated, and what other action, if any, will the DE take to monitor compliance?

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<sup>131</sup> [The draft Special Educational Needs \(SEN\) Regulations \(Northern Ireland\) 2026](#), regulation 18(16)

<sup>132</sup> [The draft Special Educational Needs \(SEN\) Regulations \(Northern Ireland\) 2026](#), regulation 14(2)

<sup>133</sup> Department of Education, [Summary Report of Consultation Responses - new draft SEN Regulations](#) (2021) p17-18

<sup>134</sup> NICCY, [Advice to the Department of Education on its Consultation on Draft Special Educational Needs \(SEN\) Regulations](#) (2021) p16

<sup>135</sup> Department of Education, [Draft Code of Practice](#) (2026) para 8.52

### 4.4.3 Transition plan

Consistent with the current statutory requirements, the new draft Regulations require that transition planning for pupils with a statement commence during the school year in which a pupil attains the age of 14 years, concurrent with the annual review, and that transition plans continue to be reviewed in conjunction with subsequent reviews of a statement.

However, the new draft Regulations propose changes to the responsibilities held by the EA and schools with regards transition planning. As per regulation 20, in the case where a child attends school, the principal will assume responsibility for convening a transition planning meeting and for the preparation of a child's first transition plan, rather than the EA who currently hold this responsibility. An EA designated officer will be responsible for approving the transition plan prepared by schools, and will retain responsibility for organising the transition planning meeting and preparing transition plans where a child does not attend school. Regulation 20(6) sets out the stakeholders to be invited to the transition planning meeting and regulation 21(2) sets out the requisite notice to be given to invitees.

The draft regulations consulted on in 2020-21 did not specify the timeframe within which the EA would approve the first transition plan; rather it stated that this would be approved "as soon as is reasonably practicable". The new draft regulations have been updated to clarify that:

- The first transition plan should be submitted to the EA at the same time as the annual review report.<sup>136</sup>
- The EA shall consider the transition plan within six weeks from the date it receives the report and either approve it or, if it considers the transition plan incomplete, return it with directions for amendment and completion to the principal (if the pupil attends school) or the EA designated officer.<sup>137</sup>

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<sup>136</sup> [The draft Special Educational Needs \(SEN\) Regulations \(Northern Ireland\) 2026](#), regulation 20(10)

<sup>137</sup> [The draft Special Educational Needs \(SEN\) Regulations \(Northern Ireland\) 2026](#), regulation 20(11)

- Should there be a requirement for amendment and completion, the principal or designated officer must submit the amended transition plan to the EA no later than two weeks from the date it receives the returned transition plan.<sup>138</sup>

Once approved by the EA, the principal is required to share the plan with the child (if over compulsory school age) or parent (in any other case).<sup>139</sup>

Section 9 of the Code provides further detail on the transition planning process. It reflects that a transition plan is a 'living' document which must be reviewed and amended as the child grows or as their needs change. It should be reviewed and, as appropriate, amended by the principal (or EA Designated Officer) during annual reviews. Subsequent transition plans must be approved by the EA.<sup>140</sup>

Consultees recommended that the draft SEN Code include specific guidance on how parents and young people can raise concerns about transition plans, along with arrangements to ensure such concerns are addressed and, where possible, resolved.<sup>141</sup>

Consultation responses stressed the need for schools to receive support in meeting their new duties, particularly through access to an EA Transitions Coordinator, given the "considerable time" required of LSCs to undertake these responsibilities.<sup>142</sup>

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<sup>138</sup> [The draft Special Educational Needs \(SEN\) Regulations \(Northern Ireland\) 2026](#), regulation 20(12)

<sup>139</sup> [The draft Special Educational Needs \(SEN\) Regulations \(Northern Ireland\) 2026](#), regulation 21(3)(c)

<sup>140</sup> Department of Education, [Draft Code of Practice](#) (2026) para 9.18 and 9.20

<sup>141</sup> Department of Education, [Summary Report of Consultation Responses - Draft Code of Practice](#) (2021) p25

<sup>142</sup> Department of Education, [Summary Report of Consultation Responses - Draft Code of Practice](#) (2021) p24

The new draft Code of Practice states that the EA must give direction to schools in preparing the first transition plan and provide support with subsequent transition plans.<sup>143</sup>

#### **Potential scrutiny points**

- Can the EA provide clarity on the proposed support and guidance that will be given to schools in preparation for the first transition plan and subsequent transition plans?
- What assurances can be provided that the EA Transitions Service has sufficient capacity and resource to respond to queries and requests for support in a timely fashion?
- How will the DE monitor EA's compliance with the new statutory timeframes for approval of transition plans?

## 4.5 Children over compulsory school age

[Section 11](#) of the SEND Act enables young people over compulsory school age who have, or may have, SEN to exercise the rights under Part II of the Education (Northern Ireland) Order 1996 which are currently exercised by parents such as request a statutory assessment, make representations within the assessment process, or right of appeal.

Part 6 of the regulations facilitate the transfer of rights from the parent to the child over compulsory school age. The regulations comprise detail on the assistance and support available to young people when exercising their rights, and the process to be followed when a request is made for the EA to determine whether a young person over compulsory school age lacks the capacity to exercise their own rights. If a child is assessed as lacking capacity, their rights transfer to the parent, who is required to act in the child's best interests.

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<sup>143</sup> Department of Education, [Draft Code of Practice](#) (2026) para 9.3

Regulation 23 outlines the persons (i.e. a parent, other representative aged 18 or over; or a solicitor, barrister or other legal representative) that can be appointed by the young person to help them exercise their rights, and the ways in which those persons can provide support or assistance.

Regulation 24 summarises those who may request a capacity determination:

- The young person (child over compulsory school age);
- The parent of the child;
- The EA;
- The child's school (the responsible body);
- The Tribunal;
- A health care professional who has experience working with the child in a professional capacity; and
- A social worker who has experience working with the child in a professional capacity.

The 2020-21 consultation sought feedback on who can raise a question about a young person's lack of capacity. While over 72% of respondents agreed with the aforementioned list, feedback more generally related to the grounds on which a request for a determination of capacity may be made, how young people's capacity will be determined, in what timeframe, and by whom. Regulation 24 has been subsequently updated to clarify that the capacity determination will be completed by an EA Educational Psychologist, and must be undertaken within four weeks of the request. The capacity determination must be in the format as set out in Schedule 3. Within the schedule, it is noted that "a capacity determination can only be conducted by an Educational Psychologist who has received specific training in the 36 months prior to making the capacity determination and has two years' experience in the last 10 years working with children/persons who lack capacity."

Regulations 25 to 28 relate to the determination of capacity. Specifically, these regulations set out the principles governing the determination; specify that a 'lack of capacity' must be assessed with reference to the young person's ability to make a particular decision; define what it means for a young person to be 'unable' to make that decision; and make clear that a young person must not be

regarded as unable to make a decision unless all practicable help and support to enable them to do so has been provided. Schedule 3 further clarifies that the Educational Psychologist can draw on supporting evidence from a child's statement or PLP when making the determination.

Under Regulation 29, an Educational Psychologist is regarded as having sufficiently established that a young person lacks capacity where they have:

- taken reasonable steps to determine whether the young person lacks capacity in relation to the decision;
- formed a reasonable belief, based on assessment, that the young person does lack capacity in the matter concerned; and
- complied with the principles for supporting a young person to make a decision before concluding that they are unable to do so.

If the child is deemed to lack capacity, the rights will transfer to the parent who must make any decisions in the best interests of the child. They must consider whether it is likely that the child will at some time have capacity in relation to the matter in question and, as far as practicable, encourage and help the child to participate in the determination.

The transfer of rights to the parent, where a young person is found to lack capacity, represents a change from the 2020–21 draft Regulations, which had also allowed for an alternative person to exercise those rights on the young person's behalf. In the SL1 letter and accompanying Explanatory Memorandum, the DE provides reasons for the removal of the alternative person in the draft Regulations 2026. This includes that:

- there is no clear regulation making power within the SEND Act 2016 to allow for an alternative person, and
- there is a lack of clarity on how the alternative person would be appointed, whether they could be relied upon to act in the child's best interests, and whether they would have adequate knowledge of the SEN system.

### Potential scrutiny points

- Does the EA Educational Psychology Service have sufficient capacity and resource to carry out capacity determinations for young people over compulsory school age, and to complete these determinations within the required four-week timeframe?
- Do the existing Educational Psychology workforce have the necessary training and experience required under Schedule 3 to undertake capacity determinations? What arrangements will be made to ensure ongoing training and regulation of Educational Psychologists to undertake capacity determinations?

## 4.6 Mediation and Appeals

Parents and carers in Northern Ireland have a statutory right to appeal certain decisions made by the EA regarding their child's SEN,<sup>144</sup> such as, if the EA decides not to conduct an assessment of a child's needs, or decides not to issue a statement following assessment, or if parents disagree with the educational content of a statement (Parts 2, 3 and 4). The SEND Act 2016 introduces new rights of appeal against a decision not to make a statement, or against the contents of a statement, for a child under two,<sup>145</sup> and against the decision not to amend a statement following annual review.<sup>146</sup>

To exercise these rights, parents must lodge an appeal with the Special Educational Needs and Disability Tribunal (SENDIST) by completing the appropriate form and submitting it along with the EA's decision letter and

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<sup>144</sup> [The Education \(Northern Ireland\) Order 1996](#), Articles 17, 18, 20, 20A

<sup>145</sup> [Special Educational Needs and Disability Act \(Northern Ireland\) 2016](#), section 9

<sup>146</sup> [Special Educational Needs and Disability Act \(Northern Ireland\) 2016](#), section 8

supporting documents. The appeal must be submitted within two months of receiving the decision.<sup>147 148</sup>

[Section 10](#) of the SEND Act provides for strengthened independence from the EA with regard to arrangements for dispute avoidance and resolution, and an independent mediation service for those appealing to the Tribunal.<sup>149</sup> The SEND Act requires the EA to ensure that independent mediation arrangements are available to anyone who intends to appeal to the Tribunal. It introduces the requirement for a parent or young person to obtain a mediation certificate from a mediation adviser before they may lodge an appeal in the following cases where the EA has served a decision Notice that carries a right of appeal to the Tribunal:

- A decision not to carry out a statutory assessment
- A decision not to make a statement
- A decision relating to the content of a statement
- A decision not to amend a statement
- A decision to cease a statement<sup>150</sup>

Certain appeals do not require a mediation certificate before lodging an appeal with SENDIST, including if the appeal concerns the school or institution named in the statement, the type of school or institution specified, or the fact that no school or institution has been named.

Mediation does not take away the right of parents or young people if they still wish to appeal to the Tribunal. A parent or young person does not have to engage in mediation but they must seek information about mediation where it is

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<sup>147</sup> Department of Justice, [Special Educational Needs and Disability Tribunal](#)

<sup>148</sup> [Special Educational Needs and Disability Tribunal Regulations \(Northern Ireland\) 2005](#), regulation 7(3)

<sup>149</sup> Since 2019, the EA has commissioned the Dispute Avoidance and Resolution Service (DARS) to provide an independent, informal means of resolving disagreements between parents/young people, and schools or the EA, about SEN provision

<sup>150</sup> Department of Education, [Draft Code of Practice](#) (2026) para 13.20

an option, and, if they wish to make an appeal in such circumstances, they must have a mediation certificate.<sup>151</sup>

Part 7 of the regulations make provisions in relation to mediation; in particular, about giving notice; imposing time limits for a mediation adviser to issue advice, information and certificates; who may attend mediation; and about the training and experience required of mediators. Regulation 39 applies where mediation has taken place and the parties reach agreement. It details the timescales for any actions to be taken:

- where the issues in the mediation agreement are those which the relevant party has a right to appeal to the Tribunal, the EA must comply with the required timeframe as if the Mediation Agreement were an Order of the Tribunal;<sup>152</sup>
- where the issues in the mediation agreement are those where the relevant party does not have a right of appeal to the Tribunal but requires the EA to take an action, the EA shall take that action not later than two weeks from the date of the Mediation Agreement.<sup>153</sup>

Regulation 40 is a new provision inserted since the regulations were last consulted on. It applies where mediation has taken place and the parties fail to reach agreement. The failure to reach agreement shall be recorded in writing and shared with the parties to mediation not later than three working days from the failure to reach an agreement. The mediator shall provide the party with the right to appeal mediation certificate specifying that mediation took place. The draft Code of Practice states that an appeal to the Tribunal must be made within **three months** of having received the relevant Notification from the EA.<sup>154</sup>

When the draft regulations were consulted on in 2020-21, some respondents expressed issue with the timescales associated with some of the requisite steps

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<sup>151</sup> Department of Education, [Draft Code of Practice](#) (2026) para 13.41 'key points'

<sup>152</sup> [The draft Special Educational Needs \(SEN\) Regulations \(Northern Ireland\) 2026](#), regulation 39(3)

<sup>153</sup> [The draft Special Educational Needs \(SEN\) Regulations \(Northern Ireland\) 2026](#), regulation 39(4).

<sup>154</sup> Department of Education, [Draft Code of Practice](#) (2026) para 13.41

in the mediation process. For instance, the CLC highlighted serious concerns about the requirement for individuals to contact the mediation service in order to obtain a mediation certificate within four weeks of receiving the EA's decision. CLC noted that such a timescale risked creating an unnecessary barrier to appeal, and a potential breach of the right to a fair trial under Article 6 of the European Convention on Human Rights, as access to appeal would effectively be blocked should the four-week notification deadline be missed.<sup>155</sup>

The DE has acknowledged this issue and adjusted processes and timeframes to ensure applicants are not impeded in exercising their right to appeal. For instance, regulation 35 no longer sets out a specific timeframe within which an individual intending to appeal to the Tribunal must contact the mediation adviser to notify them of their intention to appeal. Furthermore, there is no longer a six-week time limit for individuals who wish to pursue mediation to contact the mediation advisor to inform them of their intent.

The regulations are now more explicit that, having received a mediation certificate, a person is not required to request or participate in mediation before proceeding with an appeal. Furthermore, where an individual has informed the mediation adviser of their decision whether to pursue mediation or not, the mediation certificate must reflect that decision.<sup>156</sup>

Feedback from the 2020-21 consultation highlighted other concerns related to the timeliness, effectiveness, efficiency and capacity of the service, and the accessibility of services including for newcomer pupils and their families. Some respondents expressed concern that the requirement for a mediation certificate adds unnecessary bureaucracy to the system.<sup>157</sup>

The DE recognises that introducing the requirement to obtain a mediation certificate may increase the overall complexity of the appeals process. To

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<sup>155</sup> Children's Law Centre, [Response to the Department of Education's Consultation on the Draft SEN Regulations](#) (2021) p10

<sup>156</sup> [The draft Special Educational Needs \(SEN\) Regulations \(Northern Ireland\) 2026](#), regulation 35(4)

<sup>157</sup> Department of Education, [Summary Report of Consultation Responses - new draft SEN Regulations](#) (2021) p26 - 27

address this, the DE states that it will work in partnership with the EA, Department of Justice and Tribunal Service, to ensure that implementation is underpinned by clear, accessible guidance and user-friendly processes.

#### **Potential scrutiny points**

- Given consultee concerns about strict deadlines, such as the previously proposed four-week notification requirement to obtain a mediation certificate, Members may wish to seek assurance that the revised processes and timeframes adequately mitigate against any barriers to appeal.
- Can the DE clarify the proposed three month timeframe for making an appeal to the Tribunal, as per para 13.41 of the draft Code of Practice?
- Members may wish to seek further clarity on the guidance and processes that the DE intends to develop, alongside the EA, Department of Justice and Tribunal Service, to ensure that the introduction of a mediation certificate does not add unnecessary bureaucracy or reduce accessibility for families.

#### **4.7 Compliance with Tribunal Orders and Unopposed Appeals**

Part 8 and Schedule 4 of the regulations prescribe time limits for compliance with Tribunal Orders and unopposed appeals.

If, following an appeal, the Tribunal makes an Order in favour of the relevant party, the EA must comply with that Order before the end of a prescribed period.<sup>158</sup> Part 1 of Schedule 4 of the SEN Regulations sets out the prescribed timescales within which the EA is required to take the actions agreed for those decisions which carry a right of appeal. The draft Regulations 2026 have been

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<sup>158</sup> [The draft Special Educational Needs \(SEN\) Regulations \(Northern Ireland\) 2026](#), regulation 41

amended from the existing framework,<sup>159</sup> and as previously consulted on, to extend the timeframe within which the EA must comply with some Tribunal Orders; for instance, in the case of an appeal against the EA's decision not to make a statement, or an appeal against the contents of a statement, the prescribed period for the EA to comply with the Tribunal Order has been extended from five weeks to eight weeks.

If an appeal is lodged with the Tribunal and the EA decides not to oppose or it concedes the appeal, then the appeal is treated as having been determined in favour of the relevant party.<sup>160</sup> The EA must ensure that they have suitable arrangements in place to comply with the appellant's wishes within the prescribed time periods set out in Part 2 of Schedule 4 of the SEN Regulations. Unopposed appeals only apply to the following types of appeal to the Tribunal: the EA's decision not to make a statement; the EA's decision not to make an assessment, or the EA's decision not to substitute a school named in a statement for a different school named.<sup>161</sup>

The timescales outlined in Part 2 of Schedule 4 of the draft Regulations have been extended from those under the existing framework; it is now proposed that the EA has eight weeks to conduct an assessment and eight weeks to make and maintain a statement compared with four weeks and five weeks respectively as per the 2005 Regulations.<sup>162</sup>

Valid exceptions may apply to both the timescales for compliance with Tribunal Orders or unopposed appeals.<sup>163</sup>

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<sup>159</sup> [The Education \(Special Educational Needs\) Regulations \(Northern Ireland\) 2005](#), regulation 23

<sup>160</sup> [The Education \(Northern Ireland\) Order 1996](#), Article 18A

<sup>161</sup> [The Education \(Northern Ireland\) Order 1996](#), Article 18A

<sup>162</sup> [The Education \(Special Educational Needs\) Regulations \(Northern Ireland\) 2005](#), regulation 24

<sup>163</sup> Department of Education, [Draft Code of Practice](#) (2026) para 13.44 to 13.45

### Potential scrutiny points

- Can the DE provide a breakdown of the prescribed timescales for compliance with Tribunal Orders and unopposed appeals compared with the existing regulations, and clearly indicate where an extension to the timeframe has been made.
- Where applicable, what is the rationale for the extension to the timeframes for EA compliance with Tribunal Orders and unopposed appeals?
- Can the DE provide clarity on when valid exceptions may apply to Tribunal Orders and unopposed appeals, and clarify how specific timescales may be affected where such exceptions apply.

## 5 Other considerations

### 5.1 Financial considerations

The Explanatory Memorandum's 'Financial effects' section reflects the decision taken by the then Education Minister, Peter Weir, to allocate funding to schools in 2021 in recognition of the new duties arising from the SEND Act 2016. It notes that:

- the Minister agreed that £30m per annum would be distributed to schools to support the delivery and implementation of the new duties;
- the funding has been paid "in contemplation of statutory effect" because the duties are not yet commenced;
- due to budget constraints, schools have received £92.5million in earmarked funding to date rather than the full allocation each year;
- if the SEN Regulations are not implemented, the new duties for schools could not be imposed and the funding for schools could be withdrawn.

Published Departmental statements in 2020-21 and 2021-22 relate to the distribution of funding to schools in recognition of the financial impact arising from the additional legislative requirements of the new SEN Framework. The statements make particular reference to expected duties on schools to have a SENCo/LSC and to complete a PLP for each pupil with SEN.<sup>164,165,166</sup> However, it is not clear whether schools were given any specific guidance on how the funding should be used, or the specific quantity allocated to individual schools.

Correspondence from the DE to the Committee for Education in January 2022 refers to circumstances that partially impacted on schools' ability to fully utilise a £30m SENCo earmarked fund in 2021-22, including the timing of the allocation in August and the availability of substitute cover.<sup>167</sup> Therefore, it appears that practical issues may have had a bearing on schools' ability to fully spend earmarked funds.

Further funding of £16.5m has been provided to the EA SEND Implementation Team since 2017-18 to undertake necessary work in advance of the Regulations taking effect. The Explanatory Memorandum states that a significant programme of training and resources has been delivered to schools by the SEND Implementation Team. It reflects that this funding would also be withdrawn if new SEN Regulations are not implemented.

#### **Potential scrutiny points**

- Can the DE provide further detail on how the funding has been allocated across schools; how the funding has been used by (i) schools and (ii) the EA; and, in each year from

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<sup>164</sup> Department of Education, [Children and parents at the forefront as Education Minister launches consultation on Special Educational Needs](#) (2020)

<sup>165</sup> Department of Education, [Schools to receive £22 million for special educational needs](#) (2021)

<sup>166</sup> Department of Education, [McIlveen welcomes monitoring round allocations](#) (2021)

<sup>167</sup> NI Assembly Research and Information Service, [Public expenditure and education in 2021-22](#) (2021) p8

2020-21 to present, provide a breakdown of the funding allocation, actual spend and the rationale for any variance.

- How much further money is earmarked for (i) schools and (ii) the EA to support the implementation of responsibilities under the new SEN Framework, and over what timeframe is this expected to be allocated? What is the total estimated future allocation?

## 5.2 Impact Assessments

### 5.2.1 Equality and Human Rights Policy Screening

An [Equality and Human Rights Screening Exercise](#) on the draft SEN Regulations and draft Code of Practice was carried out and published alongside the consultation documentation in 2020. It found minor impacts on age and disability, which associated documentary deemed largely positive, and suggested that mitigation/alternative policies will offset the minor adverse impact(s). As such, the DE did not undertake an equality impact assessment (EQIA). Two organisations responding to the consultation expressed strong disagreement to this decision and noted that a EQIA was required to fully assess impacts and identify appropriate mitigation.<sup>168</sup>

### 5.2.2 Data Protection Impact Assessment

The DE carried out a Data Protection Impact Assessment (DPIA) on the new PLP in April 2020. The following risks were identified:

- use of new technology - PLP will be a module contained on the Schools Information Management System (SIMS);
- processing of information classed as 'special category' - high level health related information as per Article 9 of the GDPR will be included;

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<sup>168</sup> Department of Education, [Summary Report of Consultation Responses - Draft Code of Practice \(2021\)](#) p38-39

- sharing or matching personal information held by different organisations or in different datasets i.e. sharing of the PLP (with consent) as an information source between the EA and health and social services authorities, for example when a child is undergoing a statutory assessment.

The DE proposes to address the risks in two ways:

- confirm that only information necessary to meet the Board of Governors' statutory duty under Section 3 of the SEND Act 2016 to prepare and review a PLP for pupils with SEN is collected;
- ensure that informed consent is obtained in all cases where the PLP is shared.<sup>169</sup>

### 5.2.3 Rural Needs Impact Assessment

A [Rural Needs Impact Assessment](#) (RNIA) was carried out in 2020, and concluded that the draft Regulations and Code will not have any material impact on the social and economic needs of people in rural areas. One consultation response highlighted that rural schools often have less resources than urban schools and requested that consideration is given to the additional challenges caused by implementing the changes to SEN Regulations in rural schools.<sup>170</sup>

#### Potential scrutiny points

- Members may wish to ask the DE for more information on the mitigation proposed to address the identified data protection risks regarding PLPs.

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<sup>169</sup> The draft Special Educational Needs (SEN) Regulations (Northern Ireland) 2026, [Explanatory Memorandum](#), p10; [SL1](#), p10

<sup>170</sup> Department of Education, [Summary Report of Consultation Responses - Draft Code of Practice](#) (2021) p40

- How does the DE respond to stakeholder concerns regarding the equality screening and rural needs impact assessments?

## 6 Conclusion

In conclusion, this paper provides an overview of the key changes to the SEN legislative framework proposed by the draft Regulations 2026 including new duties for Boards of Governors; updates to the timescales for statutory assessment and the advice to be sought; the proposed content of a statement; and changes to the annual review and transition planning procedures. It further considers the regulations related to mediation and appeals, and capacity determinations of young people over compulsory school age.

The paper considers the new or amended duties for schools, the EA, DE and Department of Health arising from the draft SEN Regulations 2026, which will bring the relevant provisions of the SEND Act 2016 into force. These are considered amidst the broader backdrop of SEN reform underway or planned simultaneous to the intended commencement of the draft SEN Regulations.

In an open letter to the Minister for Education, endorsed by 14 organisations including unions, the Children's Law Centre raised significant concerns about the proposed reforms, citing serious capacity and resource issues, including Local Impact Teams, and increased pressure on schools. It called for a halt on "potentially damaging" revisions to the SEND Framework. This paper poses some considerations regarding system readiness and capacity for the commencement of the draft Regulations, revised Code and reform more generally, in the context of a changing profile of children with SEN in Northern Ireland.

The paper concludes with reference to other issues including financial considerations and issues highlighted through the Department's impact assessments.