

Department of Education

Consultation on Draft Special Educational Needs (SEN) Regulations

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Foreword by the Minister

The Special Educational Needs and Disability (SEND) Bill was passed by the Assembly at the end of January 2016. This was a significant event and represents the first building block in a process which aims to put in place a strengthened Special Educational Needs framework. The framework has four elements: the Bill, new Regulations, a new Code of Practice and training for school staff and Boards of Governors. This consultation relates to the Regulations.

My focus is on putting pupils first. They must be at the centre of any improvements we seek to make. We know over 22% of children in our schools have special educational needs (SEN). I am very clear that I want an approach that identifies, assesses and puts in place appropriate intervention and support, resulting in children who fulfil their potential during their school years. We wish to improve the educational life of children who have Special Educational Needs (SEN) and this new framework is to be put in place to make that a reality.

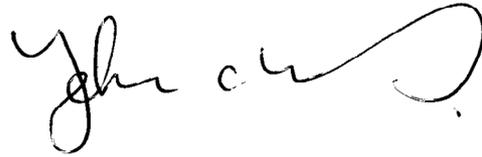
I believe that every school should have an inclusive ethos; that early and timely intervention is key; and that schools and teachers need training to ensure that they are able to meet the needs of their students with SEN. Providing transparency, accountability and reduced bureaucracy will ensure that everyone involved in the SEN world has confidence in a more responsive and effective framework of support for children with SEN.

The Bill will bring a number of changes to the existing SEN framework, which includes strengthening the duties of Boards of Governors and the Education Authority, placing new duties on health, which will in turn strengthen co-operation between health and education. It also, importantly, provides new rights to parents and children over compulsory school age.

The draft Special Educational Needs (SEN) Regulations are the second building block. The Regulations relate to aspects of the Bill and go further in providing more details regarding certain duties. They expand on the out workings of the Bill and they deal with procedures and practices. The third building block is the Code of Practice, which will also be subject to detailed consultation. By the end of February the Department of Education will have started stakeholder engagement on the Code, via meetings and workshops,

followed by a public consultation. Capacity building/training will be taken forward by the Education Authority during 2016/17 and 2017/18.

I encourage everybody with an interest in this area to take the opportunity provided by this consultation on the Regulations to offer their views.

A handwritten signature in black ink, appearing to read 'John O'Dowd', with a stylized flourish at the end.

**John O'Dowd MLA
Minister for Education**

Consultation description:

The Department of Education (the Department) proposes to revoke and replace the current Special Educational Needs (SEN) Regulations.

The draft Regulations at Annex A propose new regulations about: the Education Authority plan for SEN provision, new Board of Governor responsibilities including information to be provided to the EA about a child who is receiving EA SEN provision and regarding a Learning Support Co-ordinator; arrangements for mediation; support and assistance for children over compulsory school age to exercise rights in the SEN framework and the arrangements for determining if a child over compulsory school age lacks or may lack capacity.

The Regulations also propose amendments to the timescales for statutory assessment and for the EA seeking the views of a child

Consultation period: 22 February to 16 May 2016 (12 weeks).

Parents, children, schools, other educationalists, statutory organisations, voluntary and community groups with an interest in SEN, unions and health and social care authorities will be interested in providing their views on these draft SEN Regulations.

The new Regulations will revoke and replace the Special Educational Needs (NI) Regulations 2005¹). This approach has been taken because there are some new regulations required and amendments to existing regulations as a result of the SEND Bill provisions and the Minister's policy on special educational needs and inclusion.

When the responses to this consultation have been considered we will make any necessary changes and bring a final version of the Regulations to the Assembly under affirmative resolution for its consideration and approval once the elections are over. The Department of Education estimates this will be early in Autumn 2016.

If you have any enquiries about the consultation you can contact the Special Education and Inclusion Team on 028 91858279 or by email sen.inclusion@deni.gov.uk.

¹ Special Educational Needs (Northern Ireland) Regulations 2005

Introduction and Background

1. The Northern Ireland Executive agreed both the policy on a revised SEN and Inclusion Framework and the preparation of the required implementing legislation, including the drafting of a Special Educational Needs and Disability (SEND) Bill. This landmark decision means we need to put in place a new SEN Framework.
2. The new SEN and Inclusion Framework will continue to focus on inclusion, early identification, assessment and intervention for children with SEN through a more equitable framework in which all children with SEN should be able to get the support they need when they need it.
3. A more responsive and effective SEN and Inclusion Framework will be delivered through four elements:
 - 1) The Special Educational Needs and Disability (SEND) Bill;
 - 2) New SEN Regulations;
 - 3) New statutory Code of Practice
 - 4) Delivery of SEN capacity building / training on the new SEN framework.

SEND Bill

4. The **SEND Bill** makes important changes to the Education (NI) Order 1996 which sets out the current legislation about SEN. The Bill strengthens and adds to the duties of the Education Authority (EA), Boards of Governors and the Health and Social Care trusts to help pupils with SEN. It also provides new rights of appeal to parents following a review of a statement and for the parent of a child under age 2. In recognising their growing independence, the Bill will provide rights to children over compulsory school age recognising that they may need support and assistance and also that some children may lack the capacity to exercise their rights within the SEN framework.
5. The Bill includes a duty for the **EA** to publish an annual plan of its arrangements for special educational provision. In particular, this will include a description of resources, advice and support that will be made available. The EA plan aims to provide greater clarity for schools and parents about what is available. The EA will also be required to seek and have regard to the views of the child when making decisions about SEN. For children with

a statement the Bill will require the EA to set out the nature and extent of the SEN provision to be made for the child. The EA will also be required to put in place independent mediation arrangements for a person considering making an appeal.

6. For **Boards of Governors** it means the appointment of a Learning Support Co-ordinator (LSC), with responsibility for co-ordinating provision for children with SEN. Furthermore, teachers will be required to take **all** reasonable steps to actively identify and provide for the needs of the pupil with SEN. The school will be required to complete and review a personal learning plan for each pupil with SEN and to transfer this plan when the child moves from one grant-aided school to another grant-aided school.

7. The Bill provides for increased co-operation between the EA and **health and social care** trusts in identification, assessment and provision. It provides a new duty on health and social care trusts to provide services identified by them as likely to be of benefit in addressing the child's SEN.

8. For ease of reference the link to the SEND Bill and Explanatory and Financial Memorandum (EFM) is:

<http://www.niassembly.gov.uk/globalassets/documents/legislation/bills/executive-bills/session-2014-2015/sen-and-disability-bill/send-bill---further-consideration-stage---12-1-16.pdf>

New SEN Regulations

9. The Bill, followed by **new SEN Regulations** will form the strengthened legislative base for delivering a more responsive and effective SEN and Inclusion Framework. A broad narrative description of what is new, what is being amended and what is not being replaced through the draft SEN Regulations is set out in paragraphs 12-16 below. Many of the individual regulations contained in the 2005 Regulations are being carried forward without change.

New SEN Code of Practice

10. The third element of the new SEN and Inclusion Framework, will be a **new SEN Code of Practice**, which will be key in providing clear and practical guidance to schools, the EA and others in the identification, assessment and putting in place the right supports to help the child fulfil their potential. In tandem with the formal consultation on the SEN Regulations, the Department of Education (DE) will carry out targeted stakeholder engagement to establish views and ideas which will help inform the practical guidance in the new Code. When we have listened to what people have to say we will produce a final draft of the Code of Practice for public consultation.

SEN Capacity Building / Training on the new SEN Framework

11. A fourth element of the new SEN and Inclusion Framework will be the delivery of SEN capacity building / training for EA staff, Boards of Governors, principals, teachers, LSCs and other school staff on the new SEN framework.

What are the new regulations?

12. **Regulations 5 & 6:** The form and content of the annual **Education Authority plan** of arrangements for special educational provision (resources, advisory, support services and training), the procedure to be followed in connection with the preparation, reviewing or revision of the plan including the persons to be consulted about it.

Regulation 7: The **changes of circumstance** which the Board of Governors of a school should notify the EA about, specifically for a child who is receiving SEN support from the EA.

Regulations 8 – 10: The qualifications and experience of a school's **learning support co-ordinator** (LSC) (responsible for co-ordinating the provision of pupils with SEN) in a mainstream school or a special school and about the LSC functions setting out the timescales for and the information to be issued to a parent of a child under age 2 following the EA decision on whether to make a statement (including rights of appeal)

Regulation 21: Sets out the timescales and information that the EA need to include in notices which are sent to a parent or child following a periodic review of a statement.

Regulation 26: Sets out the arrangements and support for children with SEN over compulsory school age to exercise their rights within the SEN framework. It also sets out the arrangements to be followed by the EA should the child over compulsory school age wish another person to act on his/her behalf.

Regulation 27: This regulation sets out the procedure and criteria to be used by the EA in determining whether or not the child over compulsory school age lacks or may lack capacity to exercise his/her rights within the SEN framework.

Regulations 28-32: The details regarding the **new mediation arrangements** including giving notice; imposing time limits; who may attend mediation; requirement to take reasonable steps to ascertain the views of the child; about the provision of advocacy and other support services for a person pursuing mediation with the EA; for the EA to take

steps following the conclusion of mediation; and about the training, qualifications and experience of mediation advisors.

Which existing regulations are being amended?

13. The existing Regulations are being amended to reflect the move to the single Education Authority and the rights of the child over compulsory school age. The draft SEN Regulations include a number of proposed changes, however, the main changes proposed to the existing SEN Regulations relate to:

- reduction in timescales within which the EA is required to carry out the various steps within the statutory assessment through to the issue of a final statement (a reduction in the overall timescale from 26 weeks to 20 weeks) [**regulations 17, 20 and 21**] This includes:
 - reducing from 6 weeks to 4 weeks the timescale for the EA to notify parents, children or responsible bodies whether an assessment is being made [**regulation 17**];
 - reducing from 10 weeks to 8 weeks the period during which the EA must complete its assessment [**regulation 17**];
 - reducing from 18 weeks to 14 weeks the timescale within which the EA must provide a proposed statement to the parent or child (from receipt of a request for an assessment) [**regulation 20**];
 - reducing from 8 weeks to 6 weeks the timescale for the EA to complete the statementing process once a draft has been provided; to respond to a request to change a named school; to provide an amended statement from notice being served to a child or their parent [**regulation 21**].
- the seeking of **medical or other health advice** (relating to relevant treatment or service likely to be of benefit in addressing the special educational needs of the child) [**regulation 12 and 14**];
- including the **views of the child** as a matter to be taken account of in making an assessment [**regulation 12 and 16**];
- where a school is closed for 4 or more weeks then waiting for an **educational psychologist's advice**, as well as a school principal's advice, can be counted as a valid exception to the EA meeting the statutory timescales for the completion of a statutory assessment [**regulation 17**].

14. In addition, the EA now needs to seek information from the principal of a school attended by a child within the last 12 months rather than within the last 18 months. This is to keep requirements consistent with the 12 month timescale that information remains current for, and is in line with the annual review approach [**Regulation 13**].

15. The format of the statement. [**Schedule**].

Which 2005 regulations are not being replaced?

16. There are a number of regulations in the **2005 SEN Regulations** which are not being replaced. These include: **2005 regulations 13 and 14** and **Schedule 1 Part A and B** (the associated templates for letters to parents under these regulations); and also **2005 regulation 21** (transfer of statements). They have not been replaced given the single Education Authority and the fact that documentation will be standardised across the EA. Regarding the content of notices accompanying a proposed statement or a proposed amended statement or an amendment notice following annual review, it is proposed that the information to be included in these letters will be included in the Code of Practice, which can more easily be updated as and when this is needed.

Annex A provides the draft SEN Regulations for consultation and Annex B the consultation questions and response form.