



Response from the Equality Commission for Northern Ireland to the consultation by the Department of Education on the Draft Special Educational Needs (SEN) Regulations

Introduction

1. The Equality Commission welcomes the opportunity to respond to the consultation by the Department on the Draft Special Educational Needs (SEN) Regulations.
2. The Equality Commission for Northern Ireland (the Commission) is an independent public body established under the Northern Ireland Act 1998. The Commission is responsible for implementing the legislation on fair employment and treatment, sex discrimination and equal pay, race relations, sexual orientation, disability and age.
3. The Commission's remit also includes overseeing the statutory duties on public authorities to promote equality of opportunity and good relations under Section 75 of the Northern Ireland Act 1998 (Section 75) and to promote positive attitudes towards disabled people and encourage participation by disabled people in public life under the Disability Discrimination Act 1995.
4. The Commission's general duties include:
 - working towards the elimination of discrimination;
 - promoting equality of opportunity and encouraging good practice;
 - promoting positive / affirmative action

- promoting good relations between people of different racial groups;
 - overseeing the implementation and effectiveness of the statutory duty on relevant public authorities;
 - keeping the legislation under review.
5. The Commission, with the Northern Ireland Human Rights Commission, has been designated under the United Nations Convention on the rights of Persons with Disabilities (CRPD) as the independent mechanism tasked with promoting, protecting and monitoring implementation of CRPD in Northern Ireland.

Executive Summary

6. The Commission broadly welcomes the draft regulations acknowledging that they have the potential to enhance the support and protections currently available to students with special educational needs.
7. However, the Commission asks the Department to give further consideration to the following issues and recommendations:
- that draft regulation 5, Form and Content of the Education Authority SEN Plan, is amended to place a requirement on the Authority to:
 - take steps to promote positive attitudes towards disabled students in line with the public authority 'Disability Duties';
 - take measures to promote awareness of rights arising from the United Nations Convention on the Rights of Persons with Disabilities;
 - include reference to arrangements for placement of and support for children with SEN in early years settings;
 - set out the supports available for children who receive a Personal Learning Plan but are not awarded a Statement;

- set out the arrangements for monitoring and evaluation of the fulfilment of the duties on Boards of Governors with respect to SEN provision, including the extent to which PLPs and CSPs/Statements have delivered on intended outcomes and targets;
- include a commitment to gather disaggregated data concerning participation and outcomes for those children seeking access to the SEN framework;
- make the Plan available in accessible formats in accordance with Articles 9 and 21 of the UNCRPD and the requirements of the Authority's Equality Scheme;
- That the draft Education Authority SEN plan, issued for consultation purposes, is accompanied by a completed screening template;
- That draft regulation 10 is amended to include an explicit reference that the obligation on the Board of Governors to make arrangements for the necessary training for the Learning Support Co-ordinator, is extended to encompass ensuring that the training needs of other teachers and staff involved in the delivery of SEN provision e.g. Classroom Assistants, are provided.

Specific Comments

Regulation 2: Interpretation

8. The Commission acknowledges the rationale behind the change to the interpretation of 'transition plan', as detailed in Regulation 2, to incorporate links to the duty upon health and education authorities to co-operate as required by the Children's Services Co-operation Act (Northern Ireland) 2015¹.

¹ See: <http://www.legislation.gov.uk/nia/2015/10/introduction/enacted>

Regulation 5: Form and Content of the Education Authority SEN Plan

9. The Commission welcomes the proposed inclusion in the regulations of the requirements on the form and content of Education Authority Plans, including those to set out a description of resources, information advisory/support services to be made available as well as arrangements for access, dealing with disagreements and mediation.

However, we **recommend** that the Department give further consideration to include requirements to:

- take steps to promote positive attitudes towards disabled students in line with the public authority 'Disability Duties'² obligations;
- take measures to promote awareness of rights arising from the United Nations Convention on the Rights of Persons with Disabilities³.

The Commission considers that Education Authority SEN Plans are an important vehicle to enable the promotion of positive attitudes towards children with disabilities and to assist in the realisation of rights arising from the Convention.

10. In light of the importance of early intervention and the positive impact this may have for children's future prospects, the Commission also

² Under Section 49A of the Disability Discrimination Act 1995 (as amended by Article 5 of the Disability Discrimination (Northern Ireland) Order 2006), public authorities, when carrying out their functions must have due regard to the need to:

- Promote positive attitudes towards disabled people;
- Encourage participation by disabled people in public life.

Promoting positive attitudes can include training, taking steps to portray disabled people in a positive role as well as taking steps to eliminate ignorance and prejudice towards disabled people.

Further details are available in: Equality Commission for Northern Ireland (2007): 'A Guide for Public Authorities – Promoting positive attitudes towards disabled people and encouraging the participation of disabled people in public life' (Belfast: ECNI). Available at:

<http://www.equalityni.org/ECNI/media/ECNI/Publications/Employers%20and%20Service%20Providers/DisabilitydutiesGuideforPAs2007.pdf>.

³ See:

<http://www.equalityni.org/ECNI/media/ECNI/Publications/Delivering%20Equality/UNCRPDOptionalProtocolPlainlanguage.pdf>.

recommends that the regulations require that the form and content of a Plan includes reference to arrangements for placement of and support for children with SEN in early years settings (statutory and non-statutory).

11. The Commission is aware that a number of stakeholders have expressed concern that the revised SEN Framework will result in a significant number of pupils currently awarded a statement transferring to a Personal Learning Plan (PLP) thereby experiencing a dilution of support. We **recommend**, therefore, that the regulations stipulate that the form and content of an Education Authority Plan sets out the supports that will be available to assist such children.
12. The Commission **recommends** that the regulations should require that the Plan includes arrangements for the monitoring and evaluation of the fulfilment of the duties on Boards of Governors with respect to SEN provision including reference to the role of the Education and Training Inspectorate (ETI) in this regard.
13. The monitoring arrangements should ensure that the outcomes from PLPs and CSPs/Statements are reviewed on an annual basis to examine the extent to which the plans have delivered on intended targets and outcomes.
14. We also **recommend** that the regulations stipulate that the Plan should be made available in accessible formats in accordance with Articles 9 and 21 of the United Nations Convention on the Rights of Persons with Disabilities⁴ and in accordance with the requirements of the Education Authority's Equality Scheme⁵.

⁴ See: 'United Nations Convention on the Rights of Persons with Disabilities and Optional Protocol'. Available at:

<http://www.equalityni.org/ECNI/media/ECNI/Publications/Delivering%20Equality/UNCRPDOptionalProtocol.pdf>.

⁵ Education Authority Equality Scheme (June 2015), para 6.3, page18. Available at: http://www.eani.org.uk/_resources/assets/attachment/full/0/28462.docx.

Regulation 6: Procedure for preparing, reviewing or revising a plan

15. The Commission welcomes the proposed stipulation that the Education Authority's SEN Plan set out the arrangements for consultation based on a three year cycle.
16. However, we **recommend** that the draft Education Authority SEN Plan, issued for consultation purposes, is accompanied by a completed screening template^{6 7}.

Regulations 8 & 9: Prescribed qualifications

17. The Commission welcomes the proposed inclusion of a requirement that the Education Authority's SEN Plan set out the prescribed qualifications and experiences of Learning Support Co-ordinators with respect to both Ordinary Schools and Special Schools.

Regulation 10: Board of Governors duties

18. Whilst the Commission welcomes the proposed inclusion of an obligation on the Board of Governors to ensure the provision of the necessary training for Learning Support Co-ordinators, we **recommend** that the regulation be amended to include an explicit reference that the obligation also encompasses ensuring that the training needs of other teachers and staff involved in the delivery of SEN provision e.g. Classroom Assistants, are provided.

⁶ The Commission notes the commitment, at paragraph 4.3, page 11, of the Education Authority's Equality Scheme, to use the ECNI screening guidance. Available at: http://www.eani.org.uk/_resources/assets/attachment/full/0/28462.docx.

⁷ The Equality Commission's *Guide to the Statutory Duties* (2010) states (at page 51) that 'In the context of Section 75, policy is very broadly defined and covers all the ways in which a public authority carries out or proposes to carry out its functions relating to Northern Ireland'. The term 'policy' is used to denote any strategy, policy (proposed/amended/existing) or practice and/or decision, whether written or unwritten. For example, a policy may include: planning decisions, service changes, corporate strategies; policy development; practices; guidelines; procedure and protocols; board/council papers and decisions etc., both written and unwritten'. Available at: <http://www.equalityni.org/ECNI/media/ECNI/Publications/Employers%20and%20Service%20Providers/S75GuideforPublicAuthoritiesApril2010.pdf>

Regulation 11: Notices relating to assessment

19. We welcome the proposed extension of the rights of a child over compulsory school age, in compliance with Articles 7 and 24 of the United Nations Convention on the Rights of Persons with Disabilities, with respect to:
- who a notice is served on;
 - making a request for assessment;
 - providing a copy of a notice to a parent where the child is aged under 18 years.

Regulations 12-16: Advice to be sought by an authority

20. Likewise, the Commission welcomes the inclusion in the regulations of a proposed requirement that the Education Authority, when making an assessment must seek advice from the child if the child is above compulsory school age, as in compliance with Articles 7 and 24 of the UNCRPD.
21. We also acknowledge the incorporation of a requirement to seek health advice, the inclusion of advice concerning a treatment or service likely to be beneficial for the child and the requirement on the Authority to take into account the views of the child when making an assessment.

Regulation 17: Time limits and prescribed information relating to an assessment.

22. The Commission welcomes the proposed reductions of the timescale for the Education Authority to notify parents, children or responsible bodies whether an assessment is being made (from six weeks to four weeks) and of the period during which the Authority must complete its assessment (from ten weeks to eight weeks).

Regulations 20 and 21: Time limits

23. The Commission also welcomes the proposed reduction of the timescale for the Education Authority from 8 weeks to 6 weeks to:
- complete the statementing process once a draft has been provided;
 - respond to a request to change a named school;
 - to provide an amended statement from notice being served to a child or their parent.
24. We also acknowledge the reduction from 18 weeks to 14 weeks the timescale within which the EA must provide a proposed statement to the parent or child.

Regulations 22, 23 and 24: Review of statements

25. The Commission welcomes the proposed provision for a child over compulsory school age to:
- receive a notice/transition plan/report
 - input advice;
 - attend a review meeting;
 - copying information to the parent of a child not yet aged 18 years.

Regulation 26: Assistance and support for a child over compulsory school age

26. The Commission welcomes the proposed provision to enable a child over school age to exercise their rights, including allowing for a parent or advocate who is not a legal representative to be present in discussions.

Regulation 27: Capacity of the Child

27. The Commission acknowledges the inclusion in the legislation of a presumption that the child has capacity to exercise his/her rights, in accordance with the UN Convention of the Rights of the Persons with

Disabilities⁸, unless otherwise determined by the Authority on foot of a question being raised.

Regulations 28-31: Mediation

28. The Commission is committed to the early resolution of disputes and is of the view that mediation processes, if applied effectively in dealing with complaints and discrimination disputes, can ensure early, less costly and more informal resolution of complaints with meaningful outcomes.

The Commission therefore welcomes the setting out in the aforementioned articles of arrangements for undertaking mediation accompanied by detailed timescales allowing for a mediation to be concluded no later than the last date on which the complainant is required to lodge a complaint at Tribunal.

29. The Commission considers that it is vital that the mediation process is, and is perceived to be, genuinely and transparently independent in order to engender confidence among pupils and their parents and to ensure that they are not deterred from using the service.

Data collection to enable effective monitoring

43. Article 31 of the UNCRPD places obligations on the UK and other Member States to ensure the collection and assessment of statistics and other data in order to enable them to learn more about the barriers that exist for disabled people and to better understand how they can put into practice the UNCRPD.
44. As set out in independent research commissioned by the Commission⁹ (2012), the availability of robust data, information and

⁸ Article 7.3 of the CRPD places an obligation on state parties to ensure that children with disabilities have the right to express their views freely and that their views are given due weight in accordance with their age and maturity and to be provided with disability and age appropriate assistance to realise that right. Further, the Preamble (r) to the CRPD requires recognition of children and their human rights, taking into account the Convention on the Rights of the Child, while Article 3 (h), CRPD General Principles, requires public authorities and state funded agencies to respect the evolving capacities of disabled children and respect for their rights to preserve their identities.

statistics is central to evidence based policy making and to an effective monitoring process under Article 33 of the UNCRPD. Article 31 identifies the purpose of data and statistics collection and outlines the standards to be used for the collection, and maintenance and use of this¹⁰.

45. One of the findings of the 2012 research in relation to the statistical and data requirements of the UNCRPD is that statistics on policies and programmes were very rarely disaggregated to give information on persons with disabilities or on the type of disability.
46. The research further commented that it was 'currently extremely difficult to measure the effectiveness of government policies in relation to people with disabilities' and this was 'due to a lack of co-ordinated and effective monitoring to quantify the impact of policy change'¹¹.
47. The research identified that the collection of data was a priority area where the UNCRPD is not being fully implemented in Northern Ireland with respect to policies and programmes.
48. Further research (2014) into the implementation of the UNCRPD in Northern Ireland confirmed that there was still 'a lack of data on disabled children and young people' and suggested that 'the lack of available data had negative implications for the development of evidence-based policy with respect to disability in Northern Ireland'¹².

⁹ Harper, C., McClenahan, S., Byrne, B., Russell, H. (2012): *Disability Programmes and Policies: How does Northern Ireland Measure Up?* Available at: <http://www.equalityni.org/ECNI/media/ECNI/Publications/Delivering%20Equality/UNCRPDmonitoringimplementationFullReport0112.pdf>

¹⁰ See: 'United Nations Convention on the Rights of Persons with Disabilities and Optional Protocol'. Available at: <http://www.equalityni.org/ECNI/media/ECNI/Publications/Delivering%20Equality/UNCRPDOptionalProtocol.pdf>.

¹¹ Ibid, page 253.

¹² Byrne, B., Harper, C., Irvine, R.S., Russell, H. and Fitzpatrick, B. (2014): Shortfalls in public policy and programme delivery in Northern Ireland relative to the Articles of the UNCRPD – Final Report 2 May 2014, page 157.

48. In light of these findings, the Commission **recommends** that the regulation 5, form and content of plan of arrangements for special educational provision, is amended to require the Authority to set out a commitment to gather disaggregated data concerning participation and outcomes for those children seeking to access the SEN framework.

Legal, Policy and Research Division
May 2016