

Consultation Questions on the draft SEN Code of Practice

1. Your Name

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2. Are you responding:

as an individual (please complete a) to b) below)

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Clarity on the responsibilities of Learning Support Co-ordinator

Current Position: Under the current Code of Practice on the Identification and Assessment of Children with Special Educational Needs, schools are required to have a Special Educational Needs Co-ordinator (SENCO). Once commenced, the SEND Act requires that every mainstream and special school must designate a teacher as Learning Support Co-ordinator (LSC) from the staff of the school with responsibility for co-ordinating the provision of education for children at the school who have SEN.

Departmental Proposal: The aim is to set out clearly the responsibilities of the LSC and the links to senior management and teachers (see SEN Code references below). The Code emphasises that the senior leadership of the school are required to support and guide the LSC on all aspects of their SEN co-ordination role. The LSC co-ordination role includes overseeing the day to day operation of the school's SEN policy and SEN provision planning and working with other teachers where there is a concern that a child may have SEN. The role also includes providing direction concerning the completion of personal learning plans for a child with SEN.

SEN Code references: Section 2 paragraphs beginning 2.43. Also see [Flowcharts and Checklists](#) in Annex 3 (nursery schools and nursery classes), Annex 4 (Primary) and Annex 5 (Post-primary) which highlight the LSC role including the steps required to be taken by the LSC.

3. Do you agree that the responsibilities of the Learning Support Co-ordinator (LSC) are clearly set out in the SEN Code?

Strongly agree	Agree	Neither agree or disagree	Disagree	Strongly disagree	Don't know
	X				
If you disagree or strongly disagree please provide additional comments:					

Clarity on the Three Stages of Special Education Provision

Current Position: There are currently 5 Stages set out in the Code of Practice on the Identification and Assessment of Children with Special Educational Needs. Moving from the current 5 Stages to 3 Stages of Special Education Provision was agreed by the NI Executive in 2012.

Departmental Proposals: The draft SEN Code is about children who have, or may have, SEN. It sets out the approach schools (nursery schools or classes, primary and post-primary and special schools) should take where there is a concern that a child may have SEN. The approach to be taken will help determine whether a child's learning difficulty can be catered for through normal differentiation of educational provision or if the learning difficulty is significant and calls for special educational provision to be made. If it is decided that a child requires special educational provision it is only at this point that the child should be entered on the school's SEN Register and a PLP should be created.

The SEN Code sets out that the three Stages of special educational provision are focused on the intensity of the special educational provision to help a child make progress and achieve improved outcomes. The Stages are underpinned by a systematic and ongoing process of assessment of the individual child's SEN and special educational provision. The 3 Stages are:

Stage 1 School delivered special educational provision.

Stage 2 School delivered plus external provision from the EA and/or where appropriate, a HSC Trust. Stage 2 will only commence on provision of EA and/or HSC Trust support i.e. delivery of resources, advice or support.

Stage 3 School plus special education provision as set out in a Statement.

SEN Code references: See Section 3 paragraphs beginning 3.28 to 3.57 for the processes where there is a concern through each of the three Stages of special educational provision. Also see Flowcharts and Checklists in Annex 3 (for nursery schools and nursery classes), Annex 4 (for primary settings) and Annex 5 (for post-primary settings) including the school processes from where there is a concern through each of the three Stages.

4. Where there is a concern that a child may have SEN, do you agree that the process to be followed by schools is clear in the SEN Code?

(See Section 3, paragraphs beginning 3.28. Also see [Flowcharts and Checklists](#) in Annex 3 a) and b) (for nursery schools or classes), Annex 4 a) and b) (for primary settings) and Annex 5 a) and b) (for post-primary settings)).

Strongly agree	Agree	Neither agree or disagree	Disagree	Strongly disagree	Don't know
			x		
<p>If you disagree or strongly disagree please provide additional comments:</p> <p>The Commission recommends that guidance should be provided at Annexes 3a) and 4a) as to what might constitute 'a suitable time' required for monitoring to ensure that Whole School Educational Provision has been implemented. There is a risk that the use of the phrase 'a suitable time' may potentially be interpreted in such a way as to significantly slow down the assessment process.</p> <p>The Commission also recommends that guidance should be provided at Annex 5a) as to what might constitute 'a suitable time' required for monitoring to allow Principal/SMT to ensure that all Whole School Educational Provision has been implemented by relevant staff.</p>					

5. Where a child is at Stage 1 of special educational provision, do you agree that the process to be followed by schools is clear in the SEN Code?

(See Section 3, paragraphs beginning 3.38. Also see [Flowcharts and Checklists](#) in Annex 3 c) and d) (for nursery schools or classes), Annex 4 c) and d) (for primary settings) and Annex 5 c) and d) (for post-primary settings)).

Strongly agree	Agree	Neither agree or disagree	Disagree	Strongly disagree	Don't know
	X				
<p>If you disagree or strongly disagree please provide additional comments:</p>					

The Commission **recommends** that guidance should be provided at Annexes 3c), 4c) and 5c) as to what might constitute ‘a suitable time’ required for monitoring to ensure that Stage 1 provision has been implemented drawing from special educational provision map.

6. Where a child is at Stage 2 of special educational provision, do you agree that the process to be followed by schools is clear in the SEN Code?

(See Section 3, paragraphs beginning 3.45. Also see Flowcharts and Checklists in Annex 3 e) and f) (for nursery schools or classes), Annex 4 e) and f) (for primary settings) and Annex 5 e) and f) (for post-primary settings).

Strongly agree	Agree	Neither agree or disagree	Disagree	Strongly disagree	Don't know
	X				

If you disagree or strongly disagree please provide additional comments:

The Commission **recommends** that guidance should be provided at Annexes 3e), 4e) and 5e) as to what might constitute ‘a suitable time’ required for monitoring to ensure that Stage 2 provision has been implemented.

7. Where a child is at Stage 3 of special educational provision, do you agree that the process to be followed by schools is clear in the SEN Code?

(See Section 3, paragraphs beginning 3.55. Also see Flowcharts and Checklists in Annex 3 g) (for nursery schools or classes), Annex 4 g) (for primary settings) and Annex 5 g) (for post-primary settings).

Strongly agree	Agree	Neither agree or disagree	Disagree	Strongly disagree	Don't know

			x		
<p>If you disagree or strongly disagree please provide additional comments:</p> <p>The Commission recommends that guidance should be provided at Annexes 3g), 4g) and 5g) as to what might constitute 'a suitable time' required for monitoring to ensure that all provision as detailed in the Statement and PLP has been implemented.</p>					

Content of the Personal Learning Plan

Current Position: In the current Code of Practice on the Identification and Assessment of Children with Special Educational Needs, for current Stages 2 to 5, a child is required to have an individual education plan (IEP). There are inconsistencies both in the completion of these plans and the content. Once commenced, the SEND Act requires that every child who has SEN must have a Personal Learning Plan (PLP) (a programme of special educational provision).

Departmental Proposals: The Department is seeking views on the proposed content of the PLP templates for nursery schools and nursery classes (in primary schools), primary schools, post-primary and special school settings. The PLP is required to be used to record the special educational provision put in place to help a child's progress and improve outcomes. Practical guidance for creating, maintaining, reviewing, and, as appropriate, the sharing of a PLP is provided in the SEN Code. The PLP pulls together information about a child's SEN and factors which may be contributing to those needs. The information includes expected outcomes, teaching strategies and resources, special educational provision to be made, monitoring and review arrangements and the outcome of the special educational provision on the child's progress. Where available to the school, a child's Health and Social Care (HSC) Number will be included to assist schools in communicating with HSC Trusts. The PLP will be the key information and evidence base for the purpose of seeking EA support through the EA plan or arrangements for special educational provision. The PLP will be held on the Schools Information System (SIMS). The PLP templates have been developed with C2K, the EA and SENCO clusters across the different school phases and the Special Schools' Strategic Leadership Forum. Please also refer to paragraph 30 above, in relation to the Data Protection Impact Assessment that the Department carried out on the PLP.

SEN Code references: See Section 3 paragraphs beginning 3.70 regarding the PLP and Annex 6 a) for a description of each of the data fields within the PLP. Annex 6 b) provides the PLP template for nursery and nursery classes, Annex 6 c) for primary settings, Annex 6 d) for post-primary settings and Annex 6 e) for special school settings.

8. Do you agree with the proposed content of the Personal Learning Plan (PLP)?

Strongly agree	Agree	Neither agree or disagree	Disagree	Strongly disagree	Don't know
			x		
<p>If you disagree or strongly disagree with a particular data field please provide additional comments including which PLP template (nursery / primary / post-primary / special)</p> <p>The Equality Commission recommends that the PLP records the <u>quantity</u> of specific type/s of special education provision made available.</p> <p>The Equality Commission recommends that the review of PLP section in Annex 6a) should include an option for amendment of Statement.</p> <p>The Commission recommends that reference to an anticipated review date is included at part 3 of the PLP (Nursery) at Annex 6b), Primary PLP at Annex 6c) and Post Primary PLP at Annex 6d), alongside the reference to monitoring arrangements.</p>					

Clarity on Transition Planning to Adulthood

Current position: The current Code of Practice on the Identification and Assessment of Children with Special Educational Needs sets out the requirement on the EA for preparing a transition plan for a child with a Statement following their 14th birthday.

Departmental Proposals: The Department proposes that, given the first-hand knowledge of the child concerned, the school a child attends should prepare a child’s first transition plan (as part of the annual review of a child’s Statement during the school year a child attains age 14). A transition plan is completed in order to plan coherently for a child’s transition to adulthood. Section 8 sets out the procedure involved in the preparation of the first transition plan for a child.

To provide for consistency across all schools and for all children, the EA should provide directions to schools for the preparation the transition plan and consider and approve the plan. The school is responsible for arranging and inviting attendees to the annual review meeting at which the transition plan should also be discussed. Those invited must include an EA Education Transitions Officer, and representatives from Careers Services and HSC Trust.

SEN Code references: See Section 8. References to the transition plan are also made in Section 7.

9. Once a child with a Statement reaches the age of 14, do you agree that the school process for the completion of the first transition plan is clear?

Strongly agree	Agree	Neither agree or disagree	Disagree	Strongly disagree	Don't know
	X				

If you disagree or strongly disagree please provide additional comments:

The Commission **recommends** that the Code indicate at Section 8, the availability of opportunities for children, young people and parents to raise any concerns they may have about transition plans and set out arrangements to facilitate such concerns being addressed and, where possible, resolved.

General Comments

10. Do you have any other comments you wish to make on the draft SEN Code?

The Commission welcomes the reference, at paragraph 1.7 (c) of the Code of Practice, that consideration has been given to the UNCRPD in its development. However, the Commission **recommends** that the Code includes reference (with hyperlinks for ease of access) to the Articles of particular relevance within the Convention e.g. Article 24 (Education), Article 7 (Children with disabilities) and to the UNCRPD Committee's General Comment No. 4 (2016) on the right to inclusive education, which provides guidance on the interpretation of Article 24.

General Comment No.4 sets out (at paragraph 10) a definition of what is understood as inclusive education and highlights (and elaborates at paragraph 12) core features of such education to include:

- a) A "Whole systems" approach;
- b) A "Whole educational environment";
- c) A "Whole person approach";
- d) Supported teachers;
- e) Respect for and value for diversity;
- f) A learning-friendly environment;
- g) Effective transitions;
- h) Recognition of partnership;
- i) Monitoring.

The UNCRPD Committee emphasises the importance of reasonable accommodation (at paragraphs 29-31 of the General Comment), drawing a distinction between the general accessibility duty and then obligation to provide reasonable accommodation: Accessibility benefits groups of the population and is based on a set of standards that are implemented gradually. Disproportionality or undue burden cannot be claimed to defend a failure to provide accessibility. Reasonable accommodation relates to an individual and is complementary to the accessibility duty. An individual can legitimately request reasonable accommodation even if the State party has fulfilled its accessibility duty' (paragraph 29). The Committee stresses that the denial of reasonable accommodation constitutes discrimination and that the duty to provide reasonable accommodation is immediately applicable and not subject to progressive realisation' (paragraph 31).

The Commission **recommends** that the Code of Practice is amended to require that the Board of Governors make arrangements for the provision of necessary training for teachers and staff, additional to the Learning Support Co-ordinator, involved in the delivery of SEN provision.

UNCRPD General Comment No 4. On the right to inclusive education sets out at paragraph 12 (d) (page 4) that support for teachers is a core feature of inclusive education requiring that 'all teachers and other staff receive the education and training they need to give them the core values and competencies to accommodate inclusive learning environments, which include teachers with disabilities. An inclusive culture provides an accessible and supportive environment that encourages working through collaboration, interaction and problem solving'.

The Commission **recommends** that the section in Section 2 of the draft Code on the EA Plan of Arrangements for Special Educational Provision includes that the Authority set out its arrangements in the Plan to:

- (i) promote positive attitudes towards disabled students in line with the positive disability duties under Section 49A of the Disability Discrimination Act 1995; and
- (ii) promote awareness of rights arising from the UNCRPD;
- (iii) 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;
- (iv) issue a completed S75 screening template to accompany the draft Plan issued for public consultation.

Whilst the Commission welcomes the requirement in Annex 11 Format and Content of a Statement that provision is specified, we **recommend** that the statement also includes explicit quantification of provision e.g. the number of hours per week of a particular provision (e.g. speech and language therapy) to be made available and for how long (duration) this will be provided. Such a requirement will ensure that there is clarity, consistency and transparency for all concerned parties in respect of the provision set out in the statement.

The Commission notes that the absence of quantification of provision is an issue which has been highlighted by stakeholders (see: Children with Disabilities Strategic Alliance (2010): [The State of SEN Statements - The case for specification and quantification](#))

The Commission continues to recommend reform of the disability discrimination legislation as set out in [Strengthening Protection for Disabled People](#) (2012) to address deficiencies in the legislation and to improve the experiences of students with SEN and/or disabilities. In particular we recommend:

- changes to SENDO 2005 in order to place an additional duty on schools to provide auxiliary aids and services for disabled students, where reasonable (will ensure that a disabled pupil is not put at a substantial disadvantage compared to a non-disabled pupil);
- that the current residual duty on the Education Authority in relation to the making of reasonable adjustments, is extended to include a requirement to provide auxiliary aids and services (a similar duty already exists in other parts of the UK).

Wider changes are also required with regard to the Disability Discrimination Act 1995 and SENDO 2005 in order to strengthen protection against discrimination and harassment experienced by disabled pupils. For example, there is currently less protection for disabled pupils in schools than for disabled students in further and higher education.