

CONSULTATION QUESTIONS ON THE NEW DRAFT SEN REGULATIONS

1. Your Name

Paul Noonan

2. Are you responding:

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

on behalf of an organisation / company (please complete c) to f) below)

If you are responding as an individual:

a) Email address

b) Address

If you are responding on behalf of an organisation/company:

c) Organisation/Company

Equality Commission for Northern Ireland

d) Position within Organisation/Company

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Experience Requirements of the Learning Support Co-ordinator (LSC) – (regulations 5 to 8 refer)

Current position: There is no requirement for a special educational needs co-ordinator (SENCO) to have experience of working with children with SEN. Under the SEND Act, once commenced (on the start or commencement date), every school will be required to have a LSC (the new name for the SENCO) with responsibility for co-ordinating the special educational provision for every child with SEN.

Feedback from the 2016 Consultation: The concept of a LSC was broadly welcomed. However, some concern was raised about the experience needed to fulfil the role. Some people suggested that LSCs should have at least 2 years' experience of working with children with special educational needs, while others thought 5 years was appropriate.

Department's proposal: To introduce a minimum level of experience for this role as follows:

- In a mainstream school – at least 3 years' full time equivalent of working with children with special educational needs.
- In a special school – at least 3 years' full time equivalent of working with children with special educational needs, one of which is to be obtained in a special school.

3. Do you agree that the proposed experience requirements for LSCs are sufficient for them to fulfil their role?

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

If you disagree or strongly disagree please provide additional comments:

In 2015, the Commission highlighted the risk, due to a lack of specialist training, that Learning Support Co-ordinators may miss the early identification of needs and appropriate intervention in complex cases.

New Upper Time Limits for the EA to Issue a Completed Statement (regulations 14 & 15 refer)

Current Position: There is a 26 week statutory timeframe for the EA to complete a statutory assessment and make a Statement (if necessary). This timeframe includes the making of an assessment (if one was necessary), issuing a proposed Statement (if one is necessary) and then issuing the completed Statement following representations by a parent. This timescale may be subject to circumstances which make it impracticable for the EA to meet the required timescales – these circumstances are known as “exceptions”. These exceptions mean that the issue of a completed Statement can, and does in practice, take longer if advice and information is required, for example from a Health and Social Care Trust (HSC Trust). At present, there is no explicit ‘end date’ for the EA to complete the entire process once a valid exception applies. There is significant criticism of EA delays in statutory assessment and issuing a completed Statement.

Feedback from the 2016 Consultation: The 2016 proposal was to reduce the number of weeks for the issue of a completed Statement from 26 weeks to 20 weeks. Some stakeholders felt that meeting these time limits would be unachievable. Comments highlighted difficulties surrounding the receipt of advice for the purpose of the assessment, e.g. advice from HSC Trusts. This in turn was leading to significant delays in completing the assessment in order to determine if a Statement is necessary and issuing a completed Statement.

Departmental Proposal: The Department’s proposal in the new draft SEN Regulations is to reduce the time limit for the issue of a completed Statement from 26 weeks to 22 weeks (providing no exceptions apply). The Department further proposes that if exceptions do apply, there is a new upper time limit of up to a maximum of 34 weeks within which the EA must issue a completed Statement to a parent or young person. The SEN Regulations set out those exceptions which include, e.g. a HSC Trust has not previously kept records or information on a child, a failure to keep an appointment or in instances where further advice or information is necessary.

4. Do you agree with the proposal to introduce a maximum upper time limit for the EA to issue a completed Statement?

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 believes that every child is an equal child and that:</p> <ul style="list-style-type: none"> • Every child should have equality of access to a quality educational experience; • Every child is given the opportunity to reach his or her full potential; • The ethos of every school should promote the inclusion and participation of all children. <p>The Commission maintains that adequate provision, made in an effective manner, is essential to ensuring children with SEN are able to meet their full potential, including investment in services to deal with the backlog of assessments.</p>					

Annual Review of a SEN Statement (regulation 18 refers)

Current position: Under the 1996 Order a child's SEN Statement must be reviewed annually. A meeting involving parents and others must be held each year to inform this review. There are 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.

Feedback from the 2016 Consultation: There was little mention of annual review. However feedback from the stakeholder engagement by the Education Committee and through talking to schools highlighted the anxiety felt by parents about the annual review and the bureaucracy attached to the annual review process both for parents and schools.

Department Proposal: The Department's proposals relate to flexibility with regard to holding an annual review meeting and introduce timescales for the EA to inform parents or a young person (child over compulsory school age) of the outcome of the annual review. In every year, the principal will have to seek representations and advice to complete an annual review report and submit it to the EA. It is proposed that the principal may have a meeting in any year, but there should always be an annual review meeting:

- at least once in each key stage*;
- when a child is preparing to transfer to another school or institution; and
- during the school year in which the child attains the age of 14.

In a year **that there does not have to be an annual review meeting, a parent or young person or the EA can ask for one.** It is expected this would be if it was thought the special educational provision needed to change. However, if all parties are content that the provision in place for the child is working and everyone agrees that a meeting is not needed, then one is not required.

The **new timescales** associated to annual review in the draft SEN Regulations include the EA informing the school (at which a child with a SEN Statement is registered), by the second week of September each year, of the date that the annual review report needs to be submitted to the EA. Within 4 weeks after the receipt of the report the EA should make its determination about the Statement i.e. whether it remains appropriate, or requires amendment, or the EA should cease it; for example, if the decision is not to amend the Statement then the EA will need to notify the parent or the young person if they are over compulsory school age within 14 days of its decision. The decision not to amend a Statement carries a new right of appeal.

* Years 1-2 = Foundation Stage, Years 3-4 = Key Stage 1, Years 5-7 = Key Stage 2, Years 8-10 = Key Stage 3 and Years 11-12 = Key Stage 4.

5. **Where an annual review of a Statement is taking place in any year a meeting is not required, do you agree that the parent or young person over compulsory school age can ask for a meeting?**

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

6. **Do you agree with the introduction of time limits for the EA to inform the parent or young person over compulsory school age of the outcome of the annual review of a Statement?**

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

Children over Compulsory School Age – assistance and support, and who can raise a question about a young person’s lack of capacity (regulations 23 and 24)

Current Position: Currently the rights in the SEN Framework are exercised by a child’s parent. Once commenced, the SEND Act brings in new rights for young people (children over compulsory school age) who have, or may have, SEN.

Feedback from the 2016 Consultation: The opportunity for children over compulsory school age to participate in decision making was welcomed. However, there was opposition to the regulation prohibiting the child to have a legal representative to act on their behalf or participate in discussions with the EA. In addition, there were a wide range of comments regarding lack of capacity of a child over compulsory school age to exercise their rights.

Departmental Proposals: The Department proposes that children over compulsory school age can appoint someone to help them exercise their rights, if they so wish to do so. The EA will be required to respect the appointment and recognise the assistance and support for the young person. Such assistance and support can include: legal advice; services and representations; assistance with the young person’s understanding of any information or Notices received from the EA; attending meetings, discussions, mediation, appeals etc; assistance in the completion and submission of any necessary paperwork; provision of, or assistance with, representations for submission to the EA; or in accepting the service of Notices. The proposed people are:

- A parent.
- A representative (over age 18).
- A solicitor, barrister or other legal representative.

The Department also proposes to add to the list (when compared to the 2016 draft version of the Regulations) those who can raise a question about a young person’s lack of capacity to exercise their rights within the SEN Framework. Namely, the Department has added ‘the child’s school’ and separated out ‘health care professional’ and ‘social worker’. The proposed people are:

- 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.
- A social worker who has experience working with the child in a professional capacity.

7. Do you agree with the proposed list of people who can assist and support a young person (child over compulsory school age) to exercise their rights within the SEN Framework?

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

8. Do you agree with the proposed list of people who can raise a question about a young person's lack of capacity to exercise their rights within the SEN Framework?

Strongly agree	Agree	Neither agree or disagree	Disagree	Strongly disagree	Don't know
	X				
If you disagree or strongly disagree please provide additional comments:					
<p>The Department should satisfy itself that the arrangements set out in the draft regulations in relation to the exercise of capacity are compliant with the requirements of Article 12 (Equal recognition before the law) of the United Nations Convention on the Rights of Persons with Disabilities.</p> <p>Article 12 (4) of the UNCRPD requires that 'States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests'.</p>					

Revised timescales for new Mediation Arrangements (regulations 35 & 36)

Current Position: The requirements surrounding mediation, as under the SEND Act, have not commenced (or started). It is a new process within the SEN Framework. The SEND Act, once commenced, will provide parents and young people with an informal way of resolving disputes about a decision made by the EA which carries a right of appeal to the Tribunal - the Special Educational Needs and Disability Tribunal (SENDIST). 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 and if they wish to make an appeal, they must have a mediation certificate.

Feedback from the 2016 Consultation: While the introduction of independent mediation was broadly welcomed, parents expressed their concern about some of the timescales. For example the 3 day timescale proposed in the 2016 draft SEN Regulations, in relation to the time they had to tell the mediation adviser (after receiving information about mediation), that they want to pursue mediation. This was considered too short and it could disadvantage parents.

Departmental Proposals: The new proposed timescales for the required steps within the mediation arrangements are:

- If a person is considering making an appeal, then contact must be made with a mediation adviser **within 4 weeks** of the date of the EA's Notice which included the decision.
- The mediation adviser must provide information and advice about how to pursue mediation **within 2 working days** of the person making contact.
- A mediation certificate is to be issued **within 3 working days** from the information and advice about mediation being provided.
- If a person intends to pursue mediation, they must contact a mediation adviser **within 6 weeks** of the date of the EA's decision (a Mediation Certificate will only be issued if a parent or young person has made contact with the mediation adviser **within 6 weeks** of the date of the EA's Notice which included the decision).

The EA are required to comply with the terms of any mediation agreement within certain timeframes, the same as if an Order came from SENDIST.

Whilst not exhaustive, the appealable decisions include a decision not to make an assessment; not to make a Statement; about the content of a Statement; and a decision not to amend a Statement following annual review (new).

9. Do you agree with the timescales regarding the mediation process?

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

If you disagree or strongly disagree please provide additional comments:

General Comments

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

Regulation 18 requires that the Education Authority shall write to every school by the end of the second week of September in every year specifying the dates by which reports are to be submitted to inform reviews of statements but do not appear to specifically indicate the number of weeks schools will be allowed for the preparation of such reports. In the interests of transparency and equitable application of time limit requirements across all schools, it might be better to specify the turnaround time.

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.

