

Submission to the NI Assembly Education Committee: 27 April 2012

**Department of Education's proposals on
Special Educational Needs and Inclusion**

Thank you for the invitation to attend the Education Committee's informal reception on 2 May regarding the Department of Education's (DE's) Special Educational Needs (SEN) and Inclusion policy proposals. This paper provides an overview of issues which the Commissioner would wish to highlight to Committee members on 2 May.

1. Introduction

The Children's Commissioner has a strong interest in the development of the policy proposals on SEN and Inclusion. The Commissioner has serious concerns for the implications for the rights and best interests of children with SEN in Northern Ireland, on the basis of the limited details provided by the Minister for Education regarding his intentions for progressing the SEN and Inclusion policy proposals.

The Commissioner's concerns are informed by careful consideration of the issues outlined in the Ministerial Briefing to the Education Committee on 18 January 2012; the Department's 'Summary Report' of responses to the 2009 consultation on SEN and Inclusion published on 31 January 2012¹; a meeting of the Commissioner's Office and Department officials on 6 February 2012; and liaison with colleagues in the statutory and voluntary sector.

Children's Commissioner's 'Advice Paper' on SEN and Inclusion:

The Commissioner provided the Minister with a detailed advice paper regarding the updated SEN and Inclusion proposals on 29 February 2012², in accordance with her statutory duties and powers under articles 7(2) to (4) and article 8(2) of the Commissioner for Children and Young People (NI) Order 2003. To date, the Commissioner has not received a substantive response from DE regarding her advice.

The section below outlines some issues of concern which the Commissioner has highlighted to the Department in her advice paper. Following this, section 3 provides a summarised chronology of the Commissioner's engagement on the updated SEN and Inclusion proposals.

¹ Department of Education (January 2012) 'Summary Report of Responses to the Consultation on Every School a Good School – The Way Forward for Special Educational Needs and Inclusion and the associated Equality Impact Assessment' (Bangor: DE).

² A copy of the advice paper has been provided to the Committee for Education for information, and is available via the following link: http://www.niccy.org/uploaded_docs/2012/Consultations/Jan-Mar/Advice%20paper%20on%20updated%20SEN%20proposals%20FINAL%20word%20version.pdf.

2. Issues of concern

Detailed information regarding the following points is provided in the Commissioner's advice paper. The Commissioner is happy to expand on these points during the 2 May meeting, and indeed any additional issues highlighted in the advice paper.

- a. Absence of evidence of significant stakeholder support for the proposals.
- b. Lack of detail regarding the new SEN and Inclusion Framework.
- c. The indication that Coordinated Support Plans (CSPs) (which are the proposed replacement for statements of SEN) will generally apply to around "*half the children who currently have statements*" following a transitional period³ (it is proposed that children with SEN who are not awarded a CSP will have their needs met through a Personal Learning Plan (PLP)).
- d. Lack of detail regarding PLPs; including the lack of proposals for appeal or review mechanisms for ensuring that the needs of children with PLPs are met.
- e. Lack of detail regarding monitoring of provision and the role of ETI.
- f. Annual Reviews – perceived lack of regard for the necessity of holding annual reviews; reviews will only be conducted where requested by parent or school; lack of provision for children to request an annual review.
- g. No requirement for 'Learning Support Coordinators' (i.e. SENCOs) to be a member of school senior management team.
- h. Lack of clarity regarding funding mechanisms and resource issues.
- i. Potential retrogression of the SEN and Inclusion system.
- j. Interface between education and health – need for integrated, interdepartmental working.
- k. Transitions – if there is no duty to ensure that transitions services are provided to all children with SEN (under the current SEN framework, a duty only exists with regard to children with statements) the proposal to significantly reduce number of children with a CSP may be highly detrimental.
- l. Lack of progress regarding access to SENDIST – the updated proposals do not address the current lack of access to legal aid for representation at SENDIST; no progress regarding the child's right to appeal directly to SENDIST (despite some progress on this issue in Wales).
- m. Potential negative impact of the proposals on children from lower income families.

Process of the Review and engagement with stakeholders:

The Commissioner has been dissatisfied with the nature of the engagement process which the Department has followed with regard to the SEN and Inclusion Review, including the perceived inadequacy of the Department's attempts to ensure that the policy is informed by children and young people with SEN. The Commissioner is happy to discuss her concerns regarding the engagement process in further detail.

³ This refers to a comment made by the Minister during his 18 January 2012 briefing to the Education Committee: NI Assembly Committee for Education Official Report (Hansard), 'Special Educational Needs and Inclusion', 18 January 2012.

3. Timeline of the Commissioner's engagement on the SEN and Inclusion proposals (from January 2012)

On the week following the Minister for Education's 18 January 2012 briefing to the Committee, the Department's SEN and Inclusion Team contacted the Children's Commissioner offering a meeting to discuss the 'Summary Report' of responses to the 2009 SEN and Inclusion consultation, and to give an overview of the Minister's intentions for taking forward the policy. A meeting date of 6 February 2012 was agreed upon. The Department published its 'Summary Report' of consultation responses on 31 January, less than one week prior to the Commissioner's 6 February meeting with officials. Given the limited timeframe to consider the Department's update to the policy proposals, it was agreed at the 6 February meeting that the Commissioner would respond to the Department in writing regarding the proposals. The Department advised the Commissioner's Office that the Minister wished to receive feedback from officials by the end of February 2012 on the perspectives of stakeholders regarding the updated SEN proposals. This is reiterated in the Minister's Foreword to the 'Summary Report' of consultation responses, where he states:

"I am keen to take stakeholder views on how I can progress my policy proposals to full implementation. I have therefore asked officials to engage with parents, schools and other important stakeholders so that I can make final decisions about how best these can be taken forward. I envisage that these discussions will take place over the coming weeks, after which I will finalise my proposals by February 2012. Following that I will proceed to prepare any legislative changes that are necessary and, in keeping with normal practice, these will be subject to further public consultation"⁴.

For this reason, the Commissioner's Office made it a priority to ensure that comments were provided in line with the Department's timeframe. The Commissioner wrote to the Minister for Education on 29 February 2012 enclosing an advice paper. The Commissioner also advised in her 29 February correspondence that she wished to discuss the matter of SEN and Inclusion during a meeting with the Minister (a request for a meeting had been made to the Minister's Office one week previously).

The Commissioner and the Minister were scheduled to meet on Tuesday 17 April 2012. On the afternoon of Friday 13 April, the Commissioner received a letter from the Minister's Office informing that 'SEN and Inclusion' would not be discussed at the 17 April meeting, given the fact that the Commissioner, when she made an initial request to meet with the Minister, did not outline 'SEN and Inclusion' among her proposed agenda items⁵. While surprised by the Department's stance on this matter, the Commissioner's Office was reassured to some extent by a further invitation to meet with the Minister alongside a number of other statutory and voluntary

⁴ Page vi of the 'Summary Report'. See note 1 above for full reference.

⁵ Please note for information that the Commissioner and Minister's 17 April meeting was unfortunately postponed due to extenuating circumstances. That meeting will now take place on 8 May.

organisations in order to specifically discuss the SEN and Inclusion proposals. This meeting is scheduled to take place on 1 May. The Commissioner would be happy to share her Office's initial reflections regarding the Ministerial meeting during the Education Committee's 2 May reception.

As outlined above, to date the Commissioner has not received any substantive response from the Department regarding the issues highlighted in her advice paper. It is hoped that the 1 May meeting with the Minister and others will go some way towards addressing this matter.

The Commissioner is also due to meet the Minister on 8 May, and has recently written to the Minister advising of her expectation to update the Department regarding her position on the SEN and Inclusion proposals as part of the meeting. By that stage, the Commissioner's Office expects to have a more informed picture of the Department's intentions.

4. Follow up

The Commissioner's Office understands that the Minister is due to brief the Education Committee on 9 May regarding SEN and Inclusion. The Commissioner would be happy to keep the Committee informed of her Office's position regarding the proposals as further information is provided by the Department in the coming weeks.

The Commissioner would also be happy to keep the Committee informed of any response received from the Department regarding her advice paper on the SEN and Inclusion proposals, and any follow up action which the Commissioner may take.