1.0 Introduction

The Office of Commissioner for Children and Young People (NICCY) was created in accordance with The Commissioner for Children and Young People (Northern Ireland) Order 2003 to safeguard and promote the rights and best interests of children and young people in Northern Ireland.

Under articles 7(2)(3) of this legislation, NICCY has a mandate to keep under review the adequacy and effectiveness of law, practice and services relating to the rights and best interests of children and young people by relevant authorities. The remit of our Office is children and young people from birth up to 18 years, or 21 years of age if the young person is disabled or in the care of Social Services.

In determining how to carry out her functions, the Commissioner’s paramount consideration is the rights of the child and NICCY is required to base all its work on the United Nations Convention on the Rights of the Child (UNCRC).¹

1.1 Responding to the policy proposals

NICCY welcomes the opportunity to respond to the Department’s policy proposals emerging from the review of special educational needs (SEN) and inclusion. We also welcomed the opportunity to meet with Irene Murphy in mid-October regarding the consultation exercise. We appreciate the Department’s decision to grant an extension to the consultation period until 30 November 2009. The Commissioner wrote to the Minister on 14 October 2009 formally requesting this extension in light of concerns at the timing of the consultation. Since the Department is already aware of the timing concerns and we will not repeat these in the present document.

While we have presented our comments on the policy proposals in narrative format, in order to facilitate the Department’s analysis of responses we have attempted to align our substantive comments as much as possible to the Consultation Response Booklet (see section 5 below, page 9 onwards).

¹ We note that the Department’s Equality Impact Assessment of the policy proposals incorrectly cites NICCY as the “NI Council for Children and Young People” (page 47). Perhaps the Department could update its records to reflect our correct title.
1.2 Concern regarding the policy proposals

The Department will be aware that there is a substantial level of concern regarding the policy proposals among those with an interest in Special Educational Needs.

Having been contacted by a number of voluntary and school sector stakeholders regarding this concern, NICCY invited stakeholders to an information sharing roundtable on 19 October. Some of the general areas of concern outlined by roundtable participants included:

1. The Department has chosen to introduce the high level concept of ‘Additional Educational Need’ in a consultation document which largely focused on SEN only.
2. Perceived lack of inclusivity surrounding both the Review and the consultation process.
3. Timing of the consultation exercise.
4. Potential for significant reduction in/dilution of enforceable rights for children and parents who would hold statements under the current regime.
5. Issues with potential changes to the funding regime.
6. Lack of clarity surrounding the vacuum created by losing existing SEN mechanisms, e.g., appeals processes, statutory annual reviews of statements.
7. Potential for inadequate accountability mechanisms.
8. Lack of clarity around partnership working between DE and DHSSPS.
9. Lack of information/clarity surround the role of Multi-Disciplinary Groups (MGs).
10. Perceived higher threshold to pass in order to gain the proposed replacement for statements.
11. Lack of a child rights basis for the policy proposals.
12. Possible similarities to the Scottish model introduced through the Additional Learning Support legislation, without evidence of user/voluntary sector satisfaction with that model.
13. The Department’s expectation for comments on high level proposals without consultee knowledge of what detail will follow.

1.3 Inclusivity

1.3.1 Lack of inclusivity within the Review processes

NICCY believes that the concerns outlined above have been heightened by the lack of a fully inclusive process in terms of the Review and subsequent
consultation exercise. NICCY notes that the Preface to the policy proposals states at page i that:

“There has already been extensive pre-consultation activity within the education, health, voluntary and statutory sectors and parents and children during the development of these policy proposals.”

However, we also note, for example, that no voluntary organisations are included within the members list to the Review Steering Group (as per Annex E of the document), and very few voluntary organisations are listed as Advisory Group members (Annex F).

We note that the “Engagement with Stakeholders” list (Annex G) cites NICCY, however, we would exercise caution in terms of the extent to which we would accept that we were “engaged” with within the Review process.

1.3.2 Recommendation for greater inclusivity post-consultation

NICCY recommends that the Department to attempt to remedy concerns expressed by external stakeholders regarding the SEN Review and consultation through engaging in a much more inclusive process post-consultation.

In order for the Department to achieve buy-in it must seriously and meaningfully engage with the voluntary sector, the schools sector, parents and children and young people, including the most vulnerable service users. NICCY would urge the Department to take forward the SEN and Inclusion plans with this recommendation at the heart of its work.

We welcome the fact the Department’s efforts to extend the consultation period on two occasions, and we expect the Department to continue to work with interested parties on a consultative and advisory basis as the policy proposals develop post-consultation.

We acknowledge that substantial criticism has been levelled at the Department surrounding the SEN and Inclusion proposals. The Department should take on board the gravity of concerns expressed and reconsider, if necessary, the terms of the policy. If the Department is to achieve greater buy-in, it must maximise its efforts for inclusivity.
2.0 International Law

Given NICCY’s status as a child rights-based institution, we would take the opportunity to highlight the relevant international standards which the Department has a responsibility to uphold within the terms of its policy proposals.

2.1 Children’s Rights

The UNCRC provides the overarching framework which guides the work of NICCY. The UK Government, including Northern Ireland, is a signatory to the Convention and has agreed to uphold the rights of children and young people based on the Convention.

NICCY appreciates that there are often complexities when reconciling the rights of children and young people with their welfare and best interests. NICCY would recommend the proposals are reviewed against the relevant articles within the UNCRC and incorporate them in the policy as underlying principles, to ensure that the rights and best interests of children and young people are upheld and protected.

We would firstly highlight the four General Principles of the UNCRC as core rights which should underpin the policy proposals:

- Article 2: children shall not be discriminated against and shall have equal access to all articles in the UNCRC.
- Article 3: all decisions taken which affect children’s lives should be taken in the child’s best interests.
- Article 6: all children have the right to life and to the fullest level of development.
- Article 12: children have the right to have their voices heard in all matters concerning them.

The following articles are also relevant to the substantive content of the policy proposals:

- Article 23: additional provision to ensure effective rights for children with disabilities.
- Article 28: the right of access to education.
- Article 29: the responsibility on the State to direct children’s education towards a specific set of aims. This includes the aim of developing children’s personalities, talents and mental and physical abilities to their fullest potential (article 29(1)(a)).
NICCY would also highlight the obligations in terms of implementation of economic, social and cultural rights:

- Article 4: States must undertake all appropriate measures (including legislative measures) to the maximum extent of their available resources.

NICCY would additionally urge the Department to take into account the relevant articles of the United Nations Convention on the Rights of Persons with Disabilities as it develop its policy proposals.

**NICCY recommends that the Department work towards building the relevant UNCRC articles into the policy proposal framework.**

**2.1.1 Concluding Observations of the UN Committee on the Rights of the Child (2008)**

In its Concluding Observations in its Report on the United Kingdom in October 2008, the United Nations Committee on The Rights of the Child (‘the Committee’) made a number of recommendations regarding implementation of the rights of children with disabilities.

The Committee’s comments to be taken on board by the Department include:

“*The Committee welcomes the State party’s initiatives undertaken at national as well as at local level in terms of analysing and improving the situation of children with disabilities. The Committee, however, is concerned that:*

a) *there is no comprehensive national strategy for the inclusion of children with disabilities into society;*

b) *children with disabilities continue to face barriers in the enjoyment of their rights guaranteed by the Convention, including in the right to access to health services, leisure and play.*”

(Committee on the Rights of the Child 2008:para 52)

“*The Committee notes with appreciation the numerous efforts of the State party in the sphere of education, in order to guarantee the objectives set out in the Convention. However, it is concerned that significant inequalities persist with regard to school achievement of children living with their parents in economic hardship. Several groups of children have problems to be enrolled in school or to continue or re-enter education either in regular schools or alternative educational facilities and cannot fully enjoy their right to education, notably children with disabilities…*” (Committee on the Rights of the Child 2008:para 66)
The Committee made the following recommendations:

“In the light of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities (General Assembly resolution 48/96) and the Committee’s general comment No. 9 (2006) on the rights of children with disabilities, the Committee recommends that the State party:

a.) take all necessary measures to ensure that legislation providing protection for persons with disabilities, as well as programmes and services for children with disabilities, are effectively implemented;

b.) develop early identification programmes;

c.) provide training for professional staff working with children with disabilities, such as medical, paramedical and related personnel, teachers and social workers;

d.) develop a comprehensive national strategy for the inclusion of children with disability in the society;

e.) undertake awareness-raising campaigns on the rights and special needs of children with disabilities, encourage their inclusion in society and prevent discrimination and institutionalization;

f.) consider ratifying the International Convention on the Rights of Persons with Disabilities and its Optional Protocol.”

(Committee on the Rights of the Child 2008:para 53)

NICCY recommends that the Department ensure that its policy takes on board the Committee’s comments and reflects its recommendations.

2.2 European Convention on Human Rights

NICCY would further take the opportunity to highlight the relevant provisions of the European Convention of Human Rights (ECHR) as incorporated through the Human Rights Act 1998:

- Article 2 of Protocol 1 to the ECHR as a freestanding right to education: ‘No person shall be denied the right to education’; and
- Article 2 of Protocol 1 as read in conjunction with article 14 ECHR: the right not to be discriminated against in the exercise of the right to education.

3.0 Research: NICCY’s Children’s Rights Review (NICCY 2008)

In 2007, NICCY carried out a major review of children’s rights, published in 2008 which highlights the gaps, problems and difficulties in the protection,
promotion and implementation of children’s rights in Northern Ireland. Concerns regarding the rights of children with SEN included:

- **The capacity of some mainstream schools to meet/understand/cope with SEN:**

   Education and disability support professionals and parents/carers of children with SEN who participated in the Children’s Rights Review reiterated concerns regarding the current capacity of mainstream schools to meet children’s SEN. Children and young people with SEN also highlighted issues in relation to teachers’ ability to understand their needs and/or cope with their associated behaviours in mainstream settings. These concerns were viewed in the wider context of an absence of adequate funding, training and support.

   Evidence gathered by NICCY’s Review suggested that while there are pockets of good practice, the training and support of school staff in mainstream settings are, in the main, not being adequately addressed, nor indeed are the necessary modifications always being implemented.

- **The lack of early identification and intervention regarding SEN:**

   It is acknowledged that early identification and intervention is of utmost importance to help children with SEN develop to their full potential, yet many families taking part in NICCY’s Review reiterated that identification and assessment is a real struggle.

   Further concerns identified by NICCY’s Children’s Rights Review broadly included:

   - **The lack of funding**
   
   - **The lack inability to address the increasingly diverse and/or complex nature of SEN**

   NICCY would recommend that the Department to take on board the Children’s Rights Review findings as it develops its policy proposals post-consultation.

4.0 Consultation with Children and Young People

NICCY has regularly expressed through a broad range of policy and consultation work our concern that section 75 of the Northern Ireland Act 1998
is not being adequately enforced in respect of the age criterion and that public authorities are consistently failing in their duty to meaningfully consult with children and young people on issues that have direct relevance to their lives.

The Department should bear in mind that article 12 of the UNCRC provides that children have the right to express their opinion in matters directly impacting upon them and have those views given due weight in accordance with their age and maturity. We would also direct the Department’s attention towards the 2008 Concluding Observations of the UN Committee on the Rights of the Child:

“The Committee is concerned that insufficient action has been taken to ensure the rights enshrined in article 12 to children with disabilities.” (Committee on the Rights of the Child 2008:para 32)

With this in mind, NICCY clearly has a particular interest in hearing further information from the Department as to how it has sought the views of children and young people with SEN, and children and young people generally. NICCY would welcome information regarding this.

NICCY notes that the Preface to the policy proposals at page i states that:

“There will… be further opportunities for parents, carers, children, schools, teachers, voluntary and statutory groups and other interested parties to engage with the review team and receive further clarification regarding these policy proposals at a series of roadshows to be held during the public consultation.” (emphasis added)

NICCY finds it difficult to accept that the roadshows constituted an acceptable medium for children to engage with the Review team/receive clarification around the policy proposals – as far as NICCY is aware, the roadshows were not pitched directly towards children.

**NICCY would ask the Department to clarify how it has ensured to gather the views of a proportionate spread of children and young people across each of the groups who fall under the SEN and Inclusion proposals. We would also ask the Department to clarify how those views will influence the development of the policy proposals.**

NICCY has held a consultation workshop with the NICCY Youth Panel to gain its comments and recommendations on the policy proposals – we have included
these within the body of our response and identified where such comments originate from the Youth Panel.\footnote{Please contact NICCY if you wish for a breakdown of the age range of the Youth Panel consulted with.}

### 4.1 Comments and recommendations on the children and young person’s version of the consultation document

NICCY would state at the outset our disappointment with the children and young person’s version (CYP version) of the consultation document. We recognise that the policy proposals are complex in nature, however, given that children and young people are the Department’s key service users, it is clearly critical to get right the consultation exercise with both children and young people.

Indeed NICCY was unable to use the children and young person’s version in our own consultation workshop with the NICCY Youth Panel on the policy proposals, as we felt that it provided very little information of relevance or usefulness.

In order to offer constructive comments to the Department, the NICCY Youth Panel has provided feedback and recommendations on the children and young person’s version:

The NICCY Youth Panel would highlight that:
- The CYP version is too short – it is five pages long (including the introductory letter from the Minister), compared to over 90 pages for the full consultation document.
- It perceived the tone of the document as patronising towards young people.
- There is no mention of Special Educational Needs and thus it is virtually impossible to know that this is one of the key themes of the consultation.
- The CYP version fails to deal with the issues.
- It looks as though minimum effort has been made to produce the children and young person’s version – in other words, it seems a tokenistic exercise.
- The front cover of the document is not appealing – it is the same design as the full consultation document aimed at adults.

On a positive note, the NICCY Youth Panel would commend both the use of different colours to present the information, and the way that the information was presented in different boxes in some parts.
The NICCY Youth Panel would recommend to the Department in planning future children or young persons’ versions that it:

- Makes sure that the version is child-/young person-friendly.
- Spends an adequate amount of money and time to show to children/young people that it is serious about achieving their views.
- Considers going out to schools to consult.
- Considers using different, innovative mediums to consult with children/young people, e.g., using a DVD.
- Creates enticing front covers for documents aimed at young people – this would make it more encouraging for a young person to look to see what is inside.
- Consider which age-range(s) of children or young people it is aiming at and bear in mind that one version may not suit all.

5.0 Comments on the specific policy proposals

NICCY welcomes the opportunity to provide our feedback and recommendations on the content of the policy proposals. These comments are presented below, as per the ordering of the Consultation Response Booklet. We note that the Response Booklet asks respondents to state whether they agree or disagree to each point of the policy document – we believe that such an approach is highly difficult for respondents to adopt, given the high level nature of the proposals and, in turn, the lack of detail as to what we would be signing up to. Many individual sections of the consultation document are highly interlinked; this adds to the difficulty of adopting an agree/disagree approach to each sub-theme. For these reasons, we have been unable to take this approach in our response, however, we have followed insofar as possible the format and ordering of the consultation response booklet and we trust that our response will be taken on board in full.

5.1 The Inclusive framework based on the wider concept of additional educational need (AEN) (para 3.1 to 3.8)

NICCY understands that a number of vulnerable groups of children and young people face barriers to the effective enjoyment of their right to education.

In principle, it appears well-intentioned to work with an overarching aim of proactively seeking to remove obstacles to the effective enjoyment of education rights for all vulnerable groups. However, we find it highly confusing of the Department to introduce a high level concept of AEN within a policy document...
that is ultimately concerned with detailing potentially serious changes to SEN processes. It is extremely difficult to understand the extent to which the SEN processes detailed within the policy proposals are intended to relate to processes for children with ultimately distinguishable needs.

At paragraph 3.7 of the policy proposals, the Department states that “the proposal is to introduce a new inclusive model based on the concept of additional educational needs (AEN).” However, no detail is given on what this model entails, such as funding relationships and linkages with existing/draft policies for vulnerable groups, such as the Department’s ‘Supporting Newcomer Pupils’ policy.

Because of the lack of detail on how the AEN model will operate and the implications for SEN processes (for example, funding arrangements), NICCY is unable to state whether it welcomes or rejects the Department’s proposal without further clarification from the Department. **NICCY recommends that the Department provide clarification on how the SEN concept will integrate within the AEN concept in practice.**

The Department cannot achieve buy-in without giving detail as to how the AEN model will operate and whether it will affect SEN arrangements. **We urge the Department to give further detail on the AEN proposals and extensively consult with stakeholders on this before acting any further on the current policy proposals.**

NICCY would note the fact that the four broad themes of AEN as listed in the policy proposals can imply needs of a highly variable and distinguishable nature; both across and within some of the individual themes. NICCY would seek clarification from the Department as to how it will ensure that it does not blur the distinct nature of some of the obstacles concerned: for example, a child with a suspected learning difficulty may have highly distinguishable needs from a bereaved child or a newcomer child to Northern Ireland who does not speak English. While clearly each of these difficulties require a proactive intervention to ensure that they do not interfere with a child’s education, the type of intervention required may be distinct in nature and length. NICCY is concerned that the recognition for distinct responses may be lost by the implementation of the policy proposals as they stand, we particularly note that the proposed loss of statementing with regards children with SEN may dilute their legally enforceable rights.

For the most part, NICCY’s comments on each of the specific proposals relate to children with SEN. NICCY recognises that because there has been so much broad concern for the rights of children with SEN within the current policy
proposals that less attention has been given to the situation regarding children with other needs falling within the “Inclusion” bracket.

5.2 The key principles of the policy proposals (para 4.1 to 4.6)

Paragraph 4.1 of the policy proposals states that:

“These policy proposals are designed to be delivered within a framework that includes all those children who have a difficulty in accessing and benefiting from learning, whatever the reason or cause of that difficulty.”

NICCY again would highlight the fact that the Department’s proposals focus broadly on all children with barriers to learning. While in principle we understand the Department’s broad inclusive approach, this faces a broad practical dilemma in the fact that such a good practice model towards broadly termed vulnerable groups does not imply legally enforceable rights. Indeed, in terms of children with SEN, one benefit of stating is the legally enforceable rights that it implies on behalf of the child. Thus, NICCY would recommend that the Department clarify how its move towards a good practice model based on inclusion for all will not be detrimental for those individual children and young people who currently hold legally enforceable rights through possession of a statement.

Since the policy proposals may ultimately entail a huge shift in the way that SEN are addressed, NICCY recommends that the Department provide concrete evidence to demonstrate how they will benefit children with SEN.

We find it difficult to provide substantive comments on the list of key principles (a)-(m) underpinning the policy proposals (paragraph 4.2 of the consultation document) as this list appears to briefly summarise much of the content of the full policy proposals. However, we would highlight to the Department our particular concerns with the wording of some of the key principles, including:

- b) “a ‘whole school’ approach involving staff at all levels” – this would clearly require adequate training and resources – we consider this point in more detail in sections 5.6 and 5.13 of our response below.
- f) “schools and other educational establishments providing appropriate and timely support for the vast majority of their children with additional educational needs” – this needs to be followed up by an unambiguous commitment from the Department that where schools are unable to meet
the needs of children, external expertise will be sought in a timely manner.

- **g)** “all learners, within all phases and key stages, are given the same degree of focus within the proposed policy” – this statement fails to recognise the fact that depending on the nature and level of the barrier to learning experienced by the child, a different level of preemptive action/response will be required. A ‘one size fits all approach will not be practicable.

- **l)** “majority of funding being devolved to the lowest point of delivery possible” – NICCY believes that SEN funding devolved to schools should be ring-fenced, unless concrete evidence exists to prove that this would be unworkable/detrimental to spending. If mainstream schools are to have control over SEN funding, principals also need clear, expert guidance as to how to spend that money to the maximum benefit of their pupils.

- **m)** “knowledge, views, experience and involvement of parents and carers will play a vital part in the development and maintenance of any programme put in place to support their child” – NICCY is concerned at the fact that the views and involvement of the child him or herself has been omitted from this key principle. This is a serious concern, given that the child is the ultimate service user. Parents need to be heavily involved in all aspects of processes put in place to support their child, most particularly parents of children with SEN.

NICCY broadly agrees with the Department’s vision that all children who face barriers to learning should receive the right support at the right time to allow them to develop to their fullest potential. However, we question the value of consulting on a vision without detail. We are unable to show our support without finer detail from the Department on how the policy proposals will impact on children in practice. We are particularly concerned at the potential for any dilution of the current provision for children and young people with SEN. We feel that our concerns cannot be alleviated without the finer detail from the Department as to how the policy would translate to practice.

### 5.3 Early identification and intervention (para 5.1 to 5.5)

While NICCY agrees that early identification and intervention are crucial to the proposals, it is difficult for us to provide any comments of agreement to the Department around this since the policy proposals provide little detail as to how it will ensure that early identification/intervention takes place, nor any details regarding time-bound mechanisms, accountability arrangements, etc. NICCY would recommend that the Department provide further detail.
We also note that paragraph 5.2 of the proposals states that:

“It is proposed that the current identification and assessment process will be improved by a strengthened and streamlined intervention process which places the emphasis firmly on schools and ESA to identify and provide for children who require additional educational support.”

We would expect this to be followed by statutory accountability mechanisms to ensure that this takes place.

As highlighted in section 3.0 above, many families taking part in NICCY’s Review highlighted that in the present system identification and assessment of SEN is a real struggle. Family involvement must be central to the newly agreed mechanisms for assessment and identification.

5.4 Pre-school settings (para 6.1 to 6.3)

NICCY welcomes the proposal that non-statutory, voluntary and private early education settings who receive funding through the Pre-school Education Expansion Programme would be required to work within the Department’s policy framework.

We note that such educational settings would also be available to avail of the full range of services provided by the Boards/ESA, and the proposal is to establish a core of “early intervention officers” within the Boards/ESA to cover these additional service users. Resources would need to be available for these staff to reflect the additional range of service users.

5.5 Primary and post-primary (para 7.1 to 7.5)

NICCY notes the emphasis placed on schools to take responsibility for meeting the needs of all children. The Department states at paragraph 7.1 of the proposals that:

“Although many schools have developed the capacity of their staff to ensure the access and participation of all pupils and begun to work collaboratively with local schools and other agencies to provide a range of support, other schools have been less effective at removing or diminishing the barriers to learning and subsequent achievement.”

The Department’s recognition that a number of schools are not meeting the additional (and special) educational needs of their pupils to the expected level supports the case for concrete accountability mechanisms and close monitoring
of schools; including ear-marking/ring-fencing of distinct categories of additional need funding (for example, EAL provision) and special need funding which goes directly to schools. On this basis, NICCY is concerned that the policy proposals suggest that schools will have discretion as to how they allocate SEN resources.

While the high level ideas are welcome, we find it difficult to comment on the potential impact of the proposals regarding greater collaboration, nurture groups and education other than at school without further detail on funding arrangements or information as to how they would operate in practice.

### 5.6 Training and development (para 8.1 to 8.5)

The Department’s proposals regarding training and development stem from its evidence that many SENCOs and teachers perceive that they are “ill-equipped to deal with the increasing diversity of need in their schools” (para 8.1 of the consultation document). To add to this, anecdotal information from NICCY Youth Panel members currently attending mainstream post-primary schools indicates that some SENCOs do not get a lot of free time to do the work required of them as the school SENCO. Through attending the Department’s consultation event regarding the Review, NICCY has also heard teachers expressing this view. The Department must take this on board and appreciate that the practicalities of facilitating and encouraging training and development to existing teachers may be challenging without additional support to assist with their existing demanding workloads. We hope that the Department’s outworking of the proposals enables teachers to fully access the proposed training and development.

NICCY supports the view that teacher education should prepare teachers for the diversity of needs that they may face in the classroom.

The outworking of the Department’s policy should also be clear as to where the distinction lies in terms of:

- What is reasonable to expect of a teacher in terms of dealing with different additional/special needs in-school, and
- Where the point is reached at which no amount of teacher training/paper resources can meet the child’s need and thus the move to external, relevant professional assistance should be made.

(We address this issue in further detail below in our comments regarding the proposals for a new three strand model to replace current sequential five-stage approach.)
• **The Boards/ESA’s role in training and development**

We note that in the future, the Boards/ESA will be responsible for ensuring that mainstream teachers have the skills necessary to support pupils through the provision of necessary training and support. We would ask the Department what accountability mechanism will be attached to the Boards/ESA to ensure that it fulfils this role.

**5.7 Learning Support Coordinators (LSCs) (para 9.1 to 9.4)**

NICCY notes the proposal to rename SENCOs as Learning Support Coordinators undertaking a wider remit.

While we appreciate that the proposals are high level in nature, little detail is provided as to what this wider remit will entail. We would ask, for example, what kind of “low level diagnostic testing” (para 9.3) that LSCs would be expected to carry out? Without further detail as to how the proposals will operate in practice, NICCY is concerned at the expectation that LSCs would be expected to carry out any kind of diagnostic testing in practice. Such assessment that should be carried out only by those with the relevant expertise and health professionalism.

**5.8 Coordinated Support Plans (CSPs) (para 10.1 to 10.6)**

NICCY notes that Coordinated Support Plans would replace statutory statements of SEN. We also note that CSPs would be provided solely for children with complex or multiple barriers to learning, and thus are expected to cover fewer children than those who would currently qualify for a statement.

Given NICCY’s remit, we have a clear interest in ensuring that the rights and best interests of all children are protected and promoted – we are therefore concerned at the implication that fewer children will have recourse to the CSP replacement for statementing.

We are also concerned that fewer children will have statutory rights, given the fact that the Department wishes “to take the focus off the statutory assessment process” (para 10.1), since, while we recognise the flaws in the current statementing system, we also understand that it currently represents the only mechanism for parents to achieve legally enforceable rights for their children’s SEN to be met.

Without further detail on the proposals, we do not know whether (the albeit fewer number of) children entitled to a CSP will have statutory rights. The
Department must take into account that the legally enforceable rights associated with statements are necessary because in many cases their needs have not been met without them. Removing the enforcement mechanism of a statement could be damaging to children, and thus NICCY must insist upon the Department to indicate how it will ensure that these rights are not lost.

We would also note our concern with the language used to describe the impact of the CSP proposals – the suggestion that CSPs will only be available for “the small minority of children who need SEN provision that is ‘additional to or different from’ that which an enhanced mainstream school will be expected to provide” (para 10.6, emphasis added). The implication is that all children outside of this “small minority” would be dealt with by the mainstream school, with or without external support (of which the proposals give little detail). Given the inconsistency of approach taken by individual schools under the current system, the Department must understand that its proposals are of high concern to those stakeholders who deal with SEN on a daily basis. Where there is emphasis on meeting children’s needs at the first two stages (‘within school’ and ‘within school plus external support’), NICCY recommends that statutory accountability mechanisms be introduced to cover these stages as well as at the CSP/statement stage.

5.9 Transition points (para 11.1 to 11.7)

NICCY welcomes the Department’s proposals to widen access to the Transitions Support Services to all pupils with SEN (noting that access is currently only granted to pupils who have a statement).

We note the Department’s comment regarding the need for greater monitoring and evaluation of the planning and delivery of transitions services to ensure that geographical inconsistencies are prevented in future in terms of the level and quality of the services provided. With the SEN and Inclusion Review proposals placing a general emphasis on support being provided by individual schools, there is the risk that even greater inconsistencies will arise in terms of support provided, thus it is important that monitoring arrangements for all support mechanisms are robust, including the area of transitions.
Development of effective partnerships (para 12.1 to 12.7)

(a) Partnerships within Schools and Pre-School Settings (para 12.3 to 12.5)

NICCY welcomes the proposals for the development of partnerships within schools and pre-school settings.

(b) Partnerships across Educational Settings and Learning Communities (para 12.6 to 12.7)

NICCY generally welcomes the proposals for the development of partnerships across educational settings and learning communities. It would be useful to hear more information around the proposal to give consideration to providing schools with additional monies, resources, etc. that collaborate in sharing expertise.

(c) Partnerships between Mainstream and Special Schools (para 12.8)

NICCY welcomes recognition being given to the expertise of staff within special schools in addressing the diversity of needs of those pupils with SEN.

We note that the consultation document in general is concentrated around provision in the mainstream school sector (with this being the ethos behind the proposals) and thus there is little discussion around the role of special schools, with paragraph 12.8 being one of the exceptions to this. We feel it would be helpful to provide further detail on any proposed developments regarding the funding arrangements for special schools, expanding, perhaps, on the proposal outlined in paragraph 15.5 of the consultation document, that: “It is proposed that a mechanism for funding of outreach services provided by special schools and ELBs/ESA to mainstream schools also needs to be developed.”

(d) Partnerships between ESA and the proposed RHSCB (para 12.9 to 12.17)

NICCY understands that the partnership between ESA and the proposed RHSCB would focus on improving collaborative working, joined-up thinking and delivery of services, providing more timely identification, assessment and support, etc. We believe that clear and effective legal accountability mechanisms would need to be established in order to make these aspirations reality.
(e) **Partnerships between DE and DEL (para 12.18)**

NICCY would welcome an increased, effective relationship between DE and DEL in terms of the transition beyond school.

(f) **The establishment of Multi-disciplinary Groups (MGs) (para 12.19 to 12.25)**

NICCY understands through feedback from a number of organisations with an interest in special educational needs that there is much concern regarding the potential role of Multi-disciplinary Groups. Once again, we would highlight that, while we understand that the information provided in the consultation document is high level only, we believe that the Department needs to provide much more detailed information around the role of MGs in order to gain the confidence of parents and those with an interest in the disability and SEN sector.

On reading the proposals, the role of the MG appears to be potentially broad and highly significant – from determining arrangement of support for children over and above what can be provided by the school alone – to identifying and raising SEN issues at a strategic level. In this context, the fact that the proposals do not provide the detail as to know how, to what extent, or to whom the MGs would be legally accountable, is concerning (including challenges of decisions made by MGs).

In terms of representation on the MGs, there is no indication given as to whether voluntary organisations would or should play a role.

NICCY would have a keen interest in asking the Department how it will fill out the detail of the policy in terms of ensuring that the direct views and interests of the child are listened to and given due weight by the MGs.

(g) **Partnerships with Parent/Carer (para 12.26 to 12.28)**

Establishing parental confidence in the special educational needs system should be one of the most fundamental objectives underlying the Department’s proposals. Over the past few months, NICCY has been contacted by a number of concerned parents regarding the SEN Review and consultation process. We have also witnessed parents’ distrust at a number of events regarding the consultation and been further informed of parents’ anxieties by a range of voluntary organisations. The Department of Education must take this lack of confidence in the Review process extremely seriously. It is not enough for the Department to claim that parental concerns regarding the Review are
misguided given the remit of the high level SEN proposals. NICCY shares many of the concerns expressed by parents regarding the proposals. If the Department continues with this approach, NICCY is concerned that this could further damage the confidence of parents in the outworking of the policy proposals.

**NICCY would be happy to support real engagement between the Department and parents. Additionally, parents support organisations, such as Parenting Forum, may be able to provide advice on this.**

With regard to the specific consultation proposals regarding building partnerships with parents (para 12.28), we do agree with the Department’s recognition that the current guidance in the Code of Practice should be more consistently and effectively delivered in partnership with parents and carers – however –for this to happen it may be appropriate to look towards establishing clear accountability mechanisms.

**Partnerships with children and young people (para 12.29)**

NICCY welcomes the Department’s recognition of articles 12 and 13 of the UNCRC as intrinsic features of establishing partnerships with children and young people. However, we would like the Department’s reassurance that accountability mechanisms will be established in future so as to ensure that children are always listened to and taken into account in the new SEN processes.

We have already highlighted the recent Concluding Observations of the UN Committee on the Rights of the Child, and in particular, the Committee’s concern over the fact that “insufficient action has been taken to ensure the rights enshrined in article 12 to children with disabilities” (Committee on the Rights of the Child 2008:para 32). This should encourage the Department to regard the establishment of partnerships with children and young people as a matter of utmost priority. As an aside, we note that the Department’s proposals regarding the development of effective partnerships places ‘Children and Young People’ second from the bottom of a list of nine groups where it proposes the development of partnerships – arguably children should be at the top of the Department’s list.

**Partnerships with the Voluntary Sector (para 12.30)**

NICCY has listened to the views of groups and organisations within the voluntary sector and we conclude that the provision of adequate, long-term
funding will be a key factor in achieving success in terms of the support and contribution to be made by the voluntary sector.

**5.10 Outworking of the Proposed Model (para 13.1 to 13.9)**

The Department asks consultation respondents to state whether they agree with the replacement of the sequential stages of 1-5 of the current Code of Practice by the proposed three strand model (Within School, Within School plus External Support, Co-ordinated Support Plans).

Having listened to the concerns of organisations that work very closely on SEN processes, NICCY understands that the general consensus is that a better approach by the Department would have been to seek to improve the current flaws with the five stage process, rather than seek to completely replace it with the new, three strand approach.

Many of NICCY’s concerns regarding the proposed three strand model have already been highlighted through our comments above on previous consultation points. We would ask the Department to take these into account in terms of our response on the present consultation point.

NICCY recognises the flaws of the five stage approach, including the fact that legally enforceable rights do not come into play until a statement is awarded. However, NICCY also recognises that the statement represents the only legal guarantee in terms of enforcing children’s rights to education.

We are thus concerned of the potential to reduce the number of Co-Ordinated Support Plans (CSPs) (as the proposed replacement for Statements) awarded in the proposed new system. We note that CSPs would only be available to children who face “complex or multiple barriers to learning”. We also note that this term is as yet undefined, and that regardless of this, the Department asks us to state whether we agree to the vision underpinning it. Without further detail as to the proposals, it would appear that the vision, in practice, would result in the dilution and/or reduction in legally enforceable rights. Therefore we cannot agree with the proposals.

The proposals relating to the “Within School” and “Within School plus External Support” strands appear to rely on the Department’s vision of a good practice model. NICCY believes that without showing a commitment to introduce legal accountability mechanisms in favour of parent’s/children’s rights at the school-based stages, the Department will not gain the confidence of parents or those working within SEN processes.
We would also ask the Department to clarify how it will fill out the detail of the proposals in order to ensure that parents are fully involved at each strand. NICCY also has a keen interest as to how the Department will integrate mechanisms for ensuring the child’s voice is listened to and heard at each strand.

5.11 Proposal to retain the current informal appeal, dispute avoidance and resolution and formal appeal arrangements (SENDIST) for children with SEN (para 14.1)

NICCY recommends that children should have their own right to appeal to SENDIST.

5.12 Funding (para 15.1 to 15.5)

NICCY is highly concerned at the implications of the proposal for mainstream schools to receive a portion of non-ring fenced SEN funding directly rather than this remaining centrally held. To highlight the detrimental impact that this has had in a parallel situation, NICCY is aware through our Children’s Rights Review of concern that when funding arrangements for EAL provision moved directly to schools rather than remaining centrally held, stakeholders have argued that some schools did not spend this money on EAL. As such, and without ring-fencing in place, NICCY is concerned that SEN money would not be always be spent on SEN needs by all schools. NICCY would acknowledge that mainstream schools face increasingly difficult budgeting decisions, given the level and diversity of issues and policies that they have to address. Without ring-fencing, there is clear potential for individual SEN funding to be spent elsewhere.

We would also highlight that this issue was one upon which that the NICCY Youth Panel felt very strongly. Youth Panel members currently attending mainstream post-primary schools feel that the funding proposals do not hold schools to account sufficiently in ensuring that SEN money is spent for the purposes intended.

NICCY recommends that funds for SEN should be ring-fenced within school budgets. We would also expect that any proposed changes to funding would be subject to full, public consultation.
5.13 Monitoring, Review, Evaluation and Accountability (para 16.1 to 16.5)

Our consultation response has highlighted a number of areas where we believe that the proposals currently lack clear indication of monitoring or accountability mechanisms. NICCY is highly concerned at the proposals regarding funding and we would ask the Department to provide evidence to demonstrate how it will ensure robust accountability/monitoring if it is to move centrally-held SEN funds to individual schools. We cannot simply rely on the Department’s strategic vision without concrete evidence to support its direction.

5.14 Roles and Responsibilities

NICCY notes that the consultation provides high level proposals regarding the roles and responsibilities of DE, ESA, DHSSPS, the Multi-disciplinary Groups, Mainstream schools and other educational establishments, the Education and Training Inspectorate and Children’s Services Directors. However, we will not make individual comment on each of these aspects as we have already covered the main issues in other areas of our consultation response.

5.15 Proposed phased introduction of the policy

NICCY notes the Department’s statement that:

“It is recognized that the full policy proposals can only be implemented as and when the necessary resources become available to both the education and health and social care sectors.” (para 18.7)

Without having secured a budget for full implementation and within the current climate of predicted public cutbacks, NICCY would place a question mark over these proposals.

5.17 Additional comments

NICCY has noted that due to the high level of concern regarding the special educational needs aspects of the Review, children without Special Educational Needs who would fall under the broad category of Additional Educational Needs have not been given enough weight in the consultation process. We would repeat our previously stated concern around the Department’s decision to consult on such a wide visionary aim, with little detail provided to consultees as to the practicalities for SEN processes. Once the Department has had an opportunity to assess all consultation responses, it may be useful to consider whether it has received a proportionate number of views around the area of
Inclusion/Additional Educational Needs (falling outside of SEN). It has been NICCY’s experience that the consultation document was so broad and brought up so many concerns around SEN that it was not possible to give proportionate consideration to AEN in our own response, and indeed, the consultation document itself provided little information as to how the Department’s proposed strategic direction would affect children with AEN in practice. In light of this, the Department may wish to reconsider how it has consulted on this area.

NICCY recommends a review of how birth month affects educational experiences and outcomes. We have received some evidence of higher levels of SEN statements for children with May and June birthdays. Given the Department’s Early Years Strategy in development, this may be an important area for further investigation.

6.0 Conclusion

NICCY appreciates the opportunity to respond to the policy proposals. Once the Department has reviewed the large number of responses received, NICCY would welcome a meeting to discuss how matters will be progressed.

To discuss our comments and to arrange a meeting, please contact Caroline Cunningham, Policy and Research Officer, on 90316384 or caroline@niccy.org.