Advice to the Department of Education on its Consultation on Draft Special Educational Needs (SEN) Code of Practice

19th January 2021

Introduction

The 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) and (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. Under Article 7(4), NICCY has a statutory duty to advise any relevant authority on matters concerning the rights or best interests of children and young persons. The Commissioner’s remit includes children and young people up to 18 years, or 21 years, if the young person has a disability or experience of being in the care of social services. In carrying out her functions, the Commissioner’s paramount consideration is the rights of the child or young person, having particular regard to their wishes and feelings. In exercising her functions, the Commissioner is required to have regard to all relevant provisions of the United Nations Convention on the Rights of the Child (UNCRC).

The Commissioner welcomes the opportunity to provide advice to the Department of Education on the draft SEN Code of Practice (the Code). The Code is a crucial element of the new SEN Framework and is critical in outlining the detailed processes and timescales to be followed by Boards of Governors, the Education Authority (EA) and health and social care authorities (this includes the Health and Social Care Trusts – HSC Trusts) when carrying out their statutory duties for children who have, or may have, special educational needs. Whilst the Department has previously released the draft Regulations for consultation, this is the first time that the Department has published the new SEN Code for consultation. We therefore welcome the opportunity to advise on the content of the new SEN Code. We also welcome that the revised draft Regulations have been shared for consultation; we have submitted a separate advice paper on the draft Regulations which we strongly recommend is read simultaneously to this paper as several of the recommendations with regards the Regulations also apply to the Code.

NICCY has long expressed the view that there is a pressing need for meaningful reform of the SEN Framework in a manner which ensures better outcomes for children and young people. Recent years have shone further light on the fundamental flaws in the current system and the myriad issues preventing children who have, or may have, special educational needs from enjoying their right to an effective education. In our separate advice paper on the draft Regulations, we have provided a comprehensive outline of the need for fundamental reform of the SEN system in Northern Ireland. This includes consideration of the findings from ‘*Too Little, Too Late’[[1]](#footnote-1),* NICCY’s review of SEN provision in mainstream schools, which highlighted the endemic barriers in the system preventing children and young people with SEN and disability reaching their full potential. Both this advice paper, and that on the draft Regulations, are framed in the context of the recommendations from *‘Too Little, Too Late’,* as well as other reviews including the Northern Ireland Audit Office’s SEN Impact Review[[2]](#footnote-2), the EA’s Improvement Plan and the DE SEN Learner Journey Project. Most critically, our advice is framed in the context of the United Nations Convention on the Rights of the Child (UNCRC), in ensuring that systems and processes are rights compliant as per Articles 28 and 29 and the principles of the UNCRC (Articles 2,3, 6 and 12) and remove the barriers to ensuring children’s and young people’s right to education. More detail on the UNCRC and children’s rights in the context of education is presented in our advice paper on the draft Regulations.

General Comments

The scope of the current consultation specifically focuses on the following areas of the new SEN Code:

* clarity on the responsibilities of the Learning Support Co-ordinator;
* clarity on the Three Stages of Special Educational Provision;
* content of the Personal Learning Plan; and
* clarity on Transition Planning to Adulthood.

The Department has mainly sought feedback on whether the role of the school is clear at each of the areas above. Whilst our advice is largely centred on the above areas, we have considered the issues beyond those related to the school role as other parties including the EA and Health and Social Care have an equally critical role in delivering effective special educational provision. We have also, where possible, reflected on other aspects of the draft content of the Code, however given the length of the Code and the expansive nature of the detail contained across the 14 sections and various annexes, it has not been possible to scrutinise in depth or identify and address all issues relative to all sections of the Code.

We recognise the importance of the Code being clear and understandable to all involved in the SEN process. As reflected by the Department, it is imperative that the new SEN Code of Practice accurately interprets the law into clear guidance to help those involved in the identification and assessment of children who have, or may have, SEN. The new Code contains much important and useful information, supplemented by detailed annexes. It is a considerably comprehensive and lengthy document and we have some concern about the extent to which all stakeholders including schools, EA and health and social care professionals will have the time and opportunity to review, engage with, and become familiar with its component parts. It will be important that the Department monitors stakeholders’ awareness and understanding of the new Code. We would also welcome information on how all grant-aided schools (including nursery schools and nursery classes in primary schools); the EA; health and social care authorities; and others exercising relevant statutory functions, including the SENDIST, are expected to demonstrate, in their arrangements for children with SEN, that they are fulfilling their statutory duties under Article 4 of the 1996 Order to have regard to the Code.

It is especially critical that children, young people and parents/carers are supported to engage with the new SEN Framework including the new Code of Practice. We welcome that the Code sets out requirements on the EA to make arrangements for the provision of advice and information regarding the SEN Framework. There is consideration throughout the Code of the requirement to provide information to parents/carers and children and young people, at various stages of the SEN process. We greatly welcome reflection of the fact that those involved in planning and providing services for children with SEN should take into account the principles that the rights of children are central to decisions about their well-being and that children and young people, and their parents, should be involved in the development of services which impact on them. We look forward to seeing the realisation of these important commitments, ensuring that children and young people, and their parents/carers, are informed and facilitated to actively contribute to the SEN process. It is critical that the Department monitors how this is implemented in practice as children and parents/carers are rarely enabled or empowered to be partners in the current SEN Framework. **As such, we emphasise our recommendation in our advice paper on the draft Regulations that reference to contributions from children and parents must be revised and presented as ‘advice’, not just information, in the new Regulations and Code of Practice.**

In addition, we welcome that the Code addresses key issues fundamental to ensuring improvements to the SEN system. This includes the duty in legislation on education and health to co-operate, and for the EA and the HSC Trusts to prepare a joint plan in exercise of their respective functions including themes such as clear and robust processes and pathways, integrated service delivery models, timely and effective provision of support, improved outcomes amongst children, and effective use of resources. As per Section 4 of the SEND Act, we welcome that this joint plan is expected to clearly demonstrate the EA’s and HSC Trusts’ co-operation in relation to the identification and assessment and provision of services for children who have, or may have, SEN. However, we reinforce concern, as set out in our advice paper on the draft Regulations and reinforced latterly in this paper, that educational and non-educational needs are separated within the Statement; we feel this is contrary to the ethos of co-operation and co-ordination.

We note reference to the fact the Departments of Education and Health *‘may from time to time request key performance information from the EA and Health and Social Care Trusts on the effectiveness of their co-operation’* at Section 9. This is welcome, however, we recommend that this commitment is presented as one that the Departments ‘will’ rather than ‘may’ do. As per obligations under Section 4 of the SEND Act, we also welcome that a joint inspection team, made up of inspectors appointed by DE and the Health and Social Care Regulations and Quality Improvement Authority (RQIA), will consider how the EA and the health and social care authorities have co-operated with each other in the identification and assessment of children who have, or may have, SEN; the provision of services that SEN calls for; and the preparation of transition plans for children with a Statement starting during the school year when a child attains age 14.

We note an important commitment at Section 1 of the Code for the ETI, when conducting school inspections, to consider the school practices related to SEN. We understand this is expected to include the strengths of SEN identification, assessment and making provision, and areas which require further development; the impact of the action taken by the school on the outcomes for learners; the use of data as evidence of improvement; and the extent to which schools have had regard to the Code.

Other aspects of the Code that we wish to acknowledge include Section 10 which considers the specific circumstances which might be contributing to a child experiencing difficulty in learning, including for children in secure care, Newcomer children, Traveller children, children with poor attendance, and children in care. It is vital that the needs of groups facing additional barriers in accessing identification, assessment and support are highlighted in the Code and appropriate arrangements made. We recommend that consideration is also given to the specific barriers in accessing support and assessment for children with SEN in Irish Medium settings.

We welcome that Section 14 sets out practical guidance aimed at improving inclusion within education for those children with special educational needs (SEN) and/or those with a disability. We also welcome that the Code reflects the obligations on the EA to produce an accessibility strategy and on schools to produce an accessibility plan which increases the extent to which children with a disability can participate in the curriculum; improves the physical environment of schools for increasing the extent to which children with a disability can take advantage of education and associated services provided or offered by schools; and improves the delivery of information to children with a disability.  It will be important to monitor how these arrangements are borne out in practice.

As reflected earlier in the introduction, this is one of two advice papers submitted by NICCY in response to the Department’s consultation on the revised Regulations and new Code of Practice. Whilst this paper predominantly focuses on the Code of Practice, it is recognised that the Regulations and Code of Practice work in tandem and we have therefore cross-referenced to relevant Regulations. We wish to note that within our advice on the draft Regulations, we have considered in detail the annual review process and the rights of young people over compulsory school age. Sections 7 and 13, to which the aforementioned issues pertain, are therefore considered in the advice paper on the Regulations, not within this paper. However, we reiterate that overall, there is significant read-across between the two papers and therefore both advice papers should be read simultaneously.

Within the rest of this paper we advise on the main aspects of the Code as per the scope of the Department’s consultation.

Responsibilities of the Learning Support Coordinator (LSC)

NICCY agrees that the role of the Learning Support Coordinator (LSC) is generally clearly set out in various parts of the Code of Practice. Section 2 provides a useful overview of the key roles and responsibilities of all those involved in identifying and meeting the needs of children with SEN including schools and the EA. It provides a clear summary of the general responsibilities of the LSC, whilst noting that the nature and occurrence of SEN may differ between settings.

NICCY is supportive of the fact that the LSC has a clearly defined responsibility for overseeing and ensuring the day-to-day operation of the school’s SEN Policy and ensuring, in conjunction with the school Principal, that it is kept up to date. We also welcome the LSC role in identifying that SEN related training requirements are included in the SEN Action Plan and the School Development Plan (SDP), contributing as appropriate to both staff training and recording SEN training undertaken by staff. ‘*Too Little, Too Late’* highlighted that many teaching staff lack sufficient training, and subsequent knowledge and skill, to identify and respond to the varied support requirements of children with SEN in mainstream schools. The Review reinforced the importance of such a record being routinely undertaken and that gaps and training requirements are regularly assessed. It is therefore welcome that the LSC role is intended to fulfil this gap in identifying and recording training needs.

NICCY has previously advised of the benefit of the LSC being on the senior leadership team (SLT) in order to provide direction and lead on the implementation of the conditions required to enable an inclusive culture. It is welcome that the Code reflects that the LSC should be a member of the SLT, where possible, in order to fulfil this role appropriately. It is also welcome that the Code reflects that, where this is not possible, the LSC should be supported by the SLT, a member of SLT or the Principal on a regular basis. This is absolutely crucial and will ensure that the LSC has the time, support and direction to meet the requirements of their SEN co-ordination role.

We also welcome that the Code reflects that the LSC should receive the necessary training and time to conduct the LSC role effectively. We note that the Code states that flexibility to allow the LSC release time from teaching should be an ongoing consideration; again, we reiterate that this is absolutely crucial to enable the LSC space and time to fulfil the role effectively. We are also supportive of the recommendation that opportunities should be provided to enable LSC collaboration and networking to discuss and share good practice in the delivery of the LSC role and special educational provision (section 3.95). ‘*Too Little, Too Late’* found an acute lack of opportunity for school staff, including SENCOs, to share learning and best practice techniques. Therefore, we support that such opportunities are proposed to be enabled through the new Code.

We recognise the statutory obligation on the Board of Governors of both mainstream and special schools to ensure that the teacher designated as the school’s LSC receives the necessary ongoing training and sufficient time to conduct the role effectively, as well as ensuring that the LSC has the requisite experience for the role. However, as per our advice on the Regulations, we reiterate that this responsibility should not fall solely on the Board of Governors or school Principal. The EA has an essential role in making available special educational provision for children with SEN and as part of that role needs to ensure there is an adequate supply of sufficiently trained staff. As recommended by ‘*Too Little, Too Late’,* this should include comprehensive pre- and in-service SEN and disability equality training for teachers, LSCs, classroom assistants and other professionals. Relevant authorities including the EA and ETI must also introduce robust evaluation of learning and development opportunities, to monitor reach throughout the region, and impact on the knowledge, skill and capacity of professionals supporting children with SEN in mainstream settings.

*General responsibilities of the LSC*

The responsibilities cited primarily relate to the co-ordination of the provision of education for children at the school who have SEN. However, it is welcome that the Code further details responsibilities including, for example, 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. Furthermore, it is useful that the various annexes set out the processes to be followed and roles to be fulfilled by the LSC and teachers at various stages.

Whilst all roles are critical in meeting children’s needs, NICCY wishes to emphasise the particular importance of the LSC role in delivering on the following responsibilities:

* Ensuring that procedures are in place for involving the child in all decisions about their education, according to their age, maturity and capability;
* Encouraging and supporting staff in involving the child in order to seek the views of the child and inform their PLP;
* Liaising/facilitating teacher engagement through partnership with parents and children over compulsory school age.

Fulfilment of the aforementioned responsibilities is vital in ensuring that children, young people, and their parents feel active partners in the SEN process and that their voices and experiences are heard at the earliest stages of the process. They are also imperative in ensuring fulfilment of Article 12 of the UNCRC which provides for the right of the child to be heard in all matters affecting them.It is particularly essential that the LSC has a central role in facilitating the voice of the child and young person with SEN or suspected SEN as ‘*Too Little, Too Late’* found that one of the key shortcomings of the existing system is a lack of effort and opportunity by schools and services to involve children and young people in the SEN process.

Whilst the roles and responsibilities of the LSC are generally clear, as is the fact that, once commenced, the SEND Act requires that every mainstream and special school must designate a teacher as LSC, it is not apparent whether schools with a larger population of SEN or suspected SEN should assign more than one LSC. **Clarity is needed on this matter as it is important that there is an adequate Pupil-LSC ratio; that the needs of all children with SEN are co-ordinated and fully met by the LSC; and there is no distinction in timeliness or approach on the basis of school size**.

The Three Stages of Special Educational Provision

There are currently 5 Stages set out in the 1998 Code of Practice on the Identification and Assessment of Children with Special Educational Needs. However, under the new Framework, the current 5 Stages will be amended to 3 Stages of Special Education Provision, as agreed by the NI Executive in 2012. The new Stages are:

* Stage 1: School delivered special educational provision. This Stage replaces Stages 1 and 2 of the 1998 Code of Practice on the Identification and Assessment of SEN;
* 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. This Stage includes the statutory assessment process. It replaces Stages 3 and 4 of the 1998 Code of Practice; and
* Stage 3: School plus special education provision as set out in a Statement. This Stage replaces Stage 5 of the 1998 Code of Practice.

In its current consultation on the new Code of Practice, the Department has sought feedback on clarity of the process, with a particular focus on whether the school's role is clear at each of the 3 Stages. NICCY recognises that clarity of role is vital as the school plays an integral part in ensuring early identification and intervention which is imperative to ensuring improved outcomes for children with SEN. However, other parties, including the EA and Health and Social Care have an equally critical role in the identification and assessment of children’s needs, in enabling access to vital educational supports, and in ensuring the overall timeliness and efficiency of the system. Furthermore, in NICCY’s experience, it is at the latter stages of the Code when children with SEN face particular barriers in accessing specialist supports and/or be prioritised for assessment. It is absolutely imperative that such issues are addressed by the new Code of Practice. The issues that characterise the current system cannot prevail going forward. It is for that reason that our advice in this paper extends beyond clarity of the school role at each stage of the new Code of Practice, as is the scope of the DE consultation.

The Code of Practice provides comprehensive detail on the three Stages of special educational provision and the key elements aimed at supporting its delivery. It contains detail relative to each Stage, including the processes to follow and information to be considered where there is a concern that a child may have SEN; if a child is identified as having SEN and is first placed on the school SEN register; and the steps to follow and factors to consider when reviewing a child’s progress and deciding if they should move to another Stage of the Code. This information is supplemented by detailed flowcharts and checklists contained in the annexes. Whilst the expected process at each Stage is generally clear, what is yet to be realised is how effectively this will be borne out in practice. It is a significant concern whether schools will have sufficient capacity, time, and resource to effectively respond to the needs of each child at each Stage, particularly at the earliest stages.

One of the areas where schools will need particular support is with regard to special educational provision mapping. Section 3 of the Code sets out an expectation on schools to produce a ‘map’ of the types of special educational provision they will deliver to support the three Stages on an annual basis. NICCY is optimistic that, if effectively facilitated, this should enable transparency and consistency about the provision the school makes for children with SEN. However, it is absolutely critical that schools are guided and supported to develop, implement and review the map of special educational provision. The significance of this map, and the special educational provision contained within it cannot be underestimated. The Code makes clear that this is to be a key resource for a school to draw upon when determining and delivering the appropriate special educational provision for a child. This proposed map is expected to contain the early intervention supports to be provided to pupils by schools when registered at Stage 1 of the Code. Furthermore, a child’s Personal Learning Plan (PLP) is expected to be developed by a school by drawing on the school’s special educational provision map. Furthermore, it is from this range of provision that a child is expected to be supported at latter stages of the Code alongside additional resources and supports by the EA.

However, despite the integral nature of the school map, there are aspects that are not clear. For instance, the Code lacks information on the resources that schools are expected to draw on when developing the map. It would be useful to have further detail on the expected role of school staff, including the Principal and LSC and others, in assessing the content and quality of the map and ensuring it is effectively implemented. **It is vital that schools are clear on the requirements regarding the design, implementation and review of special educational provision mapping, the type and breadth of information that should be contained, and how/where they can access additional support and guidance, if required.** The Code makes reference to separate EA guidance which provides examples of special educational provision across the five overarching SEN categories. It is suggested that the examples included in the EA guidance may be drawn from in the development of a school’s individual special educational provision map. **It will be important to monitor schools’ familiarity with this guidance, assess whether it meets schools’ needs, and if it is being effectively applied. It will also be important that ETI assesses and advises on the development of schools’ maps when assessing the strengths of SEN identification, assessment and making provision during school inspections**.

**Identification and assessment of children who have, or may have, SEN**

Section 3 outlines the steps to be taken and the information to be considered, should there be a concern that a child has SEN. This also reinforces the types of evidence that should be considered in order to assist the identification of pupils who have, or may have, SEN. It is welcome that reference is made to the information that should be obtained from parents and the young person or child to help meet the child’s needs when a concern is raised, and **it will be important that ETI consider the extent to which this information is routinely sought and considered by a school when it is assessing a child’s needs.**

One of the main considerations presented at the identification stage is that special educational provision is part of a continuum which sits alongside whole school educational provision. The Code reflects the need to exhaust whole school educational strategies before considering the requirement for special educational provision. As such, the LSC is expected to move a child to Stage 1 of the SEN Register and implement special educational provision only if the child continues to experience significant difficulties and does not make progress despite whole school educational provision being fully implemented.

Whilst NICCY recognises the necessity to identify and address other factors that might be impacting on a child’s progress, we emphasise that in some cases, children will require immediate special educational provision and it may/will not be appropriate to attempt to meet their needs through whole school educational provision. **The focus on whole school educational provision should not detract or delay from the provision of early intervention approaches. It is critical that schools are supported to ensure that children’s needs are assessed at the earliest opportunity and appropriate supports provided.**

**Stage 1**

The Code reflects the fact that Stage 1 should be put in place for a pupil when the school has compiled sufficient evidence on the nature of the difficulty being experienced or displayed; this evidence should reflect that the child has significantly greater difficulty in learning which requires special educational provision to be made because the child has made little or no progress even with whole school educational provision. The Code also reflects that Stage 1 provision is to be made if a child with SEN transfers to the school who has been receiving Stage 1 support in a previous setting or a child has significant difficulties requiring immediate special educational provision. The latter is expected to be the case only in exceptional circumstances, however, we reiterate the need for expediency in meeting a child’s needs and that this should not be hindered by a necessity to exhaust whole school educational provision particularly where it is evident that a child requires more immediate additional supports.

Where a child has been identified as requiring Stage 1 supports, they must be placed on the school’s SEN Register. At this stage the most appropriate overarching SEN category should be selected. We recognise that the category of SEN is to be selected as per the new guidance which was issued to schools in January 2019 following a full review of SEN categories undertaken in 2017/18. Notably, this guidance advises that “Pupils with a medical diagnosis/es who do not have an associated special educational need (SEN) should be recorded on a school’s Medical Register only.” As such, children can only be considered as having SEN and recorded on the SEN Register if identified by the school as requiring special educational provision. The Code makes clear that when determining whether a child has SEN, pupils who receive therapeutic or other related services from external agencies, for example, speech and language therapy, should not be considered as having SEN and recorded on the SEN Register unless identified by the school as requiring special educational provision. The categories of SEN from which a child’s are to be registered are:

* Cognition and Learning (CL);
* Social, Behavioural, Emotional and Well-Being (SBEW);
* Speech, Language and Communication Needs (SLCN);
* Sensory (SE); or
* Physical Needs (PN).

**In order to ensure swift and accurate recording of a child’s SEN, we recommend that regular guidance and training is provided to schools with regard to the SEN categories and associated descriptions.** It will be important to assess the LSC and other teachers’ familiarity with the revised SEN categories and associated descriptions, including whether schools are clear on when a child is to be placed on both the Medical Register and the SEN Register. For example, in the case of pupils with a diagnosis of ASD who should now be recorded on the Medical register, it will be important to assess whether the LSC and other teachers are familiar with and have given consideration to the ASD medical description and separate SEN descriptions, and have been able to effectively ascertain if/when a particular SEN is also applicable.

The Code makes clear that, where the professional judgement of the teacher and the LSC is such that Stage 1 provision is required for a pupil, an initial PLP is to be developed either by the teacher in consultation with the LSC in nursery, primary and special schools, or by the LSC in consultation with class and subject teachers in post-primary schools. In doing so, the teacher or LSC is to meet with the parent to discuss the provision being made for the child through the PLP; if required, to ask the parent to contact Health for medical information; and then to implement the PLP and share with other relevant school staff/professionals where necessary. One of the most critical points to reiterate at this stage is that the PLP is expected to be developed by drawing on the school’s special educational provision map. As previously noted, much hinges on the effectiveness of this map in ensuring that children and young people's receive appropriate, tailored, and timely supports. Section 3.41 reflects an expectation that ‘in the majority of cases, the child will make progress through Stage 1.’ **We therefore reiterate the critical need for training, guidance and support to schools to develop the map and a requirement on the ETI to assess the quality, depth and range of special educational provision contained within it.**

The Code provides relatively good detail on the actions to be taken by the teacher and LSC in evaluating and reviewing the provisions made at Stage 1. It is evident that the PLP is a critical source for assessing and recording the effectiveness of the Stage 1 provision and whether any further action should be taken. Dependent on progress made, the child may remain at Stage 1 or may be deemed to require further Stage 1 provision. In such cases, the PLP is to be updated with the proposed additional Stage 1 support and then continue to be monitored, evaluated, and reviewed. Again, it is not entirely clear what support**,** guidance, resource and strategies the school should draw on to deliver this further Stage 1 provision, but it is our presumption that this should be derived from the school’s map. **Clarity should be provided on this matter.**

The Code reflects that, in some cases, despite the school’s full use of its special education provision, the teacher and LSC may determine that a child should be moved to Stage 2 in order to receive additional resources, advice and support and training through the EA; the school is therefore expected to seek support through the EA’s plan of arrangements for special educational provision. The Code sets out the steps that should be followed by the school when it is considered that Stage 2 provision may be necessary. This includes discussing with the parent that the child may benefit from external provision and seek consent for further investigation of the child’s educational needs; referring to "the Code of Practice and EA arrangements for seeking Stage 2 provision consulting with relevant SEN services, as appropriate’; and submitting the referral to EA for external special educational provision and/or other external provision as appropriate.’

It is apparent that a child is proposed to remain at Stage 1 until special educational provision at Stage 2 is in place. There is a significant risk that some children will remain recorded at Stage 1 on the SEN Register but the nature of their needs is that they should, in fact, be at Stage 2. However, it is not possible to register them as such as they cannot be placed at Stage 2 until they are accessing a specialist support or service. **Whilst awaiting access to Stage 2 supports, it is imperative that children and young people’s needs are proactively met and there is no undue delay in gaining access to additional specialist supports.**

Stage 2: Specialist supports/services

As reflected earlier in this section, a significant number of issues associated with the current SEN system relate to the challenges in gaining access to additional specialist supports at the present Stage 3 of the existing Code of Practice. It is essential that such issues are addressed at Stage 2 of the new SEN Framework. The Department’s current consultation specifically asks if the process to be followed by schools is clear in the SEN Code if a child is at Stage 2.However, in our view, it is most critical to consider the arrangements through which the additional supports are accessed; the criteria for gaining access; and whether the quality and quantity of provisions are fit for purpose. Much of this detail is beyond the scope of the school role; rather the specifics related to Stage 2 services are proposed to be addressed in the *EA Plan of Arrangements for Special Educational Provision* which is to be published annually under Section 2 of the SEND Act and to which Part II of the revised Regulations pertains.

Section 2 of the Code of Practice sets out the intended aim and objectives of the EA plan. The Plan is expected to outline the arrangements made, or proposed to be made, by the EA for special educational provision. It is noted that these should not be limited only to advice but facilitate support services for individual children at Stage 2 across the range of overarching SEN Categories. We recognise that the previous draft of Regulations (Regulation 5(3)(a)) emphasised that the Plan should also set out details of the relevant training courses provided on behalf of the Authority. This has since been omitted in the new Regulations, however, it has not been explained why. **We recommend that reference to the provision of training arrangements remains in the Regulations.**

The duty on EA to publish, review and revise plans in relation to special educational provision is an important commitment which should provide greater transparency and clarity regarding the resources and advisory and support services and training which will be made available. Furthermore, it has been suggested that the arrangements for special educational provision as set out in the annual EA plan of arrangements for special educational provision can help schools identify, assess and make special educational provision for children with SEN within the three Stages. **This is clearly a critical resource and therefore it is vital that this section of the Act is commenced as a matter of priority.**

It will only be once this Plan is devised that we will be able to make a full assessment of whether it meets children’s needs, is child’s rights compliant and addresses the range of extant issues within the current statutory services. This should include robust and transparent criteria to access; removal of the role of Educational Psychologist as ‘gatekeeper’ to accessing services; a clear process for referral; and a cap on the waiting time for children to access services. However, we are supportive that Section 2 of the Code sets out a range of requirements on the EA to address such issues when devising its Plan, as reflected in the paragraphs below.

***Clarity on access to services***

For instance, we greatly welcome that section 2.18(d) of the Code of Practice states that the Plan should set out how and by whom those services can be accessed. This duty is also set out at draft Regulation 3(2) (Form and Content). Furthermore, we note that on receipt of any request for Stage 2 provision, the EA must ensure that there are appropriate arrangements in place for timely consideration of the request. The Code (2.21) sets out a requirement on the EA to develop clear criteria, to allow it to prioritise the request and the nature and type of resource/advisory/support service most appropriate to the child’s SEN. It also highlights that the EA should ensure that schools are aware of and understand the criteria to be applied and that these arrangements and criteria are applied consistently across NI. This is absolutely crucial, particularly as ‘*Too Little, Too Late’* found a profound lack of transparency regarding the criteria for (the current Stage 3) services. The new duty on the EA to publish the access requirements for Stage 2 services will go some way to addressing the recommendation of ‘*Too Little, Too Late’* that the EA should review and make explicit the criteria to access services. **It is essential that the EA ensures that all relevant stakeholders are aware of the referral criteria for each service; and takes all necessary measures to ensure that access to services is always allocated on the basis of need.**

**Furthermore, whilst reference is made to the PLP being a key information source when the EA is considering a child’s access to Stage 2 services, there is a lack of detail on the grounds on which EA might turn down a request for specialist support/services, and the nature of a process to appeal. This information must be thoroughly addressed in the EA’s plan of arrangements in agreement with the Department.**

NICCY is extremely supportive that Section 2.21 of the new Code reflects that access to EA resources, advisory and support services should not normally be restricted to the need for educational psychology authorisation. **This is absolutely essential and will be an important development in easing access to EA’s supports and services**. One of the most significant barriers in the current SEN system is that children are required to be assessed by an Educational Psychologist before they can access specialist supports/services. This has historically led to significant delays in children accessing additional statutory supports because each school has a ‘quota’ or time allocation related to the number of pupils who can be referred for assessment by the EA Educational Psychology Service. We welcome that this is to be addressed by the EA’s plan of arrangements for special educational needs provision, and that the EA is required to ensure there is clear signposting and a straightforward route for schools when developing the access arrangements to the services. It is imperative that there are no constraints on accessing additional supports/services including any form of time allocation. It is also extremely welcome that the Code states that where resources, advice and/or support is to be made available, based on EA’s professional judgment that such provision is necessary, the EA should ensure appropriate arrangements are in place to provide it without undue delay. However, further detail is required on the requisite timeframes for providing such services.

***Assessing ‘unmet need’ for Stage 2 services***

We are also extremely supportive of the fact that the Code (section 2.30) states the necessity for EA to establish a system to assess unmet demand for its services and this should comprise a means by which schools can send requests directly to the EA for Stage 2 special educational provision. Such a mechanism to assess unmet need is absolutely crucial. As evidenced by *‘Too Little, Too Late.’* there is currently a significant ‘bottle neck’ in accessing the existing Stage 3 services. The Review found that the demand for services far exceeds the supply, resulting in excessively long waiting times and/or cases where children never receive the supports required. However, when NICCY requested detail from EA on the number of children and young people awaiting access to services, the EA was not able to provide this data. **It is essential that there is a central mechanism by which the EA can monitor the number of children waiting for access to Stage 2 services, determine any unmet need, and prioritise the delivery of appropriate support for each individual child who needs it.** As recommended by *‘Too Little, Too Late’,* this should contain waiting time statistics on a referral being made for Stage 2 services and the referral being accepted or not accepted, and waiting times between the referral being accepted and the child gaining access to a Stage 2 services. **It will be important for the Department to monitor the establishment of any such mechanism and whether it meets its intended purpose.**

Most critically, we stress the need for the EA Plan to contain actions to address unmet need and ensure children and young people are not waiting excessive time periods for additional supports, as is the case with access to the existing Stage 3 services. To that end, **we recommend that the new Framework introduces a maximum waiting time to gain access to Stage 2 services. Whilst we stress it is imperative that the new EA plan ensures all children can access services as soon as possible as a referral to Stage 2 is made, a maximum waiting time will further mitigate the risk of any delay**. **The EA must also progress the development and provision of guidance to schools on supplementary evidence-based strategies that can be implemented whilst referrals for assessment are being processed.**

We recognise that Stage 2 supports and services are also to be provided by Health and Social Care Trust professionals to complement the school provision. **Further information is needed on where detail on the type of supports/services to be made available can be accessed and whether and how these services will be consulted on.**

***Processes for monitoring the effectiveness of Stage 2 services***

In NICCY’s experience, much of the extensive delays in accessing statutory services are due to issues with the accessibility and availability of supports and services, the extent to which these are appropriately resourced, and consistently provided across the region. **When devising its plan the EA must conduct a systematic review of all supports and services for children with SEN; assess the accessibility and availability of services; and identify and address any gaps in services.**

We welcome that the Code sets outs a requirement on the EA to put in place suitable arrangements for ongoing monitoring, evaluation and review of the effectiveness and delivery of its plan of arrangements for special educational provision. **As part of this, the EA must ensure that its Stage 2 services are founded on evidence based practice and demonstrating improved outcomes for children and young people**.

We welcome that DE shall request key performance information from the EA on the fulfilment of its statutory duties and the effectiveness of the EA’s delivery of its arrangements for special educational provision (as per section 2.24 of the Code). We welcome that this will include a review of performance information on the EA’s achievements against statutory timeframes associated to the statutory assessment process. The Code states that DE will also review the making and annual review of Statements and completing transition plans on a regular basis, if appropriate. We recommend that this is undertaken as a matter of course, particularly in the early stages of the new SEN Framework’s implementation, not only when deemed appropriate as is proposed in the Code.

We also greatly welcome that DE shall request ETI to conduct particular targeted surveys, for example, with regard to the delivery of EA special educational provision through the plan of arrangements. As per the Code, it is important that the Department will require the EA to act upon any recommendations made regarding the plan and its delivery by the ETI.

***Proposals for consulting on and finalising the Plan***

The EA is required to publish a draft plan for consultation by the end of March immediately preceding the school year to which the plan relates. The finalised plan is then expected to be published on or before the 31st July of each year. We stress that all individuals to be consulted in the preparation, review or revision of the Plan must be given adequate time and support to respond. There must, in turn, be sufficient time for the EA to review feedback and make revisions, as required. We therefore have some concern that the four months proposed between the publication of the draft and its finalisation is insufficient to fully consider the range of responses received and make the relevant revisions required.

**It will be essential that the Plan is accessible to all stakeholders, including parents and children and young people. Preparation of a young person’s version will therefore be required and should be issued along with the adult version. Regulation 4(1) sets out the arrangements for EA to consult on the Plan; we note that this only includes children over compulsory school age, it should be revised to include children of compulsory school age. It will be important to outline what, if any sanctions may be implemented and by whom, should the EA fail to provide the information required in the Plan, to consult effectively with consultees or deliver the Plan in a timely manner. NICCY believes it will also be important to determine the nature of the budget which has been allocated towards the completion of the Plan and for this information to be included in the Plan, when published.**

Stage 2: Statutory assessment

Stage 2 of special educational provision also contains the statutory assessment stage. Section 3 reflects the information required by schools to inform a request for statutory assessment, whilst Section 4 comprehensively sets out the key steps within the statutory assessment process.

Again, whilst the consultation solely assesses clarity of the processes that schools should follow at Stage 2, we feel that the most pertinent issues with the existent system are broader than that, namely delays in the statutory assessment process and the transparency of the processes by the EA when making decisions at the statutory assessment stage. However, there are aspects relative to the school role which require further consideration.

Section 3 of the Code reflects the role of the school in considering whether to make a request to the EA for a statutory assessment and the processes for the school to follow when progressing a referral. However, we do not feel that there is sufficient emphasis on the fact that a young person over compulsory school age or parent/carer can make a request to the EA for an assessment. We are concerned that the Stage 2 School Process Flowchart (included in the Annexes) reflects an action for schools to ‘*consult with the EA Educational Psychology Service to decide if a request for statutory assessment is appropriate’*, when considering making a request for statutory assessment. The Stage 2 to Stage 3 checklist further states a requirement to ‘*Refer to EA guidance for requesting statutory assessment, consulting with EA Educational Psychology Service as appropriate*.’ Further detail is required on this proposed process and stakeholders provided the opportunity to comment, as it does not appear to be explicitly written into the Code nor consultation documentation. **It is absolutely imperative that there is no undue delay and/or further obstacles in accessing statutory assessment.** There is a very real risk that a requirement to consult the EA Educational Psychologist Service before processing a referral for statutory assessment will significantly protract the process. Any such delay is absolutely unacceptable and cannot be enabled under the new Framework.

If the EA decides not to carry out a statutory assessment, the Code sets out a requirement for the pupil’s PLP to be revised, as appropriate, to include any further strategies or approaches suggested by the EA. Further clarity is required on the nature and quality of these additional supports/strategies; how it will be assured that these will differ from and add value to any Stage 2 supports already provided by the EA, and how schools will be supported to deliver any additional or alternative strategies to ensure these fully meet the child’s needs.

Similarly, if the EA carries out a statutory assessment but determines that it will not make a Statement, it is expected that the pupil’s PLP should be revised, as appropriate, to include any strategies, approaches and learning support as drawn from the EA’s Record of Evidence of the Statutory Assessment (‘Record of Assessment’).Section 4 provides more detail on the Record of Assessment; this appears largely similar to the note in lieu of a Statement which is currently issued under the existing Code of Practice when a decision is taken not to issue a Statement. In the new Code, the Department reflects that this Record should maximise the information for addressing the child’s special educational needs, will be available to those working with the child in school to help them supplement or change their strategies for meeting the child’s SEN, including any required EA provision at Stage 2. **As per the recommendations in the preceding paragraph, it is crucial that any further strategies effectively supplement any provisions already made from the school and EA at Stage 2; and that these approaches are robust, evidence-based and sufficiently meet the child’s needs.**

As noted throughout, one of the primary issues with the current SEN system is the length of time taken to complete a statutory assessment and issue a Statement. As reflected in our advice paper on the draft Regulations, NICCY is extremely supportive of the fact that the new SEN Framework will reduce the time limit for the issuing of a completed statement from 26 weeks to 22 weeks. However, we recognise that adherence to the 22 week window is only applicable provided there are no ‘valid exceptions’. As set out in the Regulations and further detailed in the Code of Practice, these exceptions apply if, for example, an 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. As per our advice paper on the draft Regulations, we query whether an extension is absolutely necessary in all proposed instances of exception and question the suggested length of extension where such exceptions are proposed to apply. Where such exceptions do apply, the Department proposes 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.

As reflected in our advice paper on the Regulations, whilst, in theory, NICCY supports maximum time limits in the case of valid exceptions, as at present there is no explicit ‘end date’ for the EA to complete the entire process once a valid exception applies, we have concern that the proposed maximum time limit, where exceptions apply, is too lengthy. Should valid exceptions be applied, a wait of up to 34 weeks is considerable, constituting the vast majority of a school year. We are concerned that this is too long as there is the potential for significantly adverse impacts on children's learning and development in that time. **We query whether the extent of the delay is warranted and request further detail on the rationale for the proposed length of the extensions.**

**Whilst ideally no extensions will be required and the vast majority of assessments conducted in the requisite 22 week window, nonetheless, should an extension be necessary we strongly recommend that the statutory timeframe is extended by no more than 6 weeks, meaning an absolute maximum of 28 weeks.**

Furthermore, it is absolutely crucial that there is robust monitoring and review of the timeframe within which statutory assessments are conducted and, critically, that a robust record is kept of the number of cases where valid exceptions apply, and the reasons cited. We have great concern that the exceptions may be routinely cited as justification for exceeding the 22 week time limit. As recommended in our advice on the draft Regulations, **the Department must closely monitor the roll out of these new time limits as and when they are introduced, with particular scrutiny of the frequency with which exceptions are made.** **It is imperative that there is transparency regarding the requirement for valid exceptions and robust evidence provided to rationalise an exception. This must, in turn, be thoroughly reviewed by the Department and a centrally-held record of valid exceptions kept for monitoring purposes. No delays can be permitted without a reason for valid exception.**

Section 4 also reflects the nature of the advice to be sought at the statutory assessment stage. We reiterate our concerns and recommendations as set out in our advice paper on the Regulations; this includes that the new Regulation 9 reflects the option for EA to seek information from a school Principal, institution or any person responsible for the educational provision when considering whether to conduct a statutory assessment but that ‘*this information need not be in writing.*’ **This is not acceptable; a written record of any such information provided at the consideration stage must be provided and centrally retained for the purposes of transparency and accountability.**

Furthermore, draft Regulation 10 has also been changed to reflect that the EA may seek “**any or all**” of the advices listed for the purposes of statutory assessment. It is not clear why the decision has been taken to enable such optionality. This is a significant revision to the current Regulations and NICCY has grave concerns about enabling the EA the option of whom such advice should be sought. This needs to be revised immediately and the requirement re-placed on the EA to seek advice from all relevant sources.We are also concerned that the consideration of advice to be sought no longer references health treatments and services in the Regulations. Whilst the Code (Section 4.91) reflects that ‘*health advice and information may include any relevant treatment or service which the HSC Trust has assessed as likely to be of benefit in addressing the educational needs of the child’* this must also be explicitly addressed in the Regulations.

We note that Section 4 considers the role of private Educational Psychologist reports. It reflects that, where the relevant party submits reports made by private professionals as part of their evidence about the child, the EA should consider these along with the advice provided by the HSC Trust. In NICCY’s experience, parents have resorted to paying for private assessments as a result of lengthy times for assessment, resulting in disparate provisions dependent on whether a child’s family is in the financial position to pay for a private assessment. The use of private assessments reflects a lack of appropriate support at earlier stages of the Code; **we expect and emphasise that this must be addressed by the new SEN Framework.** **Private assessments cannot be used to enable some children more expedient access to supports than others; the Department and EA must ensure equal access to assessment and provisions regardless of socio-economic background.**

Another significant issue with the current SEN system is the lack of transparency regarding the statutory assessment process and the criteria for identifying and establishing the relevant provision for children with SEN in mainstream schools. *‘Too Little, Too Late’* identified a range of issues with the decision making processes at the statutory assessment stage. Therefore, it is welcome that Section 4.41 sets out the principles on which the EA’s criteria for deciding whether it is necessary to make an assessment (or, as appropriate, make a Statement). Most notable is reference to the fact that:

* EA should make best use of the resources available to it and ensure that those engaged in statutory operations fully understand and consistently apply the criteria and have the autonomy to make decisions on whether an assessment or Statement is needed; and
* Only where there is uncertainty on whether or not to make an assessment (or make a Statement), should referral be made to a wider group or panel to make a decision.

The latter is especially welcome as ‘*Too Little, Too Late’* highlighted significant issues and gaps regarding the EA assessment panels and the criteria used to make decisions.If a panel is convened, it is essential that a record of the session is taken and shared with the relevant party. **It is critical that the Department assesses EA’s adherence to the principles and the criteria set out in the Code when deciding whether to conduct an assessment, make and/or maintain a Statement. It will also be important to ensure that parents/carers, schools and other key professionals are familiar with the criteria, indicators, and factors/evidence to be considered at the statutory assessment and statementing stage.**

Stage 3: Statement of SEN

Where a child is at Stage 3 of special educational provision, the process to be followed by schools is generally clear. Section 3 reflects that the school retains responsibility for the day to day learning of the child at this stage, sharing responsibility with the EA and, where appropriate, the HSC Trust. It also notes that schools should continue to retain the PLP for a child even with a Statement. The PLP should reflect intended outcomes for the pupil informed by the objectives of the special educational provision to be made through the Statement. The PLP should also include the nature of the special educational provision which the EA and any relevant service and treatment the HSC Trust are to provide. We note revisions to the monitoring of provisions in the Statement. These arrangements are now to be included at Part 7 of the Statement, and expected to include detail on the monitoring of both special educational and non-educational provision. With regards monitoring Part 3, specific reference is made to the arrangements for preparing or revising the child’s PLP. **It will be important to ensure that schools are familiar with the need to continue to regularly monitor, review and evaluate the PLP as is expected, to form the key basis of the educational information to inform the annual review of the Statement.**

Consistent with our advice on the other Stages, we have considered the extent to which the Code addresses issues relative to the Statement further to the school role. In NICCY's experience, the predominant issues relate to the format, content, specificity and accuracy of Statements, and the robustness of systems for monitoring and review. These must be addressed by the new Framework. Section 5 of the Code provides detail on the proposed format of the Statement which is also prescribed at Schedule 2 of the draft Regulations.

We feel it is a significant shortcoming that the provision to be made by a Health and Social Care Trust is not to be identified at Part 3 of the Statement, as had been tentatively put forward in the proposed Schedule in the 2016 draft Regulations. We would appreciate clarity on why health and social care provision is no longer proposed to be included at Part 3 of the Statement. Rather, the new Regulations and Code propose that the non-educational needs are to be listed at Part 5 and health and social care provision listed at Part 6 of the Statement ‘non-educational provision’. We have grave concerns that this weakens the duty to specify provision within Statements given that there remain issues with the legal enforceability of Part 6 of the Statement and it is not subject to the same legislative requirements re’ specificity and quantification as Part 3.

Detail in the Code relative to Part 6 of the Statement (section 5.20) acknowledges that ‘*while every effort should be made to ensure that the relevant party is satisfied with the provision, it should be acknowledged that there may be occasions when this will not happen. If this is the case, the relevant party has the option to go to mediation or appeal to the Tribunal once they receive the completed Statement’*. We feel that this is not acceptable. As noted at section 5.73, the right of appeal only relates to the description in Part 2 of the Statement of the EA’s assessment of the child’s SEN; the special educational provision specified at Part 3 of the Statement; and the school, if any, named at Part 4 of the Statement. **We strongly recommend that the Regulations and Code of Practice are revised to ensure health and social care provision is required to be detailed at Part 3 of the Statement.**

Proposed content of the Personal Learning Plan (PLP)

NICCY has previously welcomed that the current Individual Education Plan (IEP) will be replaced by the Personal Learning Plan (PLP). There are presently weaknesses in the content, quality, and consistency in school approach to the development, application, review and evaluation of IEPs, as evidenced by *‘Too Little, Too Late’.* The Review also revealed inadequacies in the quality and effectiveness of IEPs in supporting children’s learning needs. Therefore, we welcome that the PLP will replace the current IEP under the new SEN Framework **and expect that this revised format will address the aforementioned issues.**

Bearing such issues in mind, we broadly welcome the intended purpose of the PLP, the fact that it is required to be used to record the current and historic special educational provision put in place to help a child’s progress, and to track whether that provision has led to improved outcomes at each stage of the new Code of Practice. It is helpful that the PLP is intended to pull together information about a child’s SEN, the impact of the learning difficulty and/or disability on the child in school, and factors which may be contributing to their needs. We support that the PLP is intended to focus on the expected outcomes for the child and is required to include detail on monitoring and review arrangements; and the outcome of the special educational provision on the child’s progress. This measurement of outcomes, and the provision of associated evidence on any progress made in achieving such outcomes, is absolutely essential and must be reinforced as a critical component of the PLP.

The Department’s consultation specifically assesses the proposed content of the PLP. The annexes that accompany the Code provide templates for each school setting (nursery, primary, post-primary and special); these are very detailed and provide a useful overview of the comprehensive detail expected to be included in the PLP. NICCY notes that the proposed PLP is lengthy, however, we recognise that the level of detail required is necessary in enabling a thorough record of a child’s needs; information on the resource and strategies put in place; and whether these are positively impacting on a child’s progress.Most critically, the PLP is intended to be a crucial evidence source for tracking a child's progress and, significantly, is expected to contain the information to be reviewed by the EA when considering what resources, support and advice is required for a child at Stage 2, as well as when the EA is seeking educational advice and information for the purpose of statutory assessment. In addition, it is intended to be a key evidence base to inform the annual review alongside the usual school arrangements for monitoring the progress of all pupils.

**Therefore it is critical that school staff are clear on the purpose of the PLP, its intended use, and the necessity to comprehensively complete and/or contribute to all elements of the PLP.** The LSC must be guided in fulfilling their role of ensuring that all children for whom special educational provision is to be made have a PLP prepared and implemented. The LSC must also be equipped to work closely with, advise and guide teaching staff, as appropriate, on the creation, monitoring and review of PLPs. Similarly, teachers in nursery, primary and special school settings must have relevant training and guidance to create, implement, monitor and review PLPs for the children in their class including any relevant advice from external agencies, as per the requirements of the Code. This must include ensuring that the LSC and teachers are clear on the type and nature of evidence that should be included should they propose that a pupil is to be moved to another Stage.

We welcome that the Code reflects that the PLP is a living document which should be kept under review. It is proposed that schools should review each phase of the PLP:

* At least termly in nursery settings – possibly more frequently if the nursery setting chooses to do so for specific children;
* Ideally termly in primary settings - possibly more frequently for some children; and
* Ideally twice a year in post-primary settings - possibly more frequently for some children.

**Regularity of review is essential and therefore it is imperative that the proposed review periods are adhered to as a minimum. Given the critical nature of the PLP as an information source for enabling access to specialist supports and for the purposes of statutory assessment, we are concerned that a twice yearly review is not sufficient in post-primary settings and recommend that this should be on a termly basis, similar to nursery and primary settings.**

**Further crucially is that parents/carers, children and young people are proactively involved and facilitated to contribute to the creation, implementation and monitoring of the PLP.** We welcome that Section 3 of the Codes notes the importance of parent and young person partnerships and seeking the views of the child when schools create and review the PLP. We also welcome that section 3.84 further outlines the role of the teacher and LSC in ensuring that the views of the child and the parents or young person on the pupil’s progress are sought and taken into consideration. **It will be important that the Department monitors the extent to which this obligation is realised by schools**. We note that teachers and LSCs have an important role in ensuring that the parent or young person is made aware if there is any substantial change to the PLP. **It is important that staff are fully informed of and adhere to this responsibility.**

Furthermore, in NICCY’s experience, parents/carers are not sufficiently informed about the purpose and process surrounding the development and review of the current IEPs. Therefore, it is essential that clear information is provided on the new PLPs and that evidence is provided that schools have fulfilled their obligations in this regard. To that end, we welcome that the Code sets out an expectation on the EA to develop a PLP fact sheet to facilitate consistency of approach across schools and that schools are required to provide this fact sheet to parents to ensure clarity of purpose. **We call for a similar fact sheet to be produced for pupils.**

We note that the Code of Practice highlights that short term targets or expected outcomes in a PLP should be ‘***set******for, or in******collaboration with, the child’***. It is absolutely essential that the child and parent have the opportunity to inform the outcomes set out in the PLP and therefore we emphasise the necessity for this to be a collaborative process, with active involvement of all relevant parties including the child. ‘*Too Little, Too Late’* emphasised the absence of a child-centred approach to the planning and development of IEPs.

We welcome that the Code reflects that the teacher (or LSC in post-primary settings) is required, as part of the evaluation and review, to consider how successful the provision has been in achieving the intended outcomes and what the next steps are in addressing the child’s learning needs, and that the PLP should show progression in learning and expectations. This is particularly important as ‘*Too Little, Too Late’* found profound weaknesses in the monitoring and evaluation of IEPs, and the extent to which these were sufficiently outcomes focused.

Others aspects of the Code relative to the development and review of PLPs are welcome including reference to the fact that the approach to the PLP completion and review for children with SEN is a whole school responsibility. Theoretically, should the Code be implemented as intended, the PLPs should be an effective tool. However, we are concerned that the Code does not outline how schools will be monitored to ensure that they are fulfilling their duties regarding PLPs. There is a lack of detail on how the quality of the PLPs will be assessed, any external inspections of the fulfilment of Governors’ duty to ‘prepare and keep under review...a personal learning plan’ for each pupil with SEN, or reference to any kind of enforcement mechanism which might be employed, if required. Nor does the Code provide information on any supports that will be provided to ensure that schools, not achieving sufficiently high standards in terms of identifying, assessing and meeting the needs of pupils with SEN, are enabled to fulfil their duties regarding the preparation and review of PLPs.

**We recommend that during its assessment of school’s SEN provision, the ETI should inspect schools on their ability to fulfil their duties regarding the preparation and review of PLPs**. As recommended in ‘*Too Little, Too Late’*, where health and social care provision is to be made, the RQIA should work with ETI to assess:

* the effectiveness of collaborative processes to support the joint planning and identification of pupil targets and outcomes in PLPs between education and health professionals;
* evidence from schools that children and parents/carers have been facilitated to actively contribute to the process; and
* the extent to which outcomes identified within PLPs have been fulfilled, and the strategies and approaches that have been effective in enabling such progress.

Transition planning

The transition planning is a critical stage in the life of a young person with SEN.

NICCY has previously consistently highlighted the need for strengthened processes and systems to ensure that the needs of young people with SEN are met when transitioning from children to adult services. This includes the need for integrated planning, person-centred planning, consistency of provision, access to information and the participation of children and young people with SEN in decision making[[3]](#footnote-3). We have also consistently advocated for the introduction of a statutory duty to co-operate to be introduced on Education and Health authorities in meeting the needs of children with SEN and when transitioning from children to adult services. NICCY warmly welcomes the introduction, in the SEND Act, of a statutory duty to co-operate on education and health authorities in the identification and assessment of children who have, or may have, special educational needs. We are also pleased that various parts of the Code set out the legislative requirements on health, social care and education to co-operate in respect of children with SEN. It is helpful that the Code reinforces that, under the Children’s Services Co-operation Act (Northern Ireland) 2015 and Article 12A of the 1996 Order, the EA and a health and social care authority must in particular co-operate in the preparation of a child’s transition plan. We also welcome that section 8.43 reflects that the annual review during the school year in which the child attains age 14 will also have a special significance with particular regard to the interface with HSC Trusts.

NICCY is supportive of the fact that Section 1.14 of the Code reinforces the requirement for a joint inspection team, made up of inspectors appointed by DE and the Health and Social Care Regulations and Quality Improvement Authority (RQIA) to consider the preparation of transition plans for children with a Statement starting during the school year a child attains age 14, as per Section 4 of the SEND Act. This is an extremely important development and will be critical in assessing the nature, strength and effectiveness of co-operation arrangements.

***Clarity of process***

In our separate advice paper on the draft Regulations, we note that the definition of transition plan has been revised. At Regulation 2, the focus is now predominantly placed on the fact that the transition plan is required to be prepared by the Principal and approved by an EA designated officer; there is no longer mention of the duty on education and health to co-operate in this initial definition. This proposed change in roles and responsibilities is further explained in the Code of Practice consultation document where the Department proposes that 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. Part of the reason for this change is that the school is expected to have better first-hand knowledge of the child concerned. This is a change from the present procedure as the EA currently holds responsibility for preparing a child’s first transition plan. Whilst the new role of the schoolis reflected in the new Code, it is imperative is that the Department ensures that schools are adequately prepared, equipped and supported to facilitate this role. We note a requirement on the EA to give each school directions regarding the preparation of the first transition plan. **Whilst this is welcome, it is most imperative that the Department and EA assess how this guidance is adhered to by schools. As such, a review of schools’ arrangements for preparing transition plans and arrangements for implementation should be closely assessed via the joint ETI/RQIA inspection team.This should include a review of whether young people and parents have been sufficiently involved in, and their views actively sought, as part of the transition planning process.**

Furthermore, all other stakeholders involved in the process including health and education professionals must be clear and assessed on, whether they have fulfilled their requisite roles. **Both training and guidance should be provided to all professionals, including schools, to ensure that this process is carried out consistently and that the necessary process for effective transitions planning is clearly detailed for professionals who will be carrying this out. Training on the shift in approach, the operation of the new duty and steps to ensure coherent planning processes for transitions planners will be an essential element in the effective operation of the new arrangements and the new duty to co-operate.**

**There are other areas of the transition planning process that require further clarity in addition to those considered above**. For instance, section 8.18 of the Code reflects that an EA Designated Officer (normally an Education Transition Officer) is responsible for approving a child’s first transition plan prepared by a Principal. If, on reviewing the transition plan, the EA Designated Officer considers an amendment or addition is needed to the plan, further advice and guidance may be provided to the Principal before approval of the plan is given. Once approved, the Principal is required to share the plan with the child’s parent. However, it is not clear whether a parent or young person has the opportunity to request a change or dispute the content of a transition plan before it is finalised. There is no detail on the requisite timeframe within which the EA should review and feedback on the first transition plan.

We recognise that any subsequent annual review, until the child leaves school or, no longer requires a Statement, should include a review of a child’s transition plan. However, it is not wholly clearwhether the proposed reduction in the regularity of annual review meetings will impact on the transition planning process. Detail is also required on the role of other key professionals in informing the transition planning process subsequent to the first meeting. Section 8.25 states that the school should make every effort to ensure the attendance of key stakeholders at annual review meetings for a child with a Statement post 14. This responsibility should not lie solely with the school. Other key professionals should be clear on their role in informing the transition planning process and the importance of their attendance at meetings.

We wish to emphasise the importance of ensuring robust supports to facilitate the transition of young people with SEN who do not have a Statement. NICCY believes it is a significant shortcoming that transition for young people with SEN but without a Statement is not addressed in detail in the new Code of Practice and Regulations. Initial proposals issued by the Department in 2009 recommended that access to transition services should be extended to all pupils with SEN and not just those with a Statement. However, in the 2012 Policy Memorandum this proposal was withdrawn due to concerns about the creation of ‘an increased bureaucratic burden on schools’. **Transition stages for all young people with SEN and/or disabilities are extremely critical and should be carefully planned, resourced and supported, regardless of whether the child/young person has a Statement.** We acknowledge that the Code reflects that the school should provide help and guidance *‘in some instances where a child approaching the age of 16 may have a special educational need for which they do not require a Statement to be maintained, but which is nevertheless likely to require some support if they go on to further education or training.*’ Whilst this is welcome, it shall be important to assess whether this support is readily provided by schools, and whether it facilitates ease of transition for all young people with SEN.

Finally, the Code reflects that the EA is not required to maintain a Statement in respect of students who have left school and are enrolled at institutions of further or higher education or attending training courses. Section 8.40 further reflects that the Education Transition Co-ordinator should advise the young person and their parents that the young person may need to provide colleges or training providers with further independent evidence, outlining the reasons why additional support may be needed. In NICCY’s experience, the cessation of support and the requirement to produce further evidence upon transfer can provide significant upheaval and distress to a young person. This must be effectively managed and appropriate support and guidance provided to the young person and their parents/carers prior to leaving school.

Conclusion

NICCY wishes to express our gratitude to the Departmental Officials who met with us in November 2020 to discuss the developments to the SEN Framework. As reflected in the introduction, this advice paper has not covered all aspects of the Code. We would be happy to meet further to discuss any element of this submission or provide additional information or clarification if required.

As per our advice on the draft Regulations, we reiterate some core aspects that must be addressed before commencing the SEN Framework. This includes the provision of appropriate funding and resources to enable the Framework to be effectively implemented. When the new legislative framework is implemented it will be important to ensure all the systems and processes work in the way intended. We anticipate robust governance and stringent monitoring of the Framework’s implementation which should include close review of relevant authorities’ adherence to the new legislative requirements. This must be enabled from the outset to ensure the new legislative framework beds down properly and meets its intended objectives.

Finally, the transition period from the current SEN Framework to the new Framework will be an unsettling time for many vulnerable children and young people and their families. It is vital to reduce the impact of this on children and their families and to avoid any disruption to the education of children and young people with SEN. The Department should ensure that children and their parents are given access to as much information about the transition – including timeframes - between the two Frameworks; information on the operation of the new system; what children and their families should expect; and the level of services that they can access. When transferring to the new Framework all pupils must continue to have unfettered access to all the educational and or health-related support and services they require. This responsibility on the Department and the Education Authority as duty bearers must be discharged in a manner which places the child at the centre of the process.

The Commissioner calls on the Department to take into account the recommendations made in this submission, which we provide in line with the statutory advice capacity under Article 7(4) of ‘The Commissioner for Children and Young People (Northern Ireland) Order’ (2003)’.

1. NICCY (March 2020) ‘*‘Too Little, Too Late’*’, A Rights Based Review of Special Educational Needs Provision in Mainstream Schools. Available at: [www.niccy.org/senreviewreports](http://www.niccy.org/senreviewreports) [↑](#footnote-ref-1)
2. NI Audit Office (2020) Impact Review of Special Educational Needs. Available at: https://www.niauditoffice.gov.uk/sites/niao/files/media-files/242135%20NIAO%20Special%20Education%20Needs\_Fnl%20Lw%20Rs%20%28complete%29.pdf [↑](#footnote-ref-2)
3. 2012 research, *“Review of Transitions to Adult Services for Young People with Learning Disabilities,”* carried out by Professor Laura Lundy, Dr Bronagh Byrne and Dr Paschal McKeown [↑](#footnote-ref-3)