

Briefing on the new SEN Framework June 2021

The Commissioner for Children and Young People (NICCY) was established 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. This legislation confers on NICCY a range of powers and duties including keeping under review the adequacy and effectiveness of law, practice and services, advising government, monitoring delivery, promoting an understanding of children’s rights and best interests and bringing, assisting or intervening in legal proceedings. The remit of the Office covers children up to 18 years, or 21 years of age if the young person has a disability or is care experienced.

**Introduction**

The provision of appropriate, effective, and timely support and services to children and young people with Special Educational Needs and Disability (SEND) is a critical issue for NICCY. 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 as per Articles 28 and 29 and the principles of the United Nations Convention on the Rights of the Child (Articles 2,3, 6 and 12).

For too long, there have been excessive delays in the assessment and statementing process and in too many cases children with SEN have not been receiving the support they need in a timely fashion. Such issues have become all the more prevalent in recent years, with evidence highlighting the need for systemic reform to ensure the needs of children with SEN are met in both mainstream and special school settings. This includes ‘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. The Review revealed persistent delays in accessing specialist supports at all stages of the SEN process; significant inconsistencies across the region in relation to the accessibility of specialist provision in mainstream schools; and poor quantity and quality of supports and services for children with SEN. Other recent reviews have added to the evidence base for systemic change, including the Public Accounts Committee, Northern Ireland Audit Office’s SEN Impact Review, the EA’s Improvement Plan and the DE SEN Learner Journey Project. We are encouraged by the establishment of the SEND Strategic Development Programme which aims to provide a single structure through which the entire NI SEND change agenda can be managed strategically, drawing together development work which is already underway across various agencies. NICCY is a member of the SEND Strategic Development Programme Board, through which we advise on the implementation of the ‘Too Little, Too Late’ recommendations and progress made on the SEND change agenda more generally.

The delay in the commencement of the Special Educational Needs and Disability Act (Northern Ireland) 2016 (the SEND Act) provisions, together with the delay in the release of the revised draft Regulations and Code of Practice, have exacerbated existing pressures on the SEN system. Whilst we are encouraged that some progress has been made in commencing implementation of the SEN Framework, we have a number of significant concerns about the content of the revised Regulations and new Code of Practice which need to be addressed to facilitate the systemic improvements required from the new Framework. This includes concern about the proposed format of the Statement; the proposed separation of health and educational provision; advices to be sought at the statutory assessment stage; and some of the issues in the Code which are inconsistent with a child’s rights approach to inclusion.

Earlier this year, NICCY made [comprehensive submissions to the Department of Education](https://www.niccy.org/publications/2021/january/19/sen-regulations-and-code-of-practice/) in response to its consultation on the new SEN Framework. These papers framed the key issues in the context of the UNCRC and the findings from ‘Too Little, Too Late’. Importantly, our submissions identified issues beyond that set out in the Department’s consultation on the draft Regulations and Code of Practice. A synopsis of just some of the predominant issues is presented in the paragraphs that follow.

* **Proposed revisions are not sufficient in reducing the timeframe to complete a statutory assessment and issue a Statement**

The new SEN Framework proposes to reduce the time limit for the issue of a completed Statement from 26 weeks to 22 weeks but only where there are no ‘valid exceptions’. Where valid exceptions apply, this time limit could be increased to a maximum of 34 weeks; an unacceptable delay constituting the vast majority of a school year. We query whether the extent of the delay is warranted and request further detail on the rationale for the proposed length of the extensions. **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, 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 need to be 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.**

* The proposed distinction in education and health provision is at odds with the ethos of cooperation, which is integral to the new SEN Framework, and to fulfilment of obligations as per the Children’s Services Co-operation Act (CSCA)

We have significant concern that revisions to the draft Regulations affect health/education cooperation, and the format of, and therefore specification in Statements. The new Regulations and Code of Practice propose that the health and social care provision is to be listed at Part 6 of the Statement ‘non-educational provision’, rather than Part 3 ‘special educational provision’. This fundamentally weakens the duty to specify provision within Statements as Part 6 is not subject to the same legislative requirements re’ specificity and quantification as Part 3. **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.**

This distinction between health and education in both the Regulations and Code is clearly at odds with the ethos of cooperation, which is integral to the new SEN Framework and to fulfilment of obligations as per the CSCA.

Furthermore, the newly proposed Regulation 10 no longer refers to health treatments and services at the list of provisions to be considered by the EA when obtaining advice for the purpose of assessment or for potential Statements, as was set out in the draft 2016 Regulations. This proposed revision to the Regulations diminishes the obligations regarding cross-departmental co-operation with regard to the assessment of children’s needs and provisions as set out in the Statement. **Much further consideration must be given to this issue, and detail provided by the Department on how it proposes to ensure that the EA is required to collect advice on all aspects of a child’s needs.**

The proposal that ‘primary need’ is to be recorded at Part 2 is also unacceptable. There is a very significant risk that this will result in the overlooking of a child’s other needs, with the unacceptable consequence that these further needs are not provided for at Part 3 of the Statement. **There must be the facility to record for the full range of a child’s needs in the Statement.**

* **Schools must be appropriately supported to fulfil their duties under the new Framework**

The SEN Framework places new and additional responsibilities on schools. For instance, there are new responsibilities relative to the preparation, implementation, and review of Personal Learning Plans; to produce an annual ‘map’ of the types of special educational provision that schools will deliver to support the three Stages; and to prepare a pupil’s first transition plan. **Schools must receive thorough, continuous training relative to all new aspects, an initial appraisal of schools’ readiness must be undertaken, and ongoing monitoring of fulfilment of all duties must be conducted by the Education and Training Inspectorate.**

The SEND Act requires every mainstream and special school to designate a teacher as Learning Support Coordinator (LSC), however, 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**.

* There must be no undue delay or obstacles in accessing support at any Stage of the new SEN Framework

The new SEN Framework proposes 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, it is suggested that a child is only moved to Stage 1 of the SEN Register and special educational provision implemented only if the child continues to experience significant difficulties and does not make progress despite whole school educational provision being fully implemented.

**It is critical that the focus on whole school educational provision does not detract or delay from the provision of early intervention approaches. Schools must be supported to ensure that children’s needs are assessed at the earliest opportunity and appropriate supports provided.**

Furthermore, it is proposed that a child 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.**

It must be noted that a significant number of issues associated with the current SEN system relate to the challenges in gaining access to additional specialist supports. It is essential that such issues are addressed at Stage 2 of the new SEN Framework. **As part of this, a central mechanism must be established 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.**

* Further work is required to ensure that the new Framework protects children’s needs and best interests

In order to ensure that the draft Regulations and Code of Practice are truly child’s rights compliant, we recommend that the Department engages in a Child’s Rights Impact Assessment (CRIA). This is essential in ensuring a robust consideration of any impacts that the proposals may have on children’s and young people’s rights, and the modifications required to mitigate any negative impacts.

We feel that Section 14 of the Code, which focuses on ‘Inclusion of Children with SEN and/or a Disability’ particularly warrants further scrutiny by a CRIA. Whilst we welcome the Department’s intention to provide guidance to facilitate inclusive education, nonetheless, there are significant issues with this section including with regards the strategies proposed. Indeed, some of the proposals contained within Section 14 run the risk of exclusionary or discriminatory practices. We have particular concern about the detail at Section 14.36 which suggests that a reasonable adjustment may involve placing a child on a reduced school day. This is fundamentally flawed and must be omitted from the Code. **NICCY recommends that the Department reviews and re-writes this Section of the Code to ensure no potential discriminatory or exclusionary implications.**

* **Children and Young People’s current provision must not be affected by the transition to the new Framework**

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. This is absolutely crucial as the current school term comes to an end. It is further crucial given activity by the Department and EA in readiness for the new Code commencing in the future; e.g., the fact that the replacement of the current five stages by the new three stages on the Schools Information Management System (SIMS) is underway. Clarity is required on anticipated roll out and further details provided by the Department with regards the recent funding announced for schools to facilitate the implementation of the new SEN Framework.

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.

**Conclusion**

NICCY welcomes the opportunity to provide evidence to the Committee on the new SEN Framework. Going forward, we ask the Committee to note the range of issues to be addressed beyond the scope of the Department’s consultation as we have significant concern that this was unduly limited. We also wish to emphasise that significant alterations were made to the draft Regulations which were not drawn out in the consultation documentation. Therefore, NICCY reiterates the pressing need for the Department to provide detail on all changes and additions not referenced in the consultation documentation, a rationale for the changes, and a consideration of associated implications.

We look forward to further working with the Committee as it continues its scrutiny of the Department’s consultation analysis, the associated revisions required, and further implementation of the new Framework. We also welcome the opportunity to further update the Committee on progress made by relevant authorities in addressing the recommendations from ‘Too Little, Too Late’ and in implementing the SEND Change Agenda overall.

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)