

Summary Report of Consultation Responses

Special Educational Needs (SEN) Regulations

June 2021

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SECTION 1 – Introduction

The New SEN Framework

The Special Educational Needs and Disability Act (Northern Ireland) 2016, known as the SEND Act, received Royal Assent in March 2016. The SEND Act introduces important changes to the Education (Northern Ireland) Order 1996 (the 1996 Order) which contains the current primary legislation provisions relating to Special Educational Needs (SEN). The provisions covered by the SEND Act have, in the main, yet to be commenced as they are dependent on having in place the necessary supporting SEN Regulations and Code of Practice. Collectively, the SEND Act 2016, the new SEN Regulations and new Code of Practice are known as the **new SEN Framework**.

Consultations on the draft SEN Regulations and draft Code of Practice

The draft SEN Regulations and draft Code of Practice (SEN Code) were each subject to public and targeted consultations which the Minister launched on 30 September 2020. The consultations were due to run for 12 weeks until the 19 December 2020, however due to the on-going pandemic and associated lockdown measures which included the closure of schools, the closing date for the consultations was extended and they concluded on 02 March 2021. A number of respondents indicated that the timing of the consultations, in the midst of a pandemic, did not provide enough time to allow for full scrutiny of the documentation. While the Department acknowledges the views of the respondents it is important to highlight that there has already been significant delay in bringing forward changes to SEN Regulations and associated Code of Practice and the Department did not wish to delay any further. It should also be noted that two extensions were granted to the deadlines resulting in the consultations being open for 22 weeks.

The Department attaches importance to its consideration of all of the responses received and has taken care to fully understand and reflect the range of perspectives that respondents provided. The Department wishes to take this opportunity to thank all those who responded to the consultations for taking the time to express their views.

The remainder of this document focuses on the responses to the consultation on the SEN Regulations; a separate document has been prepared in relation to the Code of Practice consultation. This document is a summary of the findings and does not list all individual comments received.

The draft SEN Regulations

The draft SEN Regulations are divided into 9 parts containing 52 Regulations and 3 Schedules as follows:

Part I	General
Part II	Education Authority Plan of Arrangements for Special Educational Provision
Part III	Board of Governors
Part IV	Assessments
Part V	Statements
Part VI	Children over Compulsory School Age
Part VII	Mediation and Appeals
Part VIII	Compliance with Tribunal Orders and Unopposed Appeals
Part IX	Revocation and Transitional Provisions
Schedule 1	Additional Information to be contained in Notices
Schedule 2	Statement of Special Educational Needs
Schedule 3	Compliance with Tribunal Orders and Unopposed Appeals

Parts II, VI and VII are completely new. Other parts include significant changes to the 2005 SEN Regulations in order to bring improvements to the processes and statutory timeframes within the SEN Framework.

In the course of developing the consultation version of the draft SEN Regulations, the Department discussed and considered comments from schools, EA, and Health and Social Care authorities (HSCTs) who are key to ensuring the effective delivery of the new SEN Framework. The Department wishes to thank all those who provided input and views.

SECTION 2 – CONSULTATION METHODOLOGY

The consultation was advertised on the Department's website, social media pages, NI Direct website and via the C2k network which provides the Information and Communication Technology (ICT) service for all grant-aided schools in Northern Ireland. The consultation documents were offered in different formats, available on request, and an easy read version of the consultation document was made available on the Department's website.

The consultation consisted of the following eight documents:

- a) Consultation document on the SEN Regulations
- b) The draft SEN Regulations
- c) Summary guide on Regulations for parents and young people
- d) Easy Read – Changes to SEN law
- e) Equality and Human Rights Screening – SEN Framework 2020
- f) Rural Needs Impact Assessment – SEN Framework 2020
- g) Data Privacy Impact Assessment – SEN Framework including PLP 2020
- h) Privacy Notice for DE Consultations on new SEN Regulations and the new SEN Code of Practice

Consultation on the proposed new SEN Regulations was undertaken through two processes: public consultation and targeted consultation. A list of responses submitted via Citizen Space and by email can be found at Annex B, this does not include the names of individuals who responded.

Public Consultation

The public consultation was managed through the NI Direct Citizen Space online portal. Questions 1 & 2 related to the individual or organisational identity; thereafter respondents were directed to reply to specific questions that related to the proposed key changes to the Regulations as follows:

- Q3. Do you agree that the proposed experience requirements for the Learning Support Co-ordinators (LSC) are sufficient for them to fulfil their role?

- Q4. Do you agree with the proposal to introduce a maximum time limit for the EA to issue a completed Statement?
- Q5. Where an annual review of a Statement is taking place in any year a meeting is not required, do you agree that the parent or young person over compulsory school age can ask for a meeting?
- Q6. Do you agree with the introduction of time limits for the EA to inform the parent or young person over compulsory school age of the outcome of the annual review of the Statement?
- Q7. Do you agree with the proposed list of people who can assist and support a young person (child over compulsory school age) to exercise their rights within the SEN Framework?
- Q8. Do you agree with the proposed list of people who can raise a question about a young person's lack of capacity to exercise their rights within the SEN Framework?
- Q9. Do you agree with the timescales regarding the mediation process?
- Q10. Do you have any other comments you wish to make on the draft Regulations?

In total 207 responses were received to the consultation: 186¹ via Citizen Space and 21 via email. Respondents were directed to answer each question as Strongly Agree, Agree, Neither Agree or Disagree, Disagree, Strongly Disagree or Don't Know. A free text box was also provided against each question facilitating the respondent to add more context to their answer if they wished; respondents could also leave the answer to a question blank but provide commentary in the free text box.

Email responses received were a combination of structured i.e. answering specific (all or some) questions posed or were unstructured, i.e. not specifying which question(s) the response related to. As all responses did not reply as directed, we are unable to publish statistics in relation to these responses, however these responses have been included in the analysis within this report. Where statistics have been included in the report, these relate to the responses received via Citizen Space.

¹ 12 of the 186 were originally received by email but as they matched the online portal format they were uploaded by DE staff with the permission of the respondent.

Targeted Consultation Work

The public consultation was complemented by a targeted approach to secure more in-depth feedback on some of the specific changes that are being proposed from those who will be most affected by them, that is, children and young people with SEN and their parents/carers.

Parents/Carers²

The targeted consultation with parents was taken forward by Parenting NI on behalf of the Department. It was agreed to use a focus group approach so that parents could be supported more effectively and also to support them to express their views through the completion of one to one surveys. In total 46 parents participated in this consultation: the 46 participants had a total of 76 children ranging in age from a few months old to over 19 years old and covered all phases of school i.e. nursery, primary, post-primary and special. The parents were also representative of rural and urban/suburban communities.

The focus group method of collating information brought parents together in a way that enabled them to share their views and identify issues both of individual and common concern through informal, stimulating discussion.

The consultation focused on the following questions in relation to the Regulations:

1. Are you content with the 3 years' experience requirement for the LSC in a nursery, primary or post-primary school?
2. If your child is going through, or has gone through, the statutory assessment and making a statement process, do you agree that an upper limit for completion of the process is a good idea?
3. In the years when a review meeting is not scheduled a parent or a child over compulsory school age can still ask for a meeting and if they ask for such a meeting it must be held. Are you content with this?
4. If they have decided not to amend the Statement the EA will have 14 days to inform you of their decision. Are you content with this?

² Throughout this document when parents are referred to this encompasses carers also.

5. If they have decided to amend or cease a Statement they will have 4 weeks to inform you of their decision. Are you content with this?
6. Are you content with the list of people who can help a child who is over compulsory school age to exercise their rights?

Children and Young People

The targeted consultation with children and young people was taken forward by the Youth Service within the Education Authority (EA). A total of 81 schools were contacted and 37 schools agreed to participate. Unfortunately some schools had to withdraw due to the coronavirus pandemic which resulted in a total of 21 schools participating in the consultation, covering 249 children and young people; ranging from year 5 to year 14. The methodology for gathering these views consisted of the completion of a questionnaire and a workshop.

The focus of the consultation with children and young people was on the new rights for children over compulsory school age as detailed in the 2016 SEND Act and how these are reflected in the new draft SEN Regulations, that is, changes proposed for the annual review process (for children and young people with Statements only); and the list of people who will be allowed to help young people who are over compulsory school age to exercise the new rights they will have under the law (rights previously held by their parent(s)) and on the Personal Learning Plan (PLP). It should be noted that due to the exceptionally small number of young people over the age of 16 who participated in the survey, it was not possible to thoroughly investigate the additional rights of review and representation that are given to this group of young people.

Responses from children and young people in relation to the PLP are summarised in the consultation report completed on the new SEN Code of Practice.

SECTION 3 – SUMMARY OF PUBLIC CONSULTATION RESPONSES

This section of the report focuses on the responses received to the public consultation. Respondents were encouraged to respond using the online portal however a number of organisations felt that this process was too restrictive and did not provide sufficient opportunity to fully express their views so they submitted a response via email. It is also important to note that respondents were not compelled to answer each question, so at times the percentages provided detail only of those that answered that specific question.

As explained earlier in this report, 207 responses were received to the consultation: 186 online via Citizen Space and 21 via email.

Breakdown by respondent type

Responded as	Total	Percent
An individual (online)	82	39.61%
On behalf of an organisation/company (online)	104	50.24%
On behalf of an organisation/company (by email)	21	10.15%
Total Responses	207	100%

Of the 104 online responses received on behalf of an organisation, 79 were from schools and 25 from other organisations. Of the 79 responses from schools it should be noted that eight of the responses came from different people within one school and a further four schools submitted two responses each. Of the 25 responses from other organisations it should be noted that two of responses stated they were from an organisation but personal email addresses were used and the organisation in question submitted a corporate response. A further two organisations submitted individual responses, plus a further joint response.

The 21 responses received via email were all from organisations, five of which identified as being from schools and 16 from other organisations. It should be noted that one of the five responses from schools actually covered six schools within one Area Learning Community (ALC).

SECTION 4 – FINDINGS

As stated earlier, questions 1 and 2 refer to the identity of the individual or organization and therefore specific questions on the Regulations commenced at question 3 in the consultation documentation. The responses in relation to each question are covered in the subsequent pages.

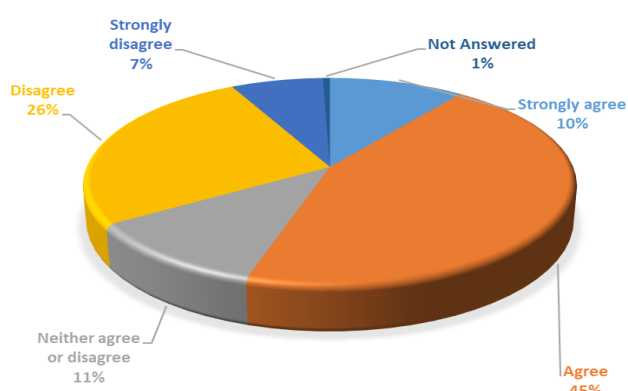
Q3: ED1/21/114887

Department's proposal:

To introduce a minimum level of experience for this role as follows:

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

There were a total of 185 responses to this question via the online portal, one respondent did not answer but did provide comments in the free text box. 24 of the respondents were from organisations, 79 responses were received from schools, and 82 respondents were individuals.



While 55% of online respondents indicated they were content with the proposed experience requirements for a LSC, 33% were not content. Some responses indicated that a minimum of five years would be a preferred level however agreed with the three years' experience if underpinned by regular reviews and appropriate training. The ratings and comments received online have been echoed by those who submitted responses via email, therefore the following commentary covers responses online and via email.

[Summary of comments received \(online and by email\)](#)

- These changes have the potential to improve the experience for all concerned and also to improve the outcomes for the children and young people affected. Therefore the Department should be encouraged to introduce the changes as soon as reasonable and practicable.
- Some respondents felt that three years' experience was too much and have indicated that schools may not have sufficient staff to take on the role of an LSC, i.e. rural schools are smaller and therefore this role may fall to the principal of the school. It was suggested that minimum criteria should be encouraged, but not essential, with Board of Governors instead able to assess candidates on the basis of school needs and specific circumstances.
- Respondents highlighted the need to protect those that currently carry out the Special Educational Needs Coordinator role and that their years of experience should count towards that required for an LSC.
- Comments reflected that the experience requirements are fairly minimal in nature and it was recommended that this be underpinned by a formal qualification or mandatory continuous improvement programme.
- It was also reported that the role and time commitment for an LSC would be different for each school due to the size of the school, number of children on the SEN register and their individual needs. Also raised as a concern was that no limit has been specified for the number of pupils an LSC was responsible for.
- Funding for the role of an LSC was mentioned in various responses including the need for schools to have adequate resources and funds to ensure the ongoing development of both the role and skills.

Views from parents

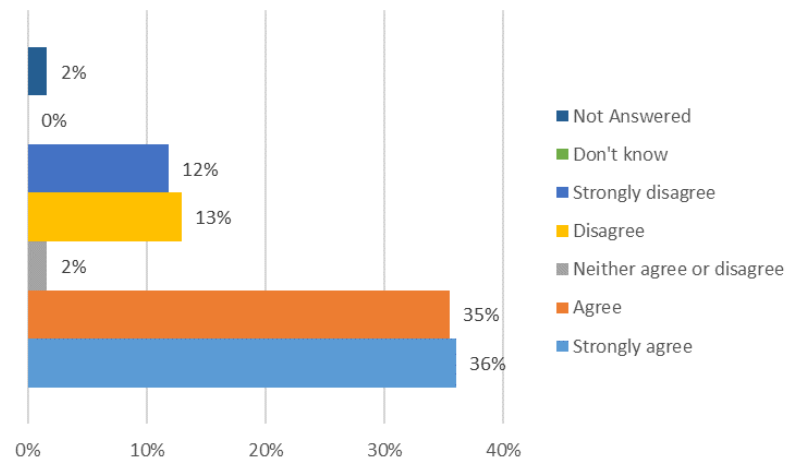
Through the targeted consultation 43% of parents reported that three years' experience for an LSC in a mainstream school was not sufficient; and 72% were not content with an additional years' experience for a special school. They reported that special educational needs are very wide ranging and more children are presenting with complex needs and abilities.

Q4: Do you agree with the proposal to introduce a maximum upper time limit for the EA to issue a completed Statement?

Department's Proposal:

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

There were 183 responses to this question online; three respondents did not answer the question, however two of them provided comments and one respondent replied "Don't know" but did provide comments. 25 respondents were from organisations, 79 from schools and 82 were individual respondents.



The majority of responses agreed with introducing an upper time limit for completion of the statutory assessment and statementing process and this was mirrored by the responses received via email. A number of responses also highlighted the need to ensure that appropriate governance arrangements are put in place for both the EA and Health and Social Care Trusts to ensure these time limits are adhered to and that the use of 'valid exceptions' are applied correctly, consistently, and their application monitored.

Summary of comments received (online and by email)

- The need for improved communication between EA and Health.
- Greater use of technology rather than a paper-based system.

- A number of respondents felt that the introduction of upper time limits was admirable, but optimistic given the significant flaws in with the current system and the inability of the EA to meet the current 26 week deadline.
- The respondents who disagreed to the upper time limit wished to see the time limit of 22 weeks reduced further.
- Some respondents were concerned that the upper time limit might be used as the 'rule' rather than the exception.
- The Regulations as currently drafted require Health and Social Care Trusts (HSCT) to request the use of a valid exception from the EA and for the EA to approve, this should be changed to inform the EA that a valid exception is being applied and the reason why.
- There is no mechanism to adequately hold EA or others to account should they fail to meet the statutory timeframes.

Views from parents

100% of parents agreed with the introduction of upper time limits and commented that the existing process was too far too long, too cumbersome, and bureaucratic. 93% of parents wanted to be able to track their child's progress through the assessment and statementing process through the use of an online portal. It was also acknowledged that not all families have online access or use of a printer, so hard copies in some instances would still be required.

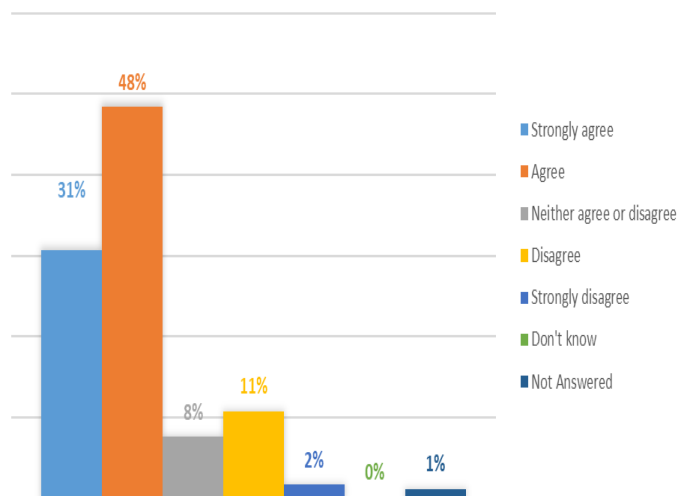
Question 5: Where an annual review of a Statement is taking place in any year a meeting is not required, do you agree that the parent or young person over compulsory school age can ask for a meeting?

Department’s Proposal:

The principal may have a meeting in any year, but there should always be an annual review meeting:

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

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



This question was answered by 184 respondents and two respondents provided comments only. 25 responses were received from organisations, 79 were from schools and 82 from individuals.

The majority of responses (79%) strongly agreed or agreed with the proposal that a parent or young

person over compulsory school age can ask for a meeting. It should be noted that from additional comments provided it would appear that quite a large number of respondents seemed to think it is the actual annual review of a Statement that will only be required in certain years. This is incorrect, a child’s Statement will continue to be reviewed annually, however it is an actual “meeting” that may not be required as part of that process. The EA will provide schools each year in September details of the annual reviews that are due and when they are due for completion.

Summary of comments received (online and by email)

- If all parties are content with special education provision a full annual review report should not be required and instead a more succinct report document should be produced for submission to EA.
- Concern was raised that parents who lack confidence or knowledge of the system will not request a meeting, even though they feel it is required and therefore important information is not shared and the child/young person's educational progress will not be shared and lead to escalation of problems at a later stage
- These reviews provide a valuable opportunity for parents to have a voice in presenting and discussing evidence on their child's progress, therefore the process and any associated guidance needs to be clear and unambiguous as some parents may not fully understand their rights due to their own SEN.
- Parents and young people should be provided with a clear option to request an annual review meeting rather than being informed about their right to request one.
- Concern that this approach required parents to opt-in to have a meeting rather than opt-out approach.

Views from parents

52% of parents agreed that they should be able to ask for a meeting, while 20% were not sure. Parents felt that a meeting needs to be offered and schools should contact parents and ask them if they wish to have a meeting, as it can be difficult sometimes for parents to remember all the appointments children need to attend, especially if they have more than one child with a SEN.

Parents also felt it was an important process as some children behave and/or react differently at home than they do in school, so it is important to have a meeting so a holistic view of the child can be recorded.

Views from children and young people

In general children and young people stated they are happy to attend a review meeting. Young people also favoured having a trusted adult to attend a review meeting

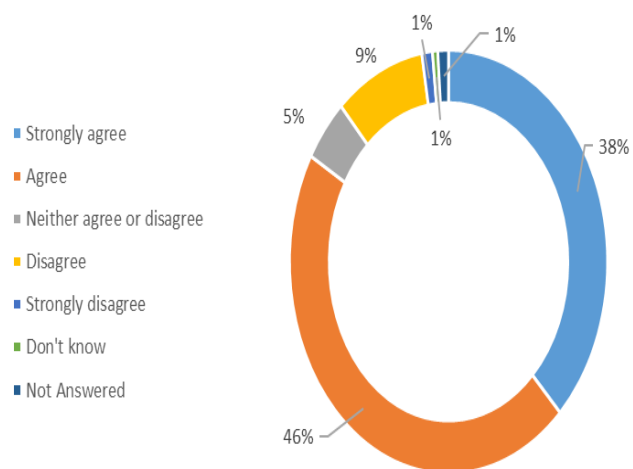
with them and were also content with a parent or guardian exercising a right to call a meeting where one was not scheduled.

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

Department's Proposal:

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

There were 184 people who responded to this question and one who did not answer the question. One respondent replied "Don't know" and provided comments to support this response while a further respondent providing commentary only. 83% of respondents responded positively to this proposal (67 of these were schools) and felt that this was a significant improvement to the SEN Framework.



While the response to this proposal was mainly positive, a small number of respondents did caution that adequate time must be given to the HSCTs to provide the necessary input and that time limits alone do not deliver what is needed in the system for both the child/parent and the school. While supportive of the proposal concerns were raised that this may lead to the EA communicating directly with the pupils over compulsory age and parents not being kept informed.

Summary of comments received (online and by email)

- Consider the use of a flow chart format for ease of understanding for student, family and the school. Often families are extremely upset as they do not fully understand the system or timelines/ appeal position etc. due to the way the information is presented.
- Information provided to the child/young person should be age appropriate and clear and prepared in their preferred format; Braille, large print, electronic etc.
- Parents must also receive communication as there is potential for the responsibility to fall upon schools to inform parents of pupils over compulsory school age of the outcome. EA must be more willing to communicate the outcome of their decision making directly with parents, especially when they propose to review or amend provision. At present they rely too readily upon schools to communicate their intentions around provision.
- While supportive of the proposal, the reality for many service users is that, in practice, the annual review processes are neither followed nor adhered to, neither in relation to the notice required nor in relation to the information which should be provided to a parent ahead of a review or following a review.
- On occasions, requests for amendments to statements following annual reviews have either not happened or happened at an unreasonable timeframe – so yes this is welcomed.
- There is a further lack of clarity for schools in the continued use of hard copy material. In the twenty first century it is incredulous that all records will not be in electronic/digital format.
- Welcome the time limits for the EA to inform the relevant parties of the outcome of annual reviews, however without investment the EA will be unable to meet these requirements and priority must be given to focusing on immediate and timely delivery for the young person.

Views from parents

When asked this question, 80% of parents agreed with the 14 days proposed for the EA to inform parents of a decision not to amend a statement however they queried why 14 days was needed if the response could be delivered by email. 72% of parents disagreed with the timeframe of 4 weeks to inform a parent of their decision to amend

or cease a statement – they felt this was far too long. They also queried why there was a difference in timescales and felt that if the statement is ceasing they should be informed as soon as possible so the parents can plan. Parents also responded that they didn't think that any timescales would be adhered to as they haven't in the past but appreciate the new Regulations are trying to address this issue.

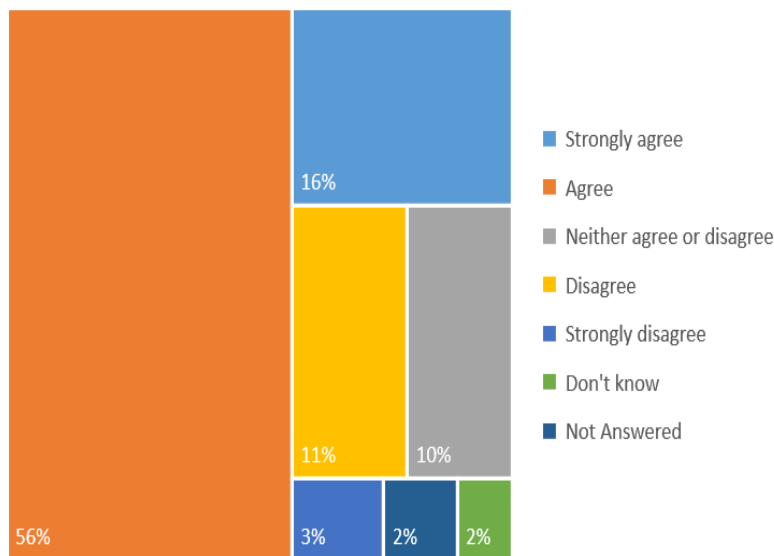
Views from children and young people

11 young people replied to this question through the on-line survey; nine were content and two were not, however no further commentary was provided to explain the responses.

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

Department’s Proposal:

Children over compulsory school age can appoint someone to help them exercise their rights, if they so wish to do so. The EA will be required to respect the appointment and recognise the assistance and support for the young person. Such assistance and support can include: legal advice; services and representations; assistance with the young person’s understanding of any information or Notices received from the EA; attending meetings, discussions, mediation, appeals etc; assistance in the completion and submission of any necessary paperwork; provision of, or assistance with, representations for submission to the EA; or in accepting the service of Notices. The proposed people are: a parent; a representative (over age 18); or a solicitor, barrister or other legal representative.



For this question 184 people responded; 2 respondents did not answer the question but did provide comments. Over 72% of respondents strongly agreed or agreed with this proposal.

Respondents felt that this was a positive step towards the transfer of rights to pupils and that a young person with SEN is provided with as much support and advice as possible from those professionals who know them best. While the majority of responses were positive, a number of those respondents did question the need for legal representatives and felt that someone with an educational background is better placed to explain any specific question to the young person. 14% of respondents strongly disagreed or disagreed and felt that there should

not be any opportunities for legal representatives at the initial stages in a school setting and that clarification was required as to the stage legal representation can be involved.

Summary of comments received (online and by email)

- Consideration needs to be made on how children and young people can be supported to exercise their rights within the SEN Framework if they have underlying speech, language, and/or communication, visual impairment and/or other sensory needs.
- Include in the list, a specific reference to advocates or support workers from voluntary and community sector groups, and from the organisations representing the voice of young people in care, foster and kinship foster carers.
- The term representative is much too broad and a list needs to be made of who may qualify as a representative for the pupil in the light of the duties they may need to carry out. It would be important that the representative is someone who has the ability to act in the best interests of the pupil.
- Sufficient time must be allowed for the young person to seek the support and consideration also needs to be given to how the support will be funded, i.e. will legal aid be provided to cover the cost of legal representation.
- If a child has a legal representative then the school should also have a legal representative.
- Regulation 23 must be strengthened as children and young people must be provided with information and guidance on how to select a representative to assist them (not just a list as currently presented in legislation).

Views from parents

In response to this question, 54% of parents were content with the proposed list, 20% were not content and 26% were unsure. The focus from parents is that the person who provides support has to be someone who knows the young person, their abilities and capabilities, and that people such as day centre staff and youth centre staff should be added to the list.

Some parents queried why legal representatives were included on the list and felt this was not appropriate. Other parents were concerned that this was an awful lot of responsibility to place on a 16 year old as they can be very impressionable and some

are easily taken advantage of. This question did raise concern from a number of parents regarding exploitation of the young person and the influence the person providing support to them may have and the need for appropriate protection mechanisms to be put in place to safeguard everyone involved.

Views from children and young people

In relation to this question, almost all young people were content with the list of people who can help them, only one respondent was not content. However, it should be noted that the maximum count of respondents that could answer this question was 13, so the response data is limited.

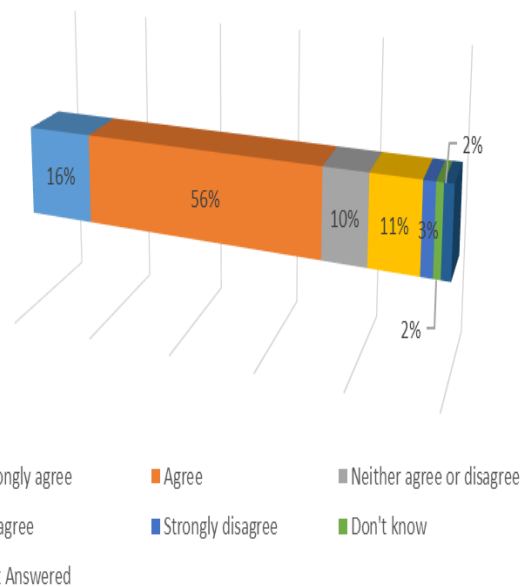
Question 8: Do you agree with the proposed list of people who can raise a question about a young person’s lack of capacity to exercise their rights within the SEN Framework?

Department’s Proposal:

To add to the list (when compared to the 2016 draft version of the Regulations) those who can raise a question about a young person’s lack of capacity to exercise their rights within the SEN Framework. The proposed people are: the young person (child over compulsory school age); the parent of the child; the EA; the child’s school (the responsible body); the Tribunal; a health care professional who has experience working with the child in a professional capacity; or a social worker who has experience working with the child in a professional capacity.

There were a total of 182 responses to this question, including three that replied “Don’t know”. Of the four that did not answer the question, two respondents provided comments.

While over 72% of respondents agreed with the list of people that can raise a question about a young person’s lack of capacity, a number did question the lack of clarity around how these young people will be tested and by whom to determine capacity. The same concerns were also expressed by those that disagreed and strongly disagreed with the proposed list of people. They also wish this person to know the individual and have sufficient detail about the young person and their education to be able to pose appropriate questions.



It was also commented that whoever might raise a question about a young person’s lack of capacity must do so honourably and in the best interests of the young person. It is also important to remember that a young person’s capacity may be fluid, as it could change over time and across a range of circumstances.

Summary of comments received (online and by email)

- Concerns regarding the definition of capacity and that many young people over compulsory school age, regardless of SEN, are not fully equipped to make potentially life-changing decisions about their education and future.
- Recommend that the young person is fully supported in selecting their representative and that the representative should have a good working knowledge of the SEN system and process.
- Include in the list, a specific reference to advocates or support workers from voluntary and community sector groups, and from the organisations representing the voice of young people in care, foster and kinship foster carers. Also consider inclusion of relevant HSC staff e.g. ‘a health care professional who has experience working with the child over compulsory school age in a professional capacity; and, a social worker who has experience working with the child over compulsory school age in a professional capacity.’
- Regulation of the level of training and experience required of capacity assessors within the EA, as is the case with those carrying out capacity assessments in mental health matters, to ensure that all decision-makers are competent in and confident with what is required in undertaking the assessment process.
- There should be more specific reference to the evidence and the process in determining capacity, rather than believes a young person lacks capacity. There needs to be detail and evidence provided on how the decision was reached.
- Further work should be carried out on the Regulations regarding “alternative persons” to take account of amendments that may become necessary due to further implementation of the Mental Capacity Act (NI) 2016 under which enduring powers of attorney will cease to exist.

Views from parents

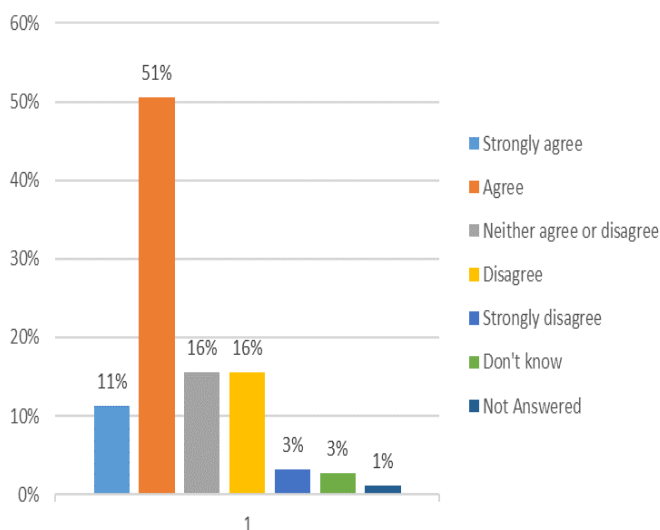
At the workshop for parents this question was incorporated into question 7, and their views are included in that section.

Question 9: Do you agree with the timescales regarding the mediation process?

Department's Proposal:

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

- If a person is considering making an appeal, then contact must be made with a mediation adviser within 4 weeks of the date of the EA's Notice which included the decision.
- The mediation adviser must provide information and advice about how to pursue mediation within 2 working days of the person making contact.
- A mediation certificate is to be issued within 3 working days from the information and advice about mediation being provided.
- If a person intends to pursue mediation, they must contact a mediation adviser within 6 weeks of the date of the EA's decision (a Mediation Certificate will only be issued if a parent or young person has made contact with the mediation adviser within 6 weeks of the date of the EA's Notice which included the decision). The EA are required to comply with the terms of any mediation agreement within certain timeframes, the same as if an Order came from SENDIST. Whilst not exhaustive, the appealable decisions include a decision not to make an assessment; not to make a Statement; about the content of a Statement; and a decision not to amend a Statement following annual review (new).



There were a total of 184 responses to this question, two did not respond however one did provide commentary. Over 60% of respondents strongly agreed or agreed with the proposed timescales, while 18% disagreed or strongly disagreed. Generally respondents felt that the timescales were reasonable

although a few respondents raised concern over how mediation services would be accessed and stressed that it is imperative that all reasonable measures are taken to enable access to a fair mediation process, centred on resolving matters in the best interests of the child or young person.

A number of respondents have mentioned that they do not believe that a mediation certificate should be a requirement before being able to lodge an appeal as it adds more unnecessary bureaucracy to the system. There was also concerns raised regarding what happens if a certificate is not received within the necessary timescales and therefore preventing a parent or young person being able to lodge an appeal.

Summary of comments received (online and by email)

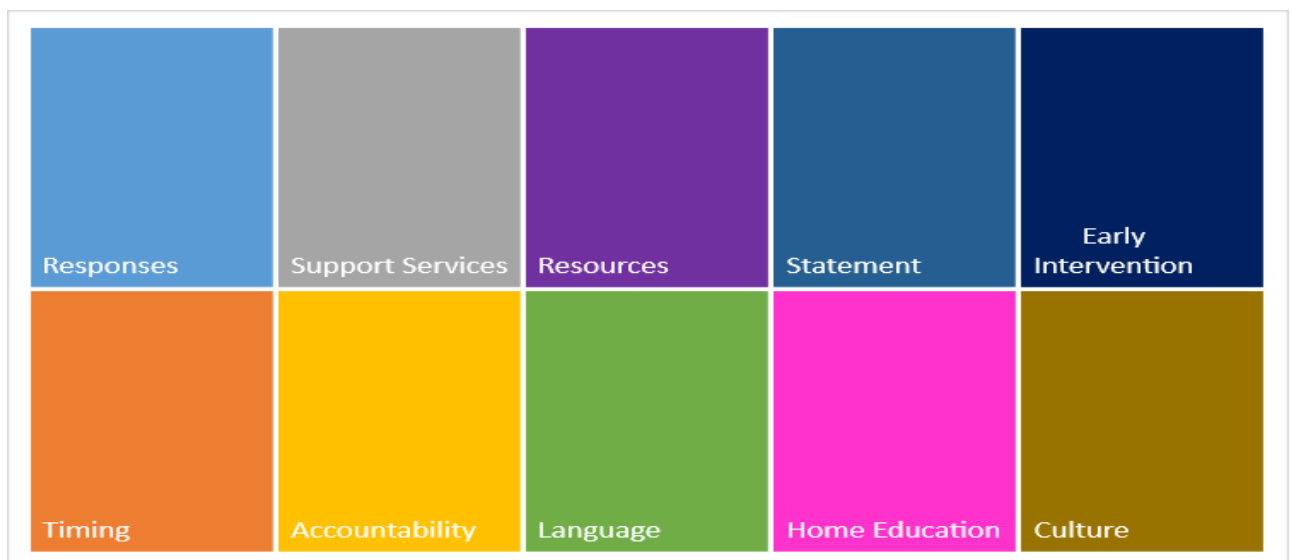
- If it is effectively managed and implemented, mediation will provide opportunities to resolve disagreements with EA in an informal way.
- In order for this process to fully meet the child's needs, it will be important that the principles of collaborative working are upheld.
- The timescales seem reasonable. However, it is questionable as to whether they can be consistently met. Particularly if there was a complex case within a school – it can take a long period of time to resolve. This process also raises concern over the availability of legal advice for schools if it was needed.
- Concerns raised regarding the model of mediation, number of mediators available and the capacity of EA to support mediation.
- Some respondents raised concern at the lack of clarity about how the mediation process will be funded, the projected numbers and who will be initially directed to mediation.
- Some school staff welcomed the changes to the time frames but raised concerns of how this would work with Newcomer parents with their language difficulties. Newcomer parents do not understand SEN processes or procedures and schools must fill this void given this is a timely process.
- Six weeks is too long a timescale for a person who intends to pursue mediation, to contact a mediation adviser. A period of two or three weeks is better so that the process is not dragged out and that mediation can begin promptly without unnecessary delays.

- The opportunity to take part in mediation should be made available to individuals in a timely manner in order that the process can begin promptly and issues can be resolved as quickly as possible.
- Warmly welcome the proposed timescales and that a mediation certificate is to be issued within 3 working days from the information and advice about mediation being provided. This is especially important for those wishing to appeal to SENDIST.

Question 10: Do you have any other comments you wish to make on the draft Regulations?

This question afforded respondents the opportunity to highlight any other areas within the Regulations that they wanted to express agreement with or raise concern. Some responses included information regarding other business areas within the Department of Education and operational matters pertaining to the Education Authority, these comments have been passed on to the relevant business area and are not included in the synopsis of responses below.

A significant amount of information was provided in relation to this question which have been summarised into the following key themes, it does not include all the individual comments received.



Responses

A number of respondents highlighted their concern that those responding outside of citizen space via email or post would not be counted or considered. The Department can confirm that all responses, even those received after the closure date of 02 March 2021, have been counted and comments fully taken into consideration.

A small number of respondents also made mention that the new SEN Regulations were different in parts from the 2016 Regulations that had previously been consulted on. The Department wishes to clarify that the 2016 Regulations were never ratified or made into law and therefore the new SEN Regulations are seeking to improve and

address weaknesses in the current Education (Special Educational Needs) Regulations (Northern Ireland) 2005.

Timing

As mentioned in the introduction, a number of respondents commented that the timing of this consultation was inconsiderate in the midst of a pandemic and subsequent school closures, and did not provide enough time to allow for full scrutiny of the documentation. The Department acknowledges these concerns however as there has already been significant delay in bringing forward changes to the SEN Regulations and the associated Code of Practice and a number of critical reports have been published recently regarding the provision of SEN, the Department felt it could not delay issuing the consultations. In recognition of the timing of the consultations, two extensions were granted to the deadlines resulting in the consultation being open for 22 weeks rather than the recommended 12 weeks.

Support Services

A number of respondents commented on the lack of transparency in the SEN system, specifically with the statutory assessment process and the criteria for identifying and establishing the relevant provision for children with SEN in mainstream settings. Concern was expressed as to the number of children and length of time they are waiting to access support services and the unknown amount of 'unmet need' within schools.

Also mentioned was that Educational Psychologists should not be a barrier to schools and children being able to access necessary resources, advisory and support services. It was felt that they should be allowed to go back to their primary role of assessment of children's special educational needs and provide comprehensive reports that contain specific recommendations and strategies that teaching staff can implement for the benefit of the children as they did previously.

Section 2 of the SEND Act should be commenced urgently so that the EA can consult and publish its plan of arrangements. It is difficult to assess how responsive the revised framework is likely to be without sight of this Plan and the specific criteria which enable children to access each individual service.

Accountability

A significant number of responses commented on the transfer of responsibility from the EA to school principals and Board of Governors. They commented that as governors are volunteers, it is likely that this additional responsibility may make it difficult for them to volunteer their time and service.

Respondents stressed the need for an accurate, clear and transparent review of the current system with realistic recommendations/targets set for SEN into the next 20 years, with resourcing clearly identified. This needs to take account of the Workload review of SEN and SENCos.

It was highlighted that Regulation 9 stated that '*this information need not be in writing but should be provided to the Authority as soon as is reasonably practicable*'. It was felt that this was unacceptable and that any information provided at consideration stage must be centrally held for the purposes of transparency and accountability.

Resources

Quite a few schools indicated that they may not have sufficient staff to take on the role of an LSC, i.e. rural schools are smaller and therefore this role may fall to the principal of the school. They also highlighted the need for appropriate funding and resources to be provided to enable the Framework to be effectively implemented; it also needs to be dedicated and recurrent funding.

Language

A number of responses, including those received from parents, children and young people highlighted the need for the language to be appropriate, clear and unambiguous. They also commented that material needs to be available in a variety of languages and format's to reflect today's school society i.e. newcomers, visually impaired etc.

Information should also be available in a variety of mediums i.e. electronic and paper.

Statement

Concerns were raised about the proposed format of the Statement as set out in Schedule 2, in that Part 3 of the statement referred to Special Education Provision meaning that a provision made by a HSCT would not be included in this section and therefore not appealable to SENDIST. The HSCT provision, including any relevant treatment or service identified by the HSCT as likely to be of benefit in addressing the special educational needs would be included in Part 6 of the Statement under Non-Educational Provision. There is concern that this weakens the duty to specify provision and the legal enforceability of Part 6 which is not appealable to SENDIST, although the contents can be challenged through the judicial review process.

It was further commented that it is accepted that the Regulations have a clear focus on educational needs, however, educational development is heavily dependent on other "non-educational" needs such as physical and emotional wellbeing that contribute to those holistic goals. Under the Children's Services Co-Operation Act (2015) there is more scope to include legal obligations within this framework that widen "what counts" as educational needs for children with SEN and for specific ways other Departments can contribute.

Home Education

One or two responses mentioned that the SEN Framework is orientated towards schools and provisions being provided in school, however this does not incorporate elements to help elective home education families. However they also noted that the legal responsibilities on schools do not translate directly onto parents who electively home educate, and the Statement of SEN was not created for the circumstances of home education and is not capable practically or legally of being applied in that setting.

Early Intervention

Respondents, predominately from the Early Years sector, want a far greater emphasis to be placed on intervention that is genuinely early; some way through primary school or the start of post-primary is not early enough. They also commented on the lack of consultation on Early Years and that the previous consultation on the subject has still not been published.

Voluntary and private early year providers are expected to follow broadly the same procedures for identifying children who have or may not have SEN. The process to get support for a child is far too long, by the time the process is nearing completion the child could have already left this setting with little or no appropriate support provided. Children with the most significant and complex needs, do not need graduated support, they need appropriate support and they need it immediately.

Culture

A small number of responses commented on the ability of the EA to meet the challenges and changes proposed in the consultation document. They feel that the proposals will only be of benefit if there is a complete change in the culture within the EA.

Support and Advice

A few respondents have commented specifically on Regulation 10 and that it states the '*EA may seek any or all of the advices listed for the purposes of statutory assessment*'. Respondents have questioned why the EA are permitted to decide which bodies they wish to seek advices from and do not have to request advice from all the bodies listed.

SECTION 5 – RESPONSES TO THE EQUALITY AND HUMAN RIGHTS POLICY SCREENING, DATA PROTECTION IMPACT ASSESSMENT AND RURAL NEEDS IMPACT ASSESSMENT

Equality and Human Rights Policy Screening

The proposed new draft SEN Regulations and Code of Practice are key elements in a more robust SEN Framework that places the child firmly at the centre of the graduated response to meeting the needs of children with SEN. The Framework will strengthen the existing duties of the EA, Boards of Governors and health and social services authorities (including HSCT) to ensure that all children with SEN receive the educational support they need to allow them to achieve improved outcomes and fulfil their potential.

The SEN Framework applies equally to all children. In the new Framework provision continues to be based on the individual needs of the child and the measures put in place by schools and the EA to address those needs. It is anticipated that there will be a positive impact on all SEN children regardless of their disability or whether they have both SEN and disability. This positive impact will be as a result of more timely assessment and appropriate interventions by schools and the EA.

In particular, it is anticipated that the new rights for the child with a disability who is over compulsory school age to make an appeal of disability discrimination, in his or her own right, will have a positive impact. Similarly pupils with SEN over compulsory school age will be able to make a SEN appeal to Tribunal in their own right. Importantly they will have the lead relationship within the Framework in terms of liaison with schools and the Education Authority about their own special educational needs.

When the SEN consultation documents were issued, the Department published the Equality and Human Rights Policy Screening document. Only a small number of respondents commented on the content of this document.

Two organisations strongly disagreed with the Department's decision to 'screen out' the draft SEN Regulations and Code, stating that while they *appreciated "it is the intention of the Department that the proposals are universal in their impact and will apply to all pupils with SEN and disabilities equally, it is clear from the screening which has been carried out on the policy that not only is there potential for differential adverse*

impact there is evidence of actual differential adverse impact..., and there are *"indications within existing data that Section 75 protected groupings are experiencing a disproportionately high incidence of SEN"*. They felt that a full Equality Impact Assessment (EQIA) was required to fully assess impacts and then identify measures to be taken to prevent or mitigate against adverse impacts and to promote equality of opportunity. In doing a full EQIA they also advised that this should include a direct consultation with children and young people.

One organisation welcomed that the Department had considered the impact on human rights in the equality screening, however noted that there seemed to be no mention or consideration of the specific rights and principles involved in human rights issues such as proportionality and necessity.

A further organisation recommended that the Department carry out a Child's Rights Impact Assessment (CRIA), advising that this would ensure that the draft Regulations and Code are truly child's rights compliant.

Department Response

The Department has reviewed its Equality and Human Rights Policy Screening and has fully considered the likely impact of the new SEN Regulations and draft Code of Practice on the section 75 categories and on various human rights legislation. The new SEN Framework is set in the context of a well-developed inclusive educational policy environment. An underpinning aim of the revised Framework is that the educational needs of all children with SEN should be addressed and that the children should be integrated fully and accepted by all on an equal basis into the life of the school; the Department believes the new SEN Framework promotes equality of opportunity for all.

Data Protection Impact Assessment

The Department carried out a Data Protection Impact Assessment (DPIA) on the new SEN Regulations including the Personal Learning Plan (PLP). The DPIA is a process to help systematically analyse, identify and minimise these risks. The result of the DPIA was that a number of potential privacy risks and corresponding mitigating actions were identified. The Department included the DPIA as part of the consultation and welcomed any comments or views.

No respondents to the consultations provided comments on the DPIA, however comments were provided during a meeting in relation to the PLP, which have been reflected in the draft Code of Practice response document.

Rural Needs Impact Assessment

A Rural Needs Impact Assessment (RNIA) was carried out and included as part of the consultations. It concluded that the draft SEN Code (and SEN Regulations) will not have any material impact on the social and economic needs of people in rural areas.

One response disagreed that the new SEN Framework will impact positively on children and young people whether in rural areas or otherwise. It stated that rural schools often find themselves with fewer resources compared to urban schools and requested that consideration is given to the additional challenges caused by implementing the changes to SEN Regulations in rural schools.

Department Response

The Department notes this response.

SECTION 6 – NEXT STEPS

The Department is currently considering the changes proposed to the new SEN Regulations by consultation respondents.

Legislative process

The draft SEN Regulations are subject to draft affirmative resolution in the NI Assembly, also known as affirmative procedure. In accordance with this procedure the Department will engage with the Assembly's Education Committee on the responses to the consultation process and on proposed changes to the draft Regulations, as agreed by the Minister.

When the process with the Education Committee is complete, a final set of Regulations will be laid in draft before the Assembly and a motion of approval raised by the Minister. The draft Regulations will be subject to a debate in the Northern Ireland Assembly. If approved by the Assembly, the Regulations will be made and come into operation on a date to be specified.

Draft SEN Code of Practice (draft SEN Code)

The draft SEN Code reflects the statutory duties and obligations detailed in legislation and provides guidance on how this is implemented in schools, the EA and other partner bodies. Once the Regulations complete their legislative journey through the Assembly and are made law, the draft SEN Code will be amended to reflect the required changes as appropriate. When the draft SEN Code is finalised a new Code of Practice will come into operation on a date to be specified and will be available on the DE and EA websites.

STAKEHOLDER ENGAGEMENT

As part of the consultation process, the team met with a number of organisations to discuss the proposed changes to the SEN Regulations and draft Code of Practice. Those organisations are named below.

Organisation	Date of Meeting
NI Commissioner for Children and Young People (NICCY)	4 November 2020
Teaching Unions	5 November 2020
NI Human Rights Commission (NIHRC) and Equality Commission for NI (ECNI)	6 November 2020
Children with Disabilities Strategic Alliance (CDSA)	10 November 2020
Non-teaching Unions	10 November 2020
Children's Law Centre	24 November 2020
Joint Consultative Forum	27 November 2020
Education Committee	2 December 2020

RESPONSES RECEIVED TO THE CONSULTATION

Individuals

82 individuals responded to the consultation.

Schools

Abbey Community College, Newtownabbey	Roe Valley Area Leaning Community (representing 6 schools)
Banbridge High School	Sion Mills Primary School, Strabane
Bangor Grammar	St Columb's College, Derry
Belfast Royal Academy	St. Columbanus' College, Bangor
Belmont Primary School, Belfast	St Francis' Primary School, Lurgan
Birches Primary School, Portadown	St James's Primary School and Nursery Unit, Newtownabbey
Black Mountain Nursery School, Belfast	St John's Primary School, Middletown
Botanic Primary School, Belfast	St John's Primary School, Swatragh
Bunscoil Phobal Feirste, Belfast	St Joseph's Convent Primary School, Newry
Carrickfergus Academy	St Joseph's Grammar School, Donaghmore
City of Armagh High School	St. Joseph's Primary School, Crumlin
Clarawood School, Belfast	St Malachy's Primary School and Nursery Unit, Camlough
Clounagh Junior High School Learning Support Centre, Portadown	St Malachy's College, Belfast
Coleraine Grammar	St Malachy's Primary School, Belfast
Cumran Primary School, Clough	St Malachy's Primary School, Whitecross
De La Salle College, Belfast	St Mary's Primary School, Pomeroy
Denamona Primary School, Fintona	St Mary's Christian Brothers' Grammar School, Belfast
Downpatrick Nursery School	St Mary's College, Derry
Dromintee Primary School & Board of Governors, Newry	St Matthew's Primary School, Belfast
Edmund Rice College, Newtownabbey	St Patricks Primary, Ballygalget (Staff and Board of Governors)
Fane Street Primary School, Belfast	St Patrick's Primary School, Maghera
Gaelscoil an Chaistil, Ballycastle	St Patrick's and St Brigids's College, Claudy
Gaelscoil Eoghain, Cookstown	St Patrick's College, Dungannon
Gaelscoil na Móna, Belfast	St Patrick's Grammar School, Downpatrick
Gaelscoil na mBeann, Kilkeel	St Patrick's Primary School & Nursery Unit, Dungannon
Glenveagh School, Belfast	St Patricks Primary, Ballynahinch (Staff and Board of Governors)
Harpur's Hill Primary School, Coleraine	St Pius X College, Magherafelt
Holy Cross College, Strabane	St Ronan's Primary and Nursery School, Lisnaskea
Hope Nursery School, Belfast	St Ronan's Primary School, Newry
Lagan College, Belfast	Strabane Controlled Primary School
Limavady High School	Strandtown Primary School, Belfast
Long Tower Primary School, Derry	Tor Bank School, Dundonald
Loreto Grammar School, Omagh	Tummery Primary School, Dromore
Magherafelt Primary School	Ulidia Integrated College, Carrickfergus
Mount St Catherine's Primary School, Armagh	Victoria Primary School, Ballyhalbert
Orritor Primary School, Cookstown	
Parkview School & Board of Governors, Lisburn	

Other Organisations

Action for Children	Irish National Teachers' Organisation
Angel Eyes NI	Mencap
Association of School and College Leaders (Northern Ireland)	Mid Ulster District Council
Autism NI	NAHT (NI) Nursery Education Committee
Belfast Health & Social Care Trust	National Association of Head Teachers
Catholic Schools' Trustee Service	NI Commissioner for Children and Young People
Children in NI	NI Human Rights Commission
Children with Disabilities Strategic Alliance	Northern Ireland Council for Integrated Education
Children's Law Centre	Royal National Institute of Blind People
Comhairle na Gaelscolaíochta	Shine
Controlled Schools' Support Council	Southern Health and Social Care Trust
Council for Catholic Maintained Schools	Special Educational Needs Advice Centre
Council for Curriculum, Examinations and Assessment	The Fostering Network NI
Education Authority – Children and Young People's Services	The National Deaf Children's Society
Equality Commission for Northern Ireland	Transferor Representatives Council
Fermanagh and Omagh District Council	Ulster Farmers Union
Governing Bodies Association	Ulster Teachers' Union
Health & Social Care Board and Public Health Agency (joint response)	Western Health & Social Care Trust
Home Education in Northern Ireland	
Intellectual Disability - Child and Adolescent Mental Health Services	