

Key Messages on Special Educational Needs and Disability Bill (SEND Bill)

The information below is a summary of SENAC’s views and comments on the Special Educational Needs and Disability Bill (SEND Bill). It is a condensed version of what will be our final response.

The SEND Bill amends the current Education (NI) Order 1996. The duties and articles within the Order amended by SEND are the subject of this document.

We acknowledge that within the legislation there is reference to the provisions contained within the SEN Regulations and Code of Practice which are as yet unseen documents.

NOTE: Reference is made in this document to the ‘Authority’ – on the 1 April 2015 the Education and Library Boards ceased to exist and in their place the Education Authority (EA) was created.

Positive Insertions and Additions	Additional Comment
Clause 1: Duty on the Authority to have regard for the views of the child	This further promotes the voice and participation of the child. However every measure should be taken to ensure such participation will be enabled where support is needed to aid communication and participation. Additionally it is important for the children and young people to know and understand how their views will be applied and the impact their participation will have.
Clause 5: Reduction of time limits in relation to assessment of needs.	This is part of the wider framework relating to the process from statutory assessment to issuing of the statement from the current 26 weeks to 20 weeks. The Bill amends the current duty setting out the timeframe for parents to make their representations during consideration of statutory assessment from 29 days to 22 days. While any reduction in this time frame is positive there is concern that this reduction may put additional pressure on parents to submit their representations within a shorter time frame, however some others may welcome this. It is very positive that the Bill enables the Authority to proceed with statutory assessment before the expiry of the 22 days.
Clause 6: A right of appeal to the Special Educational Needs and Disability Tribunal following a decision not to amend a statement following an Annual Review.	A welcome new right of appeal. This is significant as currently parents and/or schools who request amendments with supporting evidence at an Annual Review have no right of appeal if the amendments are not agreed by the Authority. This clause allows a right of Appeal.
Clause 7: A new right of appeal to parents of children under the age of 2 years on the contents of a statement or the failure to make a statement.	A welcome new right of appeal and an important development to secure provision for children’s needs as early as possible.

Clause 9: Confers on a child with SEN over compulsory school age the right to request a statutory assessment and the right of appeal to the Tribunal.	Rights currently only exercised by parents. This is a welcome development enabling further participation of young people in decisions which impact on their education and futures.
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Clause 10: Confers on a child over compulsory school age the right to make a claim to the Tribunal that the Authority or school has unlawfully discriminated on the grounds of disability and provides regulation making powers where a child lacks the capacity to exercise this right.	Similarly a positive new duty.
Clause 11: Provision of a power to the Department of Education to conduct a pilot scheme for children who have not reached the upper limit of compulsory school age to take an appeal on SEN or a disability discrimination claim to the Tribunal	For this and Clause 12 this pilot and the information coming forward from the pilot will determine the impact of this development and the nature of support required for the children to progress their interests and ensure this is an effective development for the children's educational needs.
Clause 12: Provision of a power to the Department of Education for children not yet reached the upper limit of compulsory school age to take an appeal on SEN or a disability discrimination claim to the Tribunal.	
Clause 13: A statement of SEN will be maintained by the Authority to the end of the school year following a child's 19 th birthday.	A very welcome development.

Areas requiring further consideration	Additional Comment
Clause 2: The Authority will publish a plan setting out the arrangements for SEN including a description of the resources and support services available.	It is unclear if this plan will be informed by and reflect the level and nature of needs of the SEN population within schools in order to determine the services needed to meet those needs.
<p>Clause 3: Duties on the Board of Governors of grant aided schools in relation to SEN:</p> <ul style="list-style-type: none"> • Raise awareness of the needs of those pupils with SEN • Ensure teachers take reasonable steps to identify and provide for SEN • Ensure each pupil with SEN will have a Personal Learning Plan (PLPs) 	<p>While this duty is positive some concern is expressed in relation to some aspects of this duty.</p> <ul style="list-style-type: none"> • This is positive as it broadens the context throughout the school community in which the child's needs are known. • This is stronger than the current provision as it becomes a proactive duty. Although use of the phrase 'reasonable steps' is open to interpretation. • The development of PLPs is a welcome inclusion in the Bill. It will help ensure greater consistency in the quality and content of education plans but should be supported with a pro forma PLP and

<ul style="list-style-type: none"> Designate a teacher as a Learning Support Coordinator to coordinate SEN provision with the required experience and qualifications as set out in the SEN Regulations. 	<p>set out within the Code of Practice.</p> <ul style="list-style-type: none"> There was recognition during the consultation period for the review of SEN that there is a need for an enhanced role for the Education and Training Inspectorate to evaluate and inspect the SEN practices and provision in schools. PLPs should be subject to such scrutiny to ensure they are effective and monitored to aid educational progress. Concern remains that the LSC's role will be compromised in their ability to perform their duties effectively without being a member of a school's senior management team. It is positive however that SEN Regulations will require Board of Governors to ensure the LSC will have the prescribed qualifications and/or experience. However without sight of the Regulations the level of this criteria is unknown. Given the importance of this role it is hoped the criteria would require both qualification and experience in SEN.
<p>Clause 4: A duty on the Authority to request help from a health and social care body where it considers this is required in exercising its functions.</p>	<p>Change in this duty is from 'may' request to 'shall' request. This is a stronger duty on the Authority to request the relevant help. This is positive as it means the Authority will undertake such requests for individual children rather than a parent having to contact the health and social care board when necessary.</p> <p>This duty however is dependent on the ability of the HSC boards to comply both in terms of resources available and the boards own duties and obligations. This remains a concern in terms of delay and access to provision when required to progress SEN assessments and SEN provision.</p> <p>In responding on this duty it is an opportunity to again highlight the need for joint planning and working between health and education bodies in relation to services and information for SEN and a duty to cooperate between the relevant government departments. The ability of the Authority to fully meet the children's needs quickly and effectively will remain compromised until the means to ensure the HSC Bodies comply with their requests for help based on need not resources.</p>

Clause 8: The Authority will provide an independent mediation service to those parents intending to make an appeal to the Tribunal.

This duty is heavily reliant on the Regulations setting out the form mediation will take, for example time limits, who may attend, prescribed steps the Authority may take following the conclusion of mediation and other important aspects of this service.

Without sight of the Regulations and more information on the nature of the mediation and its impact on the current SEN decision making processes and time limits for appeal it is difficult to conclude if this duty will be a positive development to ensure the needs of the children are appropriately provided for by the Authority. SEN provision is based on the needs of the child as identified through assessment and their needs are not subject to mediation.

More information and evidence on the positive impact of mediation in this context is required.

It is also worth considering that by its nature mediation is perceived as an independent third party mediating between opposing parties to reach a position of joint compromise. This implies that parents and the Authority are on opposite sides which should not be the perception. There should be a recognition that within the SEN decision making process there is already opportunity for parents and the Authority to work positively together to discuss and negotiate the support available to the child ahead of an appeal. Often such constructive discussion enables agreement which avoids the need for appeal.

Much of the challenge to provide the appropriate SEN provision can be influenced by the availability of resources. Mediating between two parties who do not have equal access to resources, information and decision making powers such as parents and the Authority would make agreements from mediation challenging and may be questionable under scrutiny.

If mediation can reduce the need for appeals and progress more quickly the means to secure the appropriate help for the child then it may be a positive new development but currently the evidence and information on the nature of this service is not sufficient to enable this conclusion.