Northern Ireland Assembly

Committee for Education

OFFICIAL REPORT (Hansard)

Special Educational Needs and Disability Bill: Department of Education

20 May 2015

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:
Mr Peter Weir (Chairperson)
Mr Chris Hazzard
Mr Trevor Lunn
Mr Nelson McCausland
Mr Robin Newton
Mrs Sandra Overend
Mr Seán Rogers

Witnesses:

Mrs Caroline Gillan	Department of Education
Ms Jan Matthews	Department of Education
Mrs Irene Murphy	Department of Education

The Chairperson (Mr Weir): I invite the officials — Caroline Gillan, Irene Murphy and Jan Matthews — to come forward. Caroline is the director of access, inclusion and well-being; Irene is the head of the special education and inclusion review team; and Jan is also on that team. I welcome the pupils who have just joined us: we will be hearing from the Department on an important law dealing with special education, and I hope you enjoy the session. Caroline, over to you.

Mrs Caroline Gillan (Department of Education): Thanks very much for the opportunity again to brief members on the proposals for the new special educational needs (SEN) framework and recap the contents of the Bill you are considering. I also want to provide an overview of work on the subordinate legislation and the code of practice that was mentioned.

Members are aware that the policy proposals for the new framework are the result of extensive engagement with stakeholders through formal consultation, including consultation with children and young people and with stakeholders beyond the consultation period. The policy proposals we now have are significantly different from those at the start of the process due to the engagement and the Department refining its position.

However, we are aware that differing and contrasting views remain, as is apparent from the written evidence that the Committee received, and the challenge has been to reach proposals that strike a balance and take account of the breadth of opinion. That is where we are and where we have got to.

We believe that the proposed framework provides a balance of measures which address some of the key issues highlighted through the review as requiring improvement to better meet the needs of children.

There are a number of key elements to the overall framework and these are as follows: the capacity-building programme for schools and early years settings; the primary legislation itself; the subordinate legislation; and, finally, the statutory guidance which is in the form of a code of practice.

We have taken on board the Committee's concerns expressed following our last briefing in February about the lack of detail available in relation to the regulations and the code of practice, and in March we provided the Committee with a paper detailing the areas that will be covered in the regulations and the code. We are aware that the written evidence you received also raised the issue that the Bill, the regulations and code should be considered together, and that has been mentioned today. However, it is worth saying that bringing forward the Bill, the regulations and code at the same time would have compromised our ability to introduce the Bill at this stage and, hopefully, see it through to completion during the current mandate. We are trying to move ahead with those areas of work and provide as much information as possible on the regulations and the code. I will come back to those later.

I mentioned that the first element of the new framework is the capacity-building measures. The Department has been engaged in a capacity-building programme since 2011-12 and that is in response to the views of educators who told us that, in advance of any big policy change, the capacity of schools to effectively manage children's needs needed to be improved. Since 2011-12, there have been a number of initiatives. We had the SEN early years pilot in all DE-funded statutory and non-statutory early years settings. An educational assessment pilot has taken place in almost 300 primary and post-primary schools. The SEN continuing professional development masters-level course, which was run by Stranmillis and St Mary's, was aimed at primary-school teachers, and improving their skills in the teaching of reading, writing and spelling to children with SEN. Some 563 schools participated in that. Running alongside these measures, the education and library boards funded and provided courses in leadership and management training for special educational needs coordinators (SENCOs) which included the effective management of classroom assistants, and over 850 schools participated in each of those two modules.

I turn to resources. We have the SEN resource file, which was compiled in order to bring together examples of good practice for use by teachers to meet the needs of SEN pupils. That has been available to every school since 2011. Allied to that, early years handbooks have been developed for use in all preschool settings, and those supplement the main SEN resource file and are very much focused at strategies to support early years pupils.

The first thing I mentioned was the early years pilot. It ran over three years and finished last September. In order to maintain the momentum of the early years work, before we had the outcome of the ETI evaluation, interim arrangements were put in place which have been going on over the course of this year and which will finish this August. Officials are currently working with the Education Authority to produce a new regional model which can be mainstreamed in terms of SEN early years support. I think we mentioned that at the last briefing session.

The Committee has received a copy of the Education and Training Inspectorate (ETI) report on that early years pilot, and members will be aware that it showed some very sound evidence of the positive outcomes of the pilot and the importance of early intervention. We hope that the recommendations from that ETI report will be built into the new arrangements. We have provided £3 million of funding this year for SEN supports in early years settings.

Capacity building never ends, but, looking ahead, we have plans to develop further training for boards of governors and school staff. It will deliver the information on the new framework, arrangements, duties and responsibilities. As you are aware, there are increased duties on boards of governors in particular and different responsibilities in the school setting. That is all I want to say about capacity building.

I turn to the SEN Bill itself, the second element of our overall framework. It provides for a strengthened legislative framework for identification and assessment of SEN. It makes some key changes to the responsibilities of boards of governors and the Education Authority. There are 16 clauses and one schedule to the Bill, and they have a strengthened base for the views of the child to be heard and for schools to have a central position in identifying, assessing and addressing the needs of most children with SEN. There is the retention of the statutory assessment by the Education Authority and the introduction of new rights of appeal and alternative dispute resolution through independent mediation. I will summarise some of the areas and, rather than doing it clause by clause, I thought that I would do it subject by subject.

In terms of the board of governors, the core proposals include provision aimed at raising the awareness of those involved in identifying and supporting SEN pupils in the school, which is for all people in the school who might be in contact with a SEN pupil, and the requirement for a personal learning plan to be put in place for each child, which was not originally the position.

Boards of governors will also be required to designate a teacher as a learning support coordinator, and that learning support coordinator has to bring together the provision for children with SEN and be responsible for ensuring that all the needs of the child are considered when making assessments and arranging for SEN provision. I think I mentioned last time that this would include issues where the child might have SEN but is also a looked-after child or is a newcomer, and the learning support coordinator needs to bring together all those needs of the child before determining the arrangements. The role of the learning support coordinator replaces the current role of the SENCO for which there is currently no legislative basis.

Boards of governors also have a new duty to inform parents of the independent dispute avoidance and resolution service (DARS) in the event of a dispute between parents and a school. I should also mention that the Bill also reinforces the fact that DARS should be provided in a way that is fully independent of the authority; so, we are probably talking about some sort of outsourcing arrangement, but it has to be fully independent of the authority.

In terms of the Education Authority, the core proposals include a duty to publish its plan of arrangements and supports for special education provision on an annual basis before the start of every school year, and it has to consult stakeholders in doing that. We hope that parents, children and schools will, therefore, be better informed and that there will be more visibility and transparency about what the authority can, and will, make available to pupils with SEN.

There is also a new statutory duty placed on the authority to have regard to the views of the child, and the driver for that is the UN Convention on the Rights of the Child (UNCRC). The duty on the authority is similar to that provided in the Children and Families Act 2014 in England. For schools, our existing guidance on seeking and giving due weight to the views of the child is set out in the code of practice, and we intend to reinforce those provisions in the revised code.

Finally, for parents and children, the Bill gives new rights for children with SEN who are over compulsory school age. It transfers to them the rights that are currently exercisable by the parent and, again, the key driver for this was the UNCRC and the views of some key stakeholders, including the Human Rights Commission and the Children's Law Centre.

The provision in the Bill means that once a child is over compulsory school age, that child will have the right to express preference and to take decisions about their own education and make decisions about where they would like to be educated, including, for example, requesting a statutory assessment. It will also include the right for a child over compulsory school age to make an appeal to the Special Educational Needs and Disability Tribunal (SENDIST). Again, this is in keeping with what has happened in other jurisdictions. However, these rights will continue to be exercised by the parents of children who are still of compulsory school age.

There is a new right of appeal to the tribunal against the Education Authority's decision not to amend a statement following annual review. Previously, there was no right of appeal if the authority decided not to amend a statement. The right of appeal will be exercised by the parent for the younger child or by the child who is over compulsory school age.

There is also a new right of appeal to the tribunal for parents of children under two against the decision of the Education Authority not to make a statement or about the content of a statement that is made. Again, this did not exist previously. As Caroline touched on in her paper, the Bill proposes new mediation arrangements for parents and children over compulsory school age who are considering making an appeal to SENDIST, and this is in keeping with the general desire to use alternative dispute resolution and improve access to justice. A similar approach has been used in England through the Children and Families Act.

The Bill also provides a power for the Department to pilot arrangements for children under compulsory school age to appeal to the tribunal. Although those rights are not in the Bill at the moment, we have a power to pilot the arrangements. Depending on the outcomes of those arrangements, we have a power to put those rights of appeal in place

There are some elements of disability discrimination in the Bill. From the disability discrimination perspective, the Bill provides for a pupil, or prospective pupil, who is over compulsory school age to appeal to the tribunal on the basis disability discrimination. This is to mirror what we have done for SEN appeals. We are also giving pupils over compulsory school age the right to achieve parity in relation to disability appeals.

I will give you an update and flavour of what is covered in the subordinate legislation. The new regulations will outline the operational detail of the new statutory provisions. The general rationale for relying on regulations to implement a number of policy proposals is based on the convention that subordinate legislation should be the vehicle to reflect the detail that is not necessarily appropriate in the Bill. Indeed, that is the position at the moment. We have the detailed set of 2005 regulations, which support the existing primary legislation, the 1996 and 2005 orders. The new regulations we will be drafting will take the existing 2005 regulations as their starting point and make the necessary amendments and additions to reflect the proposals coming from the new framework.

As I mentioned earlier, in recent weeks, we provided the Committee with a paper setting out the areas that will be covered by the regulations. You may have that paper in your folders. I will highlight a few of the matters that we intend to provide for in the regulations. In no particular order, they include the detail of the content and format of the Education Authority's plan and the supports it will make available for pupils of SEN; the form that the statement will take in the new framework; the assistance and support a child over compulsory school age may expect in order to exercise the new rights within the framework, because, obviously, they will have rights; details on how decisions will be made in relation to a child who is over compulsory school age but may lack capacity; the assistance and supports that will be required in relation to those rights; and the arrangements for the new independent mediation service, which will include the time limits for mediation and applications and the qualifications and experience of mediators.

The regulations will also amend the statutory time limit for the Education Authority to conduct the statutory assessment. You mentioned the reduction from 26 weeks to 20 weeks. Most of those time limits will be in the regulations. The only time limit that is in the actual primary legislation at the moment, and will remain, is the time limit for the right of a parent to provide written evidence to inform the statementing process. That is currently in the primary legislation, and will remain there.

Of course, members will be aware that the fact that the time limits are in the regulations rather than the primary legislation in no way dilutes their effectiveness. They remain the statutory time limits that the authority must adhere to, subject to valid exceptions, which I am happy to talk about later.

Officials are currently working with the authority staff, and others, to begin the process of drafting the subordinate legislation based on the current draft of the Bill. Obviously, that may change as we go through the Assembly procedures. The work to draft the regulations will involve engagement with the key stakeholders as we progress on individual regulations, some of which will be technical. We hope to have the regulations available for the Committee in the autumn. We will, certainly, be focusing over the summer to try to come back to you in the autumn with a draft set of regulations.

The revised code of practice is the final part of the overall framework. Schools and the Education Authority will be expected to have regard to the guidance contained in the code. Over the coming period, we intend to develop the new code alongside the regulations. The new code will replace the current code and its supplement. It will deal with such issues as the procedures to be followed at the school-based stages of the framework, the processes for assessment by the authority, the arrangements for drawing up the annual review of the statement and arrangements for transition of pupils on leaving school. That is really the flesh on the bones and all the practical and procedural-type issues.

The revised code will therefore be the vehicle for introducing the new, or strengthened, elements of the framework. Some of those include the reinforcement of the principle of inclusion of SEN pupils in mainstream settings; the format of the personal learning plan that all schools will have to have for each SEN pupil, which would include the expected timescales for completion of the personal learning plan; the arrangements for the new three levels of support; and guidance on the various arrangements for dispute avoidance, resolution and mediation. The list is not exhaustive. Further detail can be found in the paper we have provided to you. We are working with authority staff to consider the amendments to the code, and that work will move forward alongside engagement with stakeholders as we progress it. We hope to have the code with you by autumn. We emphasise that the regulations and the code will be subject to full public consultation and engagement when the time comes.

What are the timescales for commencing the new framework? Subject to the will of the Assembly, the Minister's intention and aim is to commence and implement the revised framework from September 2016. That would have a five-year transition period. We would ideally like to stay on that course.

That is all I want to say at the moment. We are happy to answer questions. We are more than happy to answer questions on transitions and valid exceptions. A number of issues were raised in Caroline's paper, but we are entirely in your hands now as to how you want to play it.

The Chairperson (Mr Weir): Caroline, thank you for that comprehensive summary. I will bring others in to comment in a minute or two.

People can see the sense in the broad thrust of what is proposed. I want to deal with some concerns that I have personally about the process, and they might be reflected by other Committee members. First, it is understandable that a lot of the detail will be in the regulations. There is a little bit of nervousness, when we compare this to a lot of legislation, because it seems that on this occasion the balance between primary legislation and the regulatory side is very heavily weighted towards the latter. That causes me some concern. I suspect that, as we move to Consideration Stage, the Committee will want to try to ensure that the balance is got right and look at whether anything needs to be brought into primary legislation.

One specific area that worries me — and I cannot speak on behalf of the Committee but it might want to consider this — is the disjoint in terms of the timetable. We are looking to get all our evidence sessions done this side of the summer, scrutinise all the clauses by that stage and, effectively, more or less have it signed off at the end of the summer. You have told us today that the regulations will be ready in the autumn; and that might be the first sighting that we get of them. There will be a lot of detail in the regulations. Given the significance of this, I would be very nervous about, effectively, signing off on a Bill and doing the clause-by-clause scrutiny without any sight of the regulations.

I would send a message back to the Department. If it is not a question of the Committee getting the final regulations ahead of that time, then I think that, at the very least, the Committee will want to see drafts of the regulations and see where we are at. It is very difficult for us to sign off on a lot of this with what is, effectively, a blank cheque. There may not be any problem with the regulations, but we will be, essentially, signing the Bill off blind. There would be concerns about that.

We have all seen this at various stages. Something tends to happen in Departments, particularly if there is any length of time involved, although I have no knowledge of the Department of Education in this respect. All of us have been on Committees where we are faced with a statutory rule and we say, "Hang on a minute. We are not particularly keen on this and we would like changes to that". The argument is then thrown back, "Well, you've already signed off on the legislation that led to this statutory rule".

This may be more of a point for you to take back: given the extent of the subordinate regulations, the Committee will be looking to ensure that the balance between secondary and primary legislation is correct. I suspect that this might mean seeing whether any elements of secondary legislation should be brought into the primary legislation. It will be critical, for the speed of passage of the Bill, for the Committee to, at least, get early sight of the drafts of those regulations. There would be a reluctance to process things without getting any sight of those regulations or the code of practice.

The other question I want to ask is about confirmation on the code of practice. It will obviously be at a level below the regulations. Will this mean that while you may well be bringing the code of practice to us, it will not be subject to formal approval by the Assembly or Committee albeit that you may seek the views of the Committee?

Mrs Gillan: It is subject to public consultation and is being brought to the Committee. It is statutory guidance, but is there any Assembly process linked to it?

Mrs Irene Murphy (Department of Education): No, there is no Assembly process, but we will bring it to the Committee for consideration before we go out to public consultation.

The Chairperson (Mr Weir): Yes, but, to be fair, that is presumably just the legal position in relation to the code. The issue is that if the code is brought before the Committee, we can give a view on it but have no control or veto over what is in it, nor does it need our approval. Is that correct?

Mrs Murphy: That is my understanding, yes.

The Chairperson (Mr Weir): Again, I suspect that this is another area that we will want to have early sight of to ensure that it is fit for purpose. It will feed into our views on the detail of the Bill as well.

Ms Jan Matthews (Department of Education): I think the code would also have to be subject to a commencement order.

The Chairperson (Mr Weir): Would a commencement order come from the Department?

Ms Matthews: Yes.

The Chairperson (Mr Weir): So, a commencement order does not have to get Committee approval. The code's being subject to a commencement order does not give the Committee any comfort because it does not have a role. We have all been on Committees for different Departments when it was said, "Well, such and such will not come in immediately until there is a commencement order". Again, that does not give any guarantee.

I have a number of items of detail that I want to ask about depending on what else is covered.

Mr Rogers: I will look at how it affects the school end. We are moving from the idea of calling it a statement to calling it a coordinated support plan. No?

Mrs Gillan: It is still a statement. The response to the consultation was very much that parents and pupils wanted to retain the statement. It is just about the format. Irene can talk in more detail about that but it is more about the format of the statement.

Mrs Murphy: Yes, the entire statutory basis for statements would remain, except for the changes to the rights of children over statutory school age. In relation to what the statement looks like, the actual form of it, we would want to include a number of important things. We would want to emphasise information in relation to the outcomes that are expected for the child and whether, for instance, any inputs might be possible from the parent.

It will still be a statement and still have a statutory basis, but within the regulations we would set out what the statement looks like and what the different sections are. We want the statement to be a coordinated plan of supports for the child.

Mr Rogers: That is fine. To get the outcomes, you will need that coordination of support. Will it cover support not normally available in school?

Mrs Murphy: That is really what a statement would do. Within the SEN framework, we have about 74,000 children with SEN, but just under 16,000 of them have statements. It is about the children for whom the Education Authority would make provision because the supports are not ordinarily available to the school. For example, a child from a special school or a child currently in a learning support centre would have a statement because those resources are not resources that would ordinarily be available to their mainstream school, but children in mainstream schools would have statements because the authority would be required to put in significantly more resource than the mainstream school could reasonably be expected to provide. That could include classroom assistants, general assistants or a range of other measures.

Mr Rogers: OK. Why will the code of practice:

> *"Clarify that HSC Trusts would not be required to recommend educational provision to be made by the Education Authority or by the school."?*

Mrs Murphy: The regulations currently set out that, whenever the authority is considering making the statement, it has to seek advice from a number of advice givers. It has to seek educational advice, educational psychology advice and medical advice. In relation specifically to the educational advice element, the regulations would say that that advice should not be provided by someone who is not a

qualified teacher. However, that does not preclude other advice coming from an educational psychologist or medical practitioners, for instance. It would have to be considered in the round by the education authority. However, say the question was how the child may be taught be the teacher, that type of advice would come from an educational professional.

Mr Rogers: Will you clarify for me that the code of practice will state that the health and social care trust will not be required to recommend that to the educational authority or to the school?

Mrs Gillan: There is a provision. In one of our briefings, we said that they are not required to talk about education advice. That is because, I suppose, professionals from the health sector should be giving advice on the health supports and needs of the child rather than the education supports, because that health professional will not have knowledge of the child in the classroom and the other supports that are available in the school.

Mr Rogers: Would, for example, a speech therapist give advice on the educational provision for that child?

Mrs Murphy: It depends what you mean by education. Do you mean how the teacher might teach the child?

Mr Rogers: Yes, and particular techniques to use to help bring their speech on and so on.

Mrs Murphy: Yes, absolutely, but those would fall under therapies. You might, then, get classroom assistants who would follow the instructions of speech and language therapists or occupational therapists within the classroom, so, that assistant would be acting out, if you like, allied health supports within the classroom. However, advice on a teaching strategy or the curriculum support would be seen as educational advice, and that would be something that the classroom assistants would take guidance on from the teacher rather than from the educational psychologist. The whole concept of the coordination of support, as we move forward, is that all of that advice would come together with the child at the centre and make sure that, in the round, the child's needs are met within the school.

Mr Rogers: Do you perceive any problems around the coordinated support plan, particularly with young people who remain in full-time education? For example, part of that might be through the Craigavon Area Learning Network or it might be that, after the age of 16, they go into further education. They would still be in full-time education, but they would not fall under the Department of Education; they would fall under the Department for Employment and Learning (DEL). Have you perceived any problems with that particular aspect?

Mrs Gillan: The issue of special education support after school did come up. We wrote to the Employment and Learning Minister when developing our policy proposals. I also draw your attention to the Assembly debate, which again raised the issue of statements after school. The DEL position, as I understand it, is that it feels that the supports that it has in place at FE and HE settings are appropriate to those settings because those are very different from a school-based setting. As far as we know, DEL is content with the arrangements that it has in place and has no intention of changing them or moving to a more statement-based process that we have in the school setting.

Mr Rogers: That is as far as you know. I am thinking of a young person who is in fourth year and going into fifth year and there is going to be a transition at the end of that stage. Is that young person aware of the level of support and help that they will get if they decide to move out of the formal school setting into further education? In terms of the whole education picture out there, many of our young people need to make the choice at 16 that FE may be the best route for them, but if they do not have that sort of information in fourth year and fifth year, with those close links to DEL, they could maybe say that they will stay in school.

Mrs Gillan: It is actually even before they are 16. That is very much part of the transitions process that is in place at the moment. For pupils with statements, there has to be a transitions process put in place from the age of 14. In the Education Authority, we have transitions advisers in each of the regions now. They must invite a DEL representative and a health representative to that transitions meeting post-14, because those absolutely are the issues that need to be taken into account.

I see that Caroline mentioned the Education and Training Inspectorate (ETI) report on transitions. It is worth noting that the main issues in that report were about the lack of provision post-19 for that minority of pupils with very challenging needs. For the transitions process itself in education, improvements were called for, but it generally works well. As part of the mental health and learning disability ministerial subgroup, work has been ongoing about the joining together of DEL, Education and Health to improve those arrangements. We had a meeting last week on the issue. As part of the code of practice, we will also look at whether there are strengthened provisions that we can put in place generally around transitions, but there is a statutory duty to have the transitions plan from post-14 for those pupils, precisely because they need to know exactly what choices to make.

Mr Rogers: It is very important. Finally, in terms of the proposed changes to the statementing process and reduction in annual reviews — I put the point to Caroline as well — is there an intention to reduce the number of young people who have a statement and to reduce the level of bureaucracy with fewer annual reviews?

Mrs Gillan: We would like to reduce the level of bureaucracy, because that would free up resources to get on with the work. The provision is around not necessarily having to do an annual review, except at the key points, but that is only if the parent, school and everybody is in agreement that the content of the statement and the supports that are in place are absolutely fine and that there is no need to go into a full review. I hope that does free up resources to get on with addressing the other important statementing processes that those individuals would be involved in. Our motivation is not to reduce the number of statements. The motivation is to improve the process and ensure that the pupils get the supports, hopefully, at as early a stage as possible, whether that is at school-based stages, at the second stage or if it needs a statement, but we have been trying to improve and reduce bureaucracy, and will continue to do so.

Mrs Murphy: Just to reinforce what Caroline said, the statutory basis for an annual review will remain. It is not that there is any dilution of the numbers of annual reviews that would be possible, but we are aware that around 70% of annual reviews conducted result in no change to provision or no request for change. That is where we think there might be an opportunity to reduce the bureaucracy around the annual review by having a two-step process, but it would still have a statutory basis.

Mr Lunn: I am sure that the detail of it — which you have done an awful lot of work on — is good, but I share the same concerns that the Chair expressed about time frame. The process started in 2009 with the first review, so we are six years in. It is three years this month since the Minister briefed us, so we are now looking at actual legislation coming forward. Am I right in thinking, Chairman, that if the legislation is not completed by June 2016 it falls, and we have to start over again?

The Chairperson (Mr Weir): I suppose it will be March 2016. The Assembly is due to be prorogued six weeks before —

Mr Lunn: You are making it worse for me. *[Laughter.]* At the moment, our Committee consideration will take us up to November 2016, which will be the autumn, but you are talking — "hopefully" was your word — about bringing forward draft regulations in the autumn and, perhaps, some indication of what will be in the code of practice. Everything slips, but, with due respect — it is not a criticism — we are six years in here. Hopefully, then, the Assembly will be satisfied with the regulations and code of practice that we get. The Assembly has to consider those and come to a conclusion before March 2016. I would respectfully suggest, on the basis of past experience, that that is not doable, particularly as we have three other education Bills in the offing as well.

The Chairperson (Mr Weir): There are two other Bills.

Mr Lunn: Well, maybe one of them is not a Bill, but they are to do with anti-bullying and shared education, and the third one was our aspiration for the school starting age to come back to us and the Minister to change his mind, although it does not seem very likely. When it comes to this business of giving us an insight into what is going to be down the line in subordinate legislation, we have been here before. I have been here before, because, as the last remaining dinosaur from the last Committee, we would not progress the first Bill to establish the Education and Skills Authority (ESA) until we got sight of the second one. We got sight of the second ESA Bill about nine months after it was promised, on the very last day of the Assembly term in June. It all collapsed anyway, which is my fear for some of this stuff. Do you think that this is doable in the timescale?

Mrs Gillan: All I can say is that we are endeavouring to do so. It has been a long process but for a reason. Even when the Executive agreed the policy proposals in June 2012, they had agreed a number of proposals but then asked the Department to look at other considerations, which were the tricky issues around the rights of the child and mediation and things such as that. We have not been sitting on our hands; we have had a lot of engagement.

It is obviously for the Committee to decide what comfort it takes from any of this. It is all about the layers of detail. If the Committee was content with the Bill as it stood, you know that you have the opportunity, if you are not content with the regulations as we bring them forward, to pray against them. I do not know whether it is likely that if you see the content of regulations it would necessarily make you say that you do not even like the higher principle that we had in the Bill. It is more likely that you might not like how the principle is being worked out; nevertheless, you have the opportunity to pray against the regulations at that stage.

We are in a bit of a catch-22. If we said that you need the whole package and that we will come to you with the Bill, the regulations and the code all drafted, realistically we will not come back to you until —

The Chairperson (Mr Weir): It is important —

Mrs Gillan: I understand your difficulty but all I can say is that we are going to push to do our best for the autumn.

The Chairperson (Mr Weir): The Committee is perfectly content and keen to work with the Department on this. From that point of view, we are not trying to be obstructive. This is not a question of giving us a blueprint, at the one time, of every single piece of legislation. We want to ensure that we do not hold back on everything until the slowest boat comes into port and that we get what we can get as quickly as possible. It is critical that these things are read together as much as possible.

Mrs Gillan: We can certainly bring it back to the Department to see whether there is a process that we can put in place so that, as things are developed, we have an ongoing flow of information.

The Chairperson (Mr Weir): The other reason why early sight of things would be very useful — it has been the experience in other Committees — is that you are quite often left with a situation where, in certain cases, the regulations are being put through reluctantly because you do not want to obstruct the process, or, alternatively, you get into a stand-off with the Department and into a situation where there is the nuclear option of a prayer of annulment. You then have to try to reconstruct the pieces and see what compromise can be reached. A number of Committees have been in that position. The preferable position is to head any problems off before you get to that stage and see what is there. There have been occasions, and I appreciate that this may not be quite the position on the SEND Bill, on which Members have said that, if they had seen precisely what was going to be in the regulations, they would not have passed a clause in the first place, because at the time it was not necessarily clear what the implication of it was. That is why there has to be a degree of follow-through and connection between the two.

Mrs Gillan: A good proportion of the regulations will be as the 2005 regulations are and will build on those, but obviously you will want to see the particular ones that relate to the new provisions. We can certainly go back and see what we can do, absolutely. We want to work with you as you are considering them.

Mr Lunn: That does not give me much satisfaction. The reason we are going through this process is evidently because of dissatisfaction with the outworkings of the 2005 regulations.

Mrs Gillan: I am speaking in relation to the structures and some of the procedural stuff. Obviously the new rights and timescales will be the new elements.

Mr Lunn: I will give you a relief from my scepticism about the overall timescale. I saw the figures that Caroline presented to us in relation to the part of it that refers to 26 weeks, down to 20 weeks, as you probably heard. What are the exceptional — what is the word?

Mrs Gillan: Valid exceptions?

Mr Lunn: Valid exceptions, yes. One of them appears to be on health grounds.

Mrs Gillan: Yes.

Mr Lunn: What are the important ones?

Mrs Gillan: Health grounds is the important one. As Irene said, about 40% of statements are within 26 weeks. Of those others that do not make the 26 weeks, where valid exceptions are used, 81% of the valid exceptions relate to late receipt of advice from the health sector.

Mr Lunn: From the — ?

Mrs Gillan: The health sector — health professionals.

The other ones might be late receipt of information from parents, issues around school holidays, or appointments that are not kept. Those are not the key issue resulting in the breaches of the 26 weeks. It is really the receipt of advice from the health sector.

Mr Lunn: Under the new arrangements, will there be a greater onus on the health sector to cooperate?

Mrs Gillan: We cannot impose new duties or requirements on the health sector. We collated the information on the valid exceptions in the Department, and I have been in contact with my counterpart in the Department of Health, and I am due to meet with him in the coming weeks to discuss these issues. He has brought together officials from the Health and Social Care Board and the trusts, because it is of concern to us. The way to improve that is by working together, and it is about the processes at the operational level. Another significant help will be the ongoing review of allied health professionals, led by the Public Health Agency. That includes the speech and language therapists, physiotherapists and occupational therapists (OTs). As part of that review we have picked up that some of the problems concern a lack of understanding, amongst some health professionals and some sectors, about the statementing process, communications issues within the trusts and the gathering of information. They have already developed proposals and are looking at operating principles and, hopefully, training, which might help to some degree. The reality is, however, as we all know, that some of the problems and pressures nowadays are caused by a lack of resources —

Mr Lunn: Well, there you start to get to it.

Mrs Gillan: — and how do we fix that? It is an issue that we are very alert to, and I am —

The Chairperson (Mr Weir): We would all welcome that greater degree of working. As part of that process, if we could see it tied down on a more statutory-type basis, that would be helpful. I am wondering whether the cynics would say that if, at the moment, more than half the cases — maybe because of valid reasons — are not making the 26 weeks —

Mr Lunn: Do you think I was not going to ask that? *[Laughter.]*

The Chairperson (Mr Weir): Sorry, I will defer to Trevor.

Mr Lunn: Thank you. At the moment 27% of the cases that fail the 26-week test are actually over nine months. Some of them are over 12 months, and only a few, thank goodness, are over 18 months. You have pressure on resources. How on earth are we realistically going to compress all that down to a timescale with a 20 week limit instead of a 26 week limit?

Mrs Gillan: I will start by saying that we feel that, if there are areas within the education sector's control, we should be trying to shave off whatever time we can. Obviously, we cannot influence areas outside that. That is why we want to try to shave off time that is within our control as much as we can. Irene or Jan may be able to explain where we might see some of the time saved.

Mrs Murphy: For instance, there is the time taken to consider whether the authority should undertake a statutory assessment or the time taken to prepare for a statement or to issue a final statement. Those are areas where we think that we could shave off some time.

Mr Lunn: I cannot hear very well, Irene. Can you move the mic round?

Mrs Murphy: Sorry. There is the time that the authority would take to consider a request for statutory assessment or in conducting the statutory assessment or in preparing the final draft statement. We know that, in all but a very small number of cases, one or two, the authority does meet its statutory time frame of 26 weeks and completes statements within that 26 weeks. We also know that there are statements where there is no significant input from health and social care trusts. As we say, we feel that, with the statements that are within the gift of education, there is scope to reduce the time frame. The counter to that is, of course, that, if the health trusts cannot do that, we do risk the number that are subject to exceptions increasing. That does not mean to say that we think that we should not do something in relation to what is within our gift.

Mr Lunn: That will do me, Chair. I am just going back to the timescale for the process of the Bill. I hope that we do not hear the words "accelerated passage" coming over the horizon, because I do not think that anybody here would be very keen to hear that.

The Chairperson (Mr Weir): I think that it is important that this is got right. The process may preclude this, but, being cynical because we have seen this on other occasions, if you have a very specified time frame regarding what are, essentially, stages 4 and 5 of the process — we have seen concerns in other Departments where there is a particular time frame — is there any danger that that will simply flip the time pressure to the opposite end and that a longer period is taken over the first three stages to make sure that everything is almost ready to run and that, effectively, you get a false picture for the areas that are not particularly time bound? Those would then take longer so that, artificially, a target is met.

Mrs Gillan: That is arguably an issue at the moment, and, obviously, the Education Authority has its statutory duties in relation to timescales for statementing. The Department also expects the authority to respond to the needs of pupils at the current stage 3 within reasonable timescales. Moving forward, the authority, hopefully, with the regional approach, will assist and bring consistency and more effective use of its resources. With that, we expect that its publication of its annual plan of supports will include some indication of what can be expected at the non-statementing side. That is always a pressure where you have the authority, quite rightly, trying to deliver its statutory duties as well as all of the other things that we expect of it.

Mrs Overend: It has been an interesting discussion so far, and I expected those questions to be asked before you came to me, Chair. I really wanted to ask about the remedy arrangements if there was a controversy or dissatisfaction. How is that proposed to change, or what are the new proposals?

Mrs Gillan: Irene, would you talk about the DARS and mediation services?

Mrs Murphy: Currently, there is a statutory dispute avoidance and resolution service. The legislation requires it to be delivered independently of the authority, but, in fact, it is staffed by education authority staff who are independent of the SEN decision-making sections of the authority. It provides an informal means of resolving dispute between parents and schools or parents and the authority. If a parent wishes to take a complaint to DARS against a school or against the authority, there is no requirement on either the authority or the school to take part. Nonetheless, it is an informal means. Moving forward with the proposals, we would like to see that the DARS is completely independent of the authority in some way. The new proposal is for parents to have a right to mediation before they take a case to the Special Educational Needs and Disability Tribunal. Those would be cases solely against the authority rather than schools. Some folks expressed concerns about whether that would mean that there would be a delay in terms of a parent taking a case to tribunal. We envisage that that, in the first stage, will be a very simple process so that, if a parent or, as we move forward, a child over the compulsory school age of 16, wishes to make an appeal, they would have to first consider what mediation might look like. We envisage that that would be perhaps a telephone call or very quick face-to-face contact. A mediation adviser would say, "OK, look, this is what mediation is. This is how it might be set up. We would have discussions with you, as the appellant, and we would have discussions with the authority, consider your dispute and see whether there is a meeting of minds". That explanation would be offered very quickly to the parent or child.

If, as a result of hearing what mediation might look like, the parent or child decided that they did not really fancy that very much and wanted to go straight to appeal, they would absolutely be able to go straight to appeal. The mediation adviser would issue a certificate saying that they had enquired about mediation, and the normal appeal process would run. We would not envisage that that would

take any longer than a number of days. If, on the other hand, the appellant decided that they wanted to engage in mediation, they would still be able to lodge their appeal with the tribunal. That is different from the process through the Children and Families Act, where mediation runs before an appeal can be lodged. That proposal is for the very reason that we did not want to see any delay in terms of a consideration by a tribunal. The process would run simultaneously so that mediation would continue with the mediation adviser and the parties concerned, and, if agreement was reached, a certificate would issue to say that an agreement had been reached, and the appellant would withdraw their appeal before a hearing. Again, we would expect to set timescales for the process around that to make sure that there was transparency around how long those things should take.

Mrs Overend: So, part of it will be in the legislation —

Mrs Murphy: Yes.

Mrs Overend: — and the process will be through regulations.

Mrs Murphy: Yes, through the secondary legislation.

Mrs Overend: What if there was a dispute with the school or about the delivery of the education? You said that it was only if there was a dispute with the authority.

Mrs Murphy: Through the dispute avoidance and resolution service. We hope that that will be more independent than it currently is and that parents or children would be able to take their dispute to DARS.

Mr Hazzard: Thanks for the update. Is it legislatively possible or even competent to include an obligation on the Education Authority and health trusts to cooperate in the development of SEN plans? Often, people talk about it, but is it possible?

Mrs Gillan: We intend — it is in my briefing somewhere — to introduce a requirement to say that the authority must ask for advice from the health side. I think that there is already a duty in health legislation that requires it to ask for advice from the education side. The reality is that something is already there where the two should be cooperating. If I can find it —

Mrs Murphy: For example, in relation to where a health trust has been involved with a child perhaps at a very early age, there is a requirement on it to notify the Education Authority. The authority then has an opportunity to consider whether they might have a special educational need that requires it to put in place provision.

Mr Hazzard: Finally — most points have been made — some people in the Irish-medium sector feel that educational psychologists and those in the wider sphere do not have a full appreciation or knowledge of special educational needs in immersion education and Irish-medium education. How will the legislation address that gap? How can we ensure that every child in Irish-medium education will receive exactly the same help and facilities as those in mainstream education?

Mrs Gillan: If there are issues, those are probably things that need to be addressed at operational level. A subgroup of what was the joined-up education and library boards had a specific Irish-medium SEN group to look precisely at particularities around the needs of Irish-speaking pupils. So, some of those issues are being addressed. That group was led by the Belfast Board. We have also funded some educational testing products, which are particular to Irish-medium education because some of the products that were available in the English-medium format were obviously not suitable. We also produced a particular early years handbook for Irish-medium education. That was not just a straight translation of the English version; we went out to Irish-medium settings to look at interventions that were more suitable to education in Irish.

Mrs Murphy: Also, the SEN resource file that we mentioned earlier was recently made available in Irish. Again, whilst the basis of it is the same as the English version, it has been specifically adapted for Irish-medium settings.

The Chairperson (Mr Weir): One final issue that I want to touch on, which links in with clauses 11 and 12 in particular, is the pilot scheme regarding challenges by children who have not reached the

upper limit of compulsory school age. There are different arguments about how good or bad an idea that is in general, but I am curious about the construct that has been put forward, which seems to put something in place on the basis of a pilot scheme that may take place at any stage in the next 10 years and then look at the issue of those who have not reached the upper limit within a two-year period of that. That approach from the Department almost seems to suggest that they feel they have to do something; it seems a little bit half-hearted or at least very cautious.

In other legislation, we have seen it indicated that there will be a pilot scheme within a period of time. In this case, it is quite a long period, which seems to suggest that the Department wants to commit to something but long-finger it as long as possible.

Mrs Gillan: Obviously, in developing the pilot scheme, we wanted to be able to learn from what was happening in England and Wales and see how the system would run, even for the post-compulsory school-age pupils, and take all of that learning on board. We also wanted to ensure that the pilot scheme could run for a period of time with a bit of learning and feedback. Only with the positive outcomes would we go and take the power —

The Chairperson (Mr Weir): Are there natural comparators in other jurisdictions?

Mrs Gillan: In England, they are about to start one or are in the midst of one.

Mrs Murphy: They have not started their pilot yet. They have similar provision for a pilot, but they have not yet started. Wales had a pilot and moved quickly to legislate, but they, as I recall, had one disability discrimination case in the pilot and moved forward on the basis of that.

The Chairperson (Mr Weir): It is the old thinking that a wise person learns from their successes and failures and an even wiser person learns from somebody else's successes and failures.

Mrs Gillan: Ten years might seem long, but it is not that we want to sit for 10 years. We genuinely want to get the learning from what is happening elsewhere and from our post-16 —

The Chairperson (Mr Weir): I think Trevor is wondering whether the legislation will be through by that stage.

Mr Lunn: I am maybe not the only one, Chair. We will see.

Mrs Gillan: If all goes well in the pilot and the evaluation, we have the power to move immediately to make it law.

The Chairperson (Mr Weir): OK. Thank you for your evidence.