



Northern Ireland  
Assembly

Committee for Education

# OFFICIAL REPORT (Hansard)

Special Educational Needs and Disability Bill:  
Northern Ireland Commissioner for Children  
and Young People

17 June 2015

# NORTHERN IRELAND ASSEMBLY

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**Members present for all or part of the proceedings:**

Mr Peter Weir (Chairperson)  
Mr Jonathan Craig  
Mr Chris Hazzard  
Mr Trevor Lunn  
Mrs Sandra Overend  
Mr Seán Rogers  
Mr Pat Sheehan

**Witnesses:**

Ms Mairead McCafferty	Northern Ireland Commissioner for Children and Young People
Ms Koulla Yiasouma	Northern Ireland Commissioner for Children and Young People

**The Chairperson (Mr Weir):** I welcome Koulla, who is the commissioner, and Mairead, who is the chief executive. I ask you to make a short opening presentation of 10 to 15 minutes, and then members will have some questions.

**Ms Koulla Yiasouma (Northern Ireland Commissioner for Children and Young People):** Thank you very much for the invitation to speak to the Committee. I am pleased to be giving evidence for the first time since my appointment in March. I assume that it will be the first of many engagements —

**The Chairperson (Mr Weir):** We will have to see, Koulla, how it goes today. *[Laughter.]*

**Ms Yiasouma:** I think that you will have to have me back whether you or I like it or not.

As you would imagine, education will be a huge focus in my term as commissioner, as it has been over the last 12 years of the NI Commissioner for Children and Young People's (NICCY's) existence. One of the things that I am very interested in, which is why the legislation is so important, is how education not only helps children to achieve academically but helps with their personal and social development.

NICCY is required by law to base all its work on the United Nations Convention on the Rights of the Child (UNCRC), and a range of articles in the convention are particularly relevant to the provisions in the Special Educational Needs and Disability (SEND) Bill. They include non-discrimination, the best interests of the child and, of course, the importance of the voice of the child or young person. Specifically, two articles — 28 and 29 — of the UNCRC centre on education and its purpose, stating that children should be provided with educational opportunities that address their individual physical,

mental, intellectual and social needs, taking account of their evolving capacity and development stage and seeking to develop a broad range of skills. This is where the Bill comes into its own.

I hope that we will continue to have the Human Rights Act, which includes the right to education, for a very long time. The European Convention on Human Rights, in article 2, protocol 1, also makes the right of a child to education very clear. The European Court has expanded that to talk about "effective education". It is not just about turning up at school; it is about making sure that a child gets an effective education. As I said, NICCY has worked on special education and how young people have transitioned from the education system into adult services since 2003.

I have been talking to colleagues outside, and the mantra is that it is difficult to assess how effective the Bill is because we have only half the story. It would have been much more helpful had the Department published the supporting regulations and the code of practice. If ever it were true, the devil is—

**The Chairperson (Mr Weir):** Sorry to interrupt. I remind members to switch off their mobile phones as they can interfere with the recording.

**Ms Yiasouma:** I just assumed that they were tweeting about the scintillating evidence that they were hearing.

**The Chairperson (Mr Weir):** Absolutely. If they want to do that, they can go outside. We do not want to spoil your evidence with phone interference. The session is being recorded for Hansard, and we have had situations in which the sound quality has been damaged by interference. It is important that everything that is said is on the record. Sorry to interrupt, Koulla.

**Ms Yiasouma:** OK, that is fine.

I will re-emphasise the point: the biggest challenge in assessing how the Bill will meet the rights of children and young people is knowing what its outworkings will look like. We need to see those, so we recommend to the Minister and the Department, and we also ask the Committee, that, when they are published, there is full consultation. We will suggest that you run another suite of evidence sessions to be sure that they have got it right, because it will definitely be in the regulations and the code that we will see how this impacts on children and young people and their families.

Very briefly, I will go through the relevant clauses. We welcome the fact that clause 1 states that, whatever the education authority, it should

*"have regard to the views of the child".*

The fact that this is in the Bill, right at the top, is very welcome. I am a little concerned that there is a range of criteria that adults have to go through to assess "if" they should consult a child. We suggest that that should be "when" they consult a child. If it is found that they cannot do so because of a child's condition, there are appropriate ways of doing that with the child, their parent or an advocate. We strongly recommend that it should be the exception that a child is not consulted on his or her views.

The other thing about consultation, and this, too, might be more relevant to the regulations, is that it is not a one-off event. Partnership and engagement with children, their parents and families should be part of the overall education. It should be in the planning and the outworking of the plan.

I will not go through all the clauses one by one. Clause 2 is the duty placed on the Education Authority to publish, review and revise plans for special educational provision. It is important that such a plan is realistic, fully resourced and accessible to children and families. The other thing that I would like to see in the plan is that it is not just about children who reach the threshold of the statement; it should also be about children who have special educational needs or particular educational requirements that are "outside the mainstream". As well as children with a disability, they could include children who have not met the threshold for the statement or the group of children who have what we might call "social needs" or other needs: for example, children who have come into the country for whom English is their second language; children who are looked after; children who have been adopted; and a myriad of other issues.

Additionally, as part of the overall plan, we urge the Education Authority to look at creative ways of engaging with pupils who might find themselves outside of school for a specific period, albeit, hopefully, temporarily. It could be a one-off event, such as when a child has an illness or has broken a limb. It could be that a child's condition means that he or she is out of school for a while. There must be creative, and often technological, ways by which we ensure that a child's educational needs are met. It is not acceptable to me that a child is out of school for six weeks. If children can have their educational needs met, thus ensuring continuity, why should they not? I urge that, when looking at the plan, the Education Authority look at creative methods of ensuring that children have their needs met whether they are in or out of school.

NICCY absolutely supports the placing of enhanced duties on boards of governors for children who have special educational needs. As I said earlier, it should be a broader duty than for those with a statement, because it is about the whole school community. Most boards of governors are volunteers, so we need to be sure that they are properly trained and not overwhelmed by this responsibility. I do not think that it is beyond the wit and resources of the Department and Education Authority to ensure that that happens. It is also important that this duty on boards of governors is taken seriously, which, in turn, will place a responsibility on the Department to monitor how they discharge that responsibility. Therefore, we look forward to receiving details on the role that the Education and Training Inspectorate (ETI) will play in that.

Clause 4, which is about the relationship between education and health, gives me considerable cause for concern. NICCY is aware, through its individual casebook, talking to parents and families generally, and commissioned research, of the detrimental impact on children's health and well-being generally, and education specifically, of ineffective cooperation between health and education bodies. We previously advised of the need to consider the introduction of a statutory duty to ensure that the health provisions set out in a statement are met. We need a holistic plan for each child. Children cannot have different plans: one to meet their health needs, one to meet their education needs and one to meet whatever other needs they have. It is regrettable that the Bill suggests a weakening of that. However, I am optimistic that the Children's Services Co-operation Bill being considered by the Committee for the Office of the First Minister and deputy First Minister will provide some assistance.

NICCY welcomes the extension of the exercising of rights to young people and making them the rights holders, but our concern is that every young person, as far as possible, is given the right to participation in decision-making about the provisions made to suit their particular needs. It needs to be meaningful. We will, therefore, be particularly interested in seeing the regulations and how those young people will be supported to exercise their rights, particularly as they get older, and whether consideration will be given to appointing an independent advocate to support a young person.

As a parent of teenagers, sometimes what I think is in my girls' best interests and what they think is in their best interests are two different things. I want them to be wrapped in cotton wool and never, ever go out, even though one is soon to be 18 years old. They are able-bodied and can voice their views. Children who do not have a voice or who need special support to access that voice need to be given that support. It is not about children exercising their rights against their parents; it is about making sure that their voices are heard and that people who make the decisions can balance all of that. It is about evolving capacity.

The UN Committee on the Rights of the Child, in its concluding observations in 2008, expressed concern about the inadequacy of participation opportunities generally and referred specifically to children with special educational needs across the four jurisdictions of the United Kingdom, particularly the opportunities in schools. It drew particular attention to the lack of the right of appeal by the child to the Special Educational Needs and Disability Tribunal (SENDIST). NICCY is, therefore, extremely disappointed that the Bill provides only for a pilot scheme for appeals and claims by children, as detailed at clause 11, which states that the Department "may" make a scheme. We recommend that the wording be altered to reflect the Department's strong commitment to implement a pilot scheme and to reduce significantly the proposed timescale from 10 years to a period of not more than three years.

NICCY welcomes the provision under clause 13 to extend the definition of a child to age 19 in order to tie in with the final school year, but we are disappointed that the Bill does not contain any additional provisions for young people transitioning from school to further education or approved training. We have two recommendations to address that issue. First, since we submitted our written evidence, I, personally, have developed my thinking on the definition of the child for the purposes of special education, as outlined in clause 13. The NICCY legislation of 2003 states that our remit extends to the age of 21 if the child or young person is looked after or is disabled, thereby recognising that these young people sometimes need additional support to reach the same developmental and educational

milestone as their peers reach at age 18. Therefore, we strongly recommend that the Committee consider a provision to extend to 21 the age of children who fall within the legislation.

In 2012, NICCY and Queen's undertook work on transitions to adult services for young people with learning disabilities specifically. It demonstrated a myriad of gaps that young people fall through, including in the area of education and training. We believe that it is imperative that every young person with a statement or with a disability — not just those with a statement but those with other needs — should be offered effective transition guidance and support to ensure that they are adequately prepared to progress to the next stage in their education. Let us not forget how long it has taken for this process to be in train. I am old enough to have been around in 2009 when this was originally discussed. The Department's original proposals in 2009 included a recommendation that all special educational needs pupils be covered by this, but that has been withdrawn. We are very disappointed that the Bill does not extend to transition support.

My final recommendation is on the status of the statement. The statement should follow the child, regardless of where his or her education and training needs are being met. I was really astonished to learn, since taking up this post, that the statement is attached to the institution in which the child is being educated. So, if a child aged 16 is more likely to have their educational needs met in an FE college, for example, the college, and the Department for Employment and Learning (DEL), as the sponsor Department, are not legally bound by the requirements of the statement. So, there is the possible anomaly of two children having their educational needs met in two different institutions but with similar, comparable educational needs. The rights of one are legally enforceable because of being educated in school; the rights of the other are not because of being educated in an FE college. That is not to say that FE colleges are not doing everything they can, but we have had incidents of it being diluted because of resource issues and what have you, meaning that children at an FE college get a very different service from the service that they would have had at school. We recommend that the statement follow the child, wherever their educational needs are being met. I am not saying that willy-nilly: it should be with an FE college or an approved training provider. I do not believe that it will cost a huge amount to do that.

That is as much as I want to say in my formal evidence. I am happy to take questions on this and any other issues, as is Mairead

**The Chairperson (Mr Weir):** Thank you very much for that. Your evidence has been comprehensive. Indeed, you covered a couple of questions that I intended to ask you.

**Ms Yiasouma:** Sorry.

**The Chairperson (Mr Weir):** No, all the better. It is good when that happens. I want to test you on two or three points. You talked about developing the role of governors. In your written evidence you talk about how you see stakeholders' concerns being addressed, more or less, by training the governors. How do you see that being addressed in practice? We are talking about 1,200 schools and a large number of governors who are, basically, volunteers. At what level do you see that training being needed?

**Ms Yiasouma:** Mairead and I have been on boards of governors, which is intense and a huge responsibility, but I think that the training can be streamlined. They are often quite big groupings. I do not think that it is impossible for each governor, with sufficient training and support, which could include support from colleagues, through networks, for instance, to take on this focus. We have also been looking at bullying and would like to see an interest in that at governor level. I think that governors would welcome the opportunity to focus on and have particular areas of interest for which they were responsible. We need not to scare them, because our education system relies on them for their governance. With proper training and support, physically and through networks of other governors doing the same thing, a focus on particular issues would be welcomed.

**The Chairperson (Mr Weir):** You have covered the next thing that I was going to raise — linkages and cooperation. You mentioned the other legislation that is going through the Assembly. An issue that we are all trying to grapple with is the significance of putting down in legislation something that will force cooperation. There are the practical outworkings. Many people — witnesses and the Committee — take the view that a lot of the details could be sketched out and added on in regulations, which will, therefore, be crucial.

May I ask you about a different subject? The Department suggests that it does not see the Bill as having major financial implications. You will, I think, disagree. Where do you see the financial implications of what, potentially, will come from the SEND Bill?

**Ms Mairead McCafferty (Northern Ireland Commissioner for Children and Young People):** One of the earliest concerns about the proposals to revise SEN and inclusion provision was that the funding should be ring-fenced. There was concern, and we heard stories and anecdotal evidence, that the special education need resource was not always going to the point of need, which is the child in the classroom. When we originally submitted our evidence, along with all the other stakeholders, back when this was being proposed, there was concern that that would be the case. So, there is a need to ring-fence the funding of SEN. Everybody appreciates that budgets are stretched in the current climate. One of the most important things that we have an opportunity to do is to change the practice. That is very much about changing the practice of our education professionals and supporting them, but also supporting the health professionals. When we look at a statement of educational needs, we see that it is very much informed by the medical input, as it should be. That is only right and proper. Therefore, both should be supported to be able to do this effectively. It is about looking at that joint resource and the pooling of resources. This is where you get into the Children's Services Co-operation Bill. If, for example, there is a mandatory obligation on both Departments to cooperate, people in those Departments will be given the freedom to do this much more effectively.

**Ms Yiasouma:** There will be financial implications, which is why I said that the Education Authority needs to make sure that those resources are identified. One of the clauses that we did not talk about relates to the time limits. We know that there is a backlog, particularly in educational psychology assessments, for instance. Work will have to be done to streamline the process. If the witnesses in the next evidence session say that there will not be any immediate financial implications, I will be concerned that it might be the same old, same old. Parents and children cannot have the same old, same old. It needs to be different. We are not necessarily asking for additional resources or thinking that it merits additional investment. It is about using the resources that they have more effectively. That is why the plan that the Education Authority will develop cannot be pie in the sky — it needs to be realistic. If it is to meet the statutory duty on time limits for doing this, it will have to put some money in at the beginning to speed up some of the assessments that these children undertake.

**The Chairperson (Mr Weir):** Finally, before I open it up to members — I have a couple of overarching questions to ask at the end — I will play devil's advocate. It has probably been conceded by most people that the construct of the pilot is slightly unusual, in that it seems almost to commit to something over a 10-year period. Objectively, it may seem that the Department does not particularly want to do this, but it feels that it has to make some nod in that direction. Perhaps one element of its reluctance is that, as I understand it, a similar pilot was tried in Wales. From the information that I have, there was a very low uptake. You then have the additional bureaucracy and whatever cost of running the pilot, only to get a negligible response. As far as the right to education and the associated costs are concerned, is there not an argument that, rather than going down the line of a pilot, which would cost a certain amount but have, potentially, relatively little direct take-up, and given the pressures on resources, it would be better simply to allocate that money to SEN provision and disability services?

**Ms Yiasouma:** I have not interrogated the pilot in Wales, but there is a lot of learning to be taken from it. Northern Ireland can learn from that. I am baffled when I read in legislation, "In 10 years' time, we're going to do x, y and z". The chances are that, in 10 years' time, we will have further legislation to address this issue. You are either genuine about including the voice of children and young people and engaging them in the decision-making processes on this important legislation for their education, or you are not.

I do not want investment in something just for the sake of setting it up. It does not need to be as complicated as that. Lessons can be learned from some of our other structures and processes for engaging children with provision, as Mairead said, particularly in healthcare. You can look at amalgamating that or at having a phased roll-out, but we need to get on with it.

I imagine that, as children and families get used to the idea, the uptake will increase. These things always happen very slowly over a number of years. We are not saying that you should do it tomorrow. We are saying that this is important legislation in ensuring the participation of children and young people. It is a culture change in our education system, particularly for that group of children. It will take time to bed in, and the investment should be commensurate with that.

**Mr Hazzard:** Thanks for the presentation. On the back of what you just said about meaningful engagement with children and young people, we see right across the board, not just in this legislation, that we need to do more. Is there a model? What does meaningful and constructive engagement with children and young people look like?

**The Chairperson (Mr Weir):** It sounds like there is still some mobile phone interference. I can hear it. Even if anybody —

**Ms Yiasouma:** For Hansard: it is not us.

**Mr Hazzard:** So that engagement is genuinely constructive and successful, rather than being a gimmick, what do we need to look at?

**Ms McCafferty:** When you ask that, Chris, the thing that jumps into my head is the annual reviews currently carried out in the education system, which should involve all the stakeholders around the table. The child should be very much at the centre of that. It is very much about making sure that the child is involved in the process from the start and throughout. As Koulla said, it should be a process of engagement; it should not be a one-off and then forgotten about. Needs change as time goes on. Hopefully, a lot of the needs of the young people will be met as they move through the system. As they go through their education career, those needs should lessen because they get the intervention they need when they need it. I suppose that the model to strive for is one in which you involve the child throughout the process so that the demand for resources lessens as time goes on. I suppose that it is very much about looking at whether we want to take the opportunity to shape this new way of working much more effectively. The whole point of doing this and the point of the whole process, which has taken, as you know, a number of years, is to better meet the needs of our children and young people. We have an education system where we have young people doing extremely well at one end and, at the other, not doing well at all. We are failing those children, and we have to take responsibility for getting this right.

**Ms Yiasouma:** On that, it is about making their views visible. When you see a document that is about the lives of children and young people, you should ask, "Where are their voices?". Is there some visibility about how that is done? We have been working with the Education and Training Inspectorate (ETI) around pupil participation in schools, and this should extend across the education system. The Minister has produced guidance, and we are saying that it needs to be mandatory that every school — every system — has a way of ensuring that the voice of the young person is heard, and ETI should be inspecting for that. You should be able to see what Mairead has described coming through in everything that is written or said about children and young people.

**Mr Hazzard:** You spoke in the report and today about the relationship between Education and Health and the need for a statutory duty. A lot of us have looked at that, but there seems to be resistance, perhaps inevitably, from those who are at the coalface of it and say that we do not need a statutory duty. What would a statutory duty bring to this process that you think is vital?

**Ms Yiasouma:** Chris, I am sick, sore and tired of reading reports, particularly from parents and children, that say that nobody was talking to each other. They say that they went to this service, that service and that service but that nobody was talking to each other. They say that they had to repeat their story. Services were fighting over each other and arguing about whose responsibility it was. You say that it is at the coalface, but I do not think that it is; it is more at management and departmental levels. On the coalface, workers often get on with it regardless. I think that a statutory duty would make for a more efficient system. If we had one child, one plan, rather than plans that compete with each other, it would make for a more effective system.

Some resistance will come, particularly when budgets are reducing, with everyone wanting to hold on to resources and not wanting to share. Actually, sharing and pooling and having one plan for our children is by far the most efficient and effective way. These are the joys of Northern Ireland — she says with an English accent. With 1.8 million people, we can get it right. We can be the best in the world in this sort of stuff because we are small, tight-knit communities, and we can absolutely get this right. I genuinely believe that, as children go through different systems and services, it should be seen as a continuum. Also, children's lives do not fit in silos, particularly children who have a variety of needs. A young person has to have their health needs met so that they can access education effectively, so it has to be the one plan. I cannot believe that we have more than one plan for these lives that are still so early on. We are overcomplicating children's lives when we should not be.

**Mr Hazzard:** Thanks, Koulla.

**Ms Yiasouma:** I do not know whether that was a coherent answer, Chris.

**Mr Lunn:** Thanks, both of you, for your presentation. I am glad that you brought up the question of the pilot scheme because the Bill is strangely worded. To clarify what you want, you want to change "the Department may" to "the Department shall" and you want to do away with:

*"this section is repealed at the end of 10 years"*

and replace that with "within three years". You are still happy enough with the pilot scheme having a duration of at least two years.

**Ms Yiasouma:** Yes.

**Mr Lunn:** Did you say yes?

**Ms Yiasouma:** If a pilot is a pilot, it needs to be for a set period. You then look at how you are going to implement it. You need to have a pilot as a pilot for a set period. Two or three years is the average.

**Mr Lunn:** The way that it is currently, the Department, "may within 10 years". Presumably, after 10 years, the Department may not, according to the way that it is worded, which is kind of crazy.

**Ms Yiasouma:** Exactly.

**Ms McCafferty:** In support of what the commissioner is saying, it is important that, when we look at developing pilots in any aspect, we look on them as something that will inform practice. There is no point in doing a pilot if it is not going to inform practice to the benefit of children and young people, and, if it can be done in a much shorter time frame, that is to be welcomed. I think that the time frame is, as the Commissioner said, much too long.

**Mr Lunn:** OK. Clause 1 concerns the duty of the authority to have regard to the views of the child. Again, if I have picked this up right, Koulla, you think that it is currently founded on the word "if", and you would like to see it use the word "when", but neither of those words appear in the clause. Can you explain to me what you mean?

**Ms Yiasouma:** Our concern is that it is not strong enough on putting the child's views in the centre, so we do not want an "if", we want a "shall". We want it to be very clear and emphatic that the views of the child are the centre of this whole provision, so we do not want to see any wriggle room. At the end of the day, these children and young people are what it is all about because they are the customer. Obviously, there are some children that will not be able to, but they are in the minority. My concern is that there is just too much: too many barriers and too many systems in place before you can actually decide whether it is OK to consult with this young person. That is what worries me. There should be a presumption that you will engage with all young people on decisions about their education.

**The Chairperson (Mr Weir):** Just to pick up on that point — again, this may be something that is under regulations — I suppose that the specifics, in that, in clause 1, there is reference to "shall" —

**Mr Lunn:** Sorry, Chair, was I finished there?

**The Chairperson (Mr Weir):** Sorry, go ahead. I shall give way to Trevor.

**Mr Lunn:** I am not crossing swords with you here in any way, but the clause says that the authority "shall" have regard to the views of that child, and the caveat is that it should be done "so far as reasonably practicable". It is a very normal type of legalistic wording, and "shall" is strong.

**Ms Yiasouma:** Let me get my clauses. I have three types of clause here:

*"so far as reasonably practicable, seek and have regard to the views of that child;"*

Where the clause states "reasonably practicable", we have interpreted that as "if". The term "practicable", and it always baffles me why you would use a word like that in legislation, gives you a get-out-of-jail-free card. We recommend that it should read, "shall seek and have regard to the views of that child."

**Mr Lunn:** So, you want "so far as reasonably practicable" taken out.

**Ms Yiasouma:** Yes, we would like it removed. I have my "ifs" and my "shalls" mixed up, so thank you for clarifying that.

**Mr Rogers:** Thank you for your presentation and your submission. However, in your submission, one of your opening paragraphs states that it is imperative that the rights of the child are not diluted. I heard you say that there are no financial implications and so on to this, but do you believe that the rights of the child are being diluted by the Bill as you see it at the moment?

**Ms Yiasouma:** There is a potential to dilute the rights of children and young people. I think that we will know more when we see the regulations and the code of practice. Mr Lunn just made a point about putting in a little word or phrase such as "reasonably practicable". That is a way of excusing the dilution of their article 12 rights, their rights to have a voice. I have been urging government, and I will continue to do so, to understand that having less money does not mean that we cannot meet the rights of children and young people. It should focus our attention on those rights and use that as the framework. There are things in this Bill, for example, clause 1, which, if done properly will strengthen the rights of young people, but the code and the regulations have the potential of diluting them if they are not right.

**Mr Rogers:** Are you also concerned about there not being a statutory duty on the Department of Health? You would also nearly need a statutory duty on DEL for FE.

**Ms Yiasouma:** Yes.

**Mr Rogers:** Can we really depend on the Children's Services Co-operation Bill if it is somewhere in OFMDFM? Would that not also need to be on the statute book as well?

**Ms Yiasouma:** Yes.

**Ms McCafferty:** From listening to Ministers and officials, we understand that the Children's Services Co-operation Bill will have Executive authority. That should make it mandatory on all Departments to work together effectively.

Going back to the point that the Commissioner made earlier in relation to the statement following the pupil, if we do that and devise the statement in such a way that it becomes an integrated plan for that child to meet that child's needs, be they strictly educational, health or, as you said, under DEL, those relevant people should feed into that plan and take responsibility for it. That will save resources in the long term because you will not duplicate the services as you go through but will deliver at the point of need. If we do it right and get it right, it should save resources in the long term.

One of the concerns — I think that goes back to the point that Chris made earlier — is whether we expect this legislation to safeguard the rights of children and young people. We believe that there is an opportunity to do that and it is important that, in considering all the evidence, the Committee also listens to the recommendations that are being put forward not just by us but by others.

Clause 1 suggests that the Education Authority can request help and input from Health and Social Care. That should be much more robustly stated. We need to bring our Health colleagues in on it. If we leave them out, and it is not mandatory to include them, we will do what we have already done. We are trying to improve the system, and we cannot support our teachers in the classroom if we do not bring in our medical expertise as well.

**Ms Yiasouma:** That is why we want the plan to extend to the age of 21. We also want the plan to oblige the authority, wherever that child is having their education and training needs met, to adhere to the requirements of the statement. It would be good to put into the Bill that the plan would be portable with the child to wherever their needs are being met and to place a statutory duty on whoever is

providing that training or education to meet their responsibilities in the statement. That will enhance the rights of children and young people.

Hopefully the Assembly will eventually approve the Children's Services Co-operation Bill. As we said in another Committee, that will be holistic for all children. However, if that duty is in this Bill as well, that is all the better.

**Mr Rogers:** I think that you also mentioned that the Committee should run a suite of evidence sessions. You have concerns about the level of scrutiny because so much of it involves secondary legislation. That is particularly so with the code of the practice, and the Department can just print something out and do it without consultation. That is a major concern.

**Ms Yiasouma:** Yes. You will hear it in the evidence sessions to follow, but those concerns are being voiced across the sector. In the three and a bit months that I have been in this role, those concerns have been voiced to me consistently by parents. Legislation is all well and good, but what will they do with the code? The talk on the ground in schools, classrooms and when parents meet is that it will be diluted. The other point is that we need to have proper services and provision for children who do not meet the threshold for a statement, because there is a group of young people whose educational needs are not being met.

In this case, more than any that I have seen, I would strongly recommend the need for close scrutiny and an assessment of the outworkings of the regulations and the code of practice as regards a statement. I certainly will be doing that as Commissioner for Children. That is really important.

**The Chairperson (Mr Weir):** That is something —

**Ms Yiasouma:** It is regrettable that they did not publish the three in tandem.

**The Chairperson (Mr Weir):** That is something that we will come back to towards the end.

**Mrs Overend:** Thanks very much for your presentation and your views. It was interesting that you said that the statement should follow the children or belong to the child rather than the institution. How do you feel that would work? How do you foresee that happening? Who would own it? Would the child own it?

**Ms Yiasouma:** Yes.

**Mrs Overend:** Who would drive it?

**Ms Yiasouma:** If we have a statutory duty on whoever it is that provides the education, there would obviously be a main, named provider. If the child moves from formal school education, then it is the school. If they move into a DEL-approved training scheme or an FE college, it should be owned by, or the responsibility to deliver on it should pass to, the relevant authority. It is the child's currency to a service; it says that the child has to have his or her needs met.

This will not be overly expensive. It will not add huge amounts to the DEL budget in view of how much that Department is already doing for young adults with disabilities. It just means that DEL will need to refocus it a little bit. The child and their family should always own the plan. It is their rights; they are the rights-holder, and this is a piece of paper that says that they have their rights to a certain type of education. It should then be revised, and the key person responsible for delivering on it should adjust it according to wherever the child is getting their training or education needs met.

**Mrs Overend:** That is why it follows through to your appeals process, because they have a responsibility to enforce it or to hold others to account.

**Ms Yiasouma:** Yes.

**Mr Lunn:** I want to go back to clause 1, if I may.

**Ms Yiasouma:** I am ready for you now.

**Mr Lunn:** You mentioned the UNCRC, which details the child's right to express their views. I have not read this document but is there any caveat in that? Does it make any suggestions as to whether it is reasonably practical or possible?

**Ms Yiasouma:** You are going to get me on this. I have it in front of me.

**Ms McCafferty:** While Koulla is looking for that, I would point out that one important aspect is the capacity of the child. As Koulla said earlier, it is very much about looking at the needs of the child and taking the views of the child into account in accordance with article 12 of the UNCRC, as you say, but also making sure that the child has the capacity to do that and that their needs are facilitated.

**Mr Lunn:** When you say that you need to make sure that the child has that capacity, does that not mean —

**Ms McCafferty:** It means facilitating —

**Ms Yiasouma:** The UN Convention on the Rights of the Child is clear. It does not say, "as far as is reasonably practicable"; in its paraphrasing of the two paragraphs in article 12, it says:

*"The child has the right to express his or her opinion freely and to have that opinion taken into account in any matter or procedure affecting the child."*

Obviously, when we are talking about "reasonably practicable", you are not going to be able to talk to a child who does not have language, but there are other ways of getting the child's views. In some other health and criminal justice procedures there are independent advocates, who act in that mediation role. For a small number of children, that may be appropriate, but it is about making sure that there is a way of getting the child's views. It is not saying that just because a child said such and such, that is what you have to do. It says that you will have had to take that into account. What overrides that is our responsibility to ensure that their best interests are met. It is what I call the "Chips for tea" syndrome: you could ask a child whether they want chips for tea every night, but it is not in their best interests. Nevertheless, you have that conversation with them. The UN Convention does not have a get-out-of-jail-free card.

**Mr Lunn:** I am not disagreeing with you; I think that we will have trouble getting the Department to withdraw that wording. Could it even say that the authority "shall seek and have regard to the views of a child" and then put in a caveat at the end in some way to say unless that is impracticable?

**Ms Yiasouma:** I will say to the Department that we are happy to work with it on drawing up a clause that will work while ensuring that the child's article 12 rights are met thoroughly.

**Mr Lunn:** OK.

**Ms Yiasouma:** Members, we are taking evidence, and we have just momentarily dipped below the quorum. Fortunately, we do not have to take any decisions today.

I just want to ask a couple of overarching questions. One of the areas that the Committee is wrestling with — indeed, it has been brought up by pretty much every witness — and has raised with the Department is the interaction between the high-level intent in the legislation and the regulations. I suppose you are right in what you said about the Department producing the regulations and the code of practice at the same time. Obviously, we are pressing the Department for publication as early as possible.

The one constraint on the other side of this is the lifetime of this Assembly, which is due to run out in the spring of next year. It is important that, if we are to make a difference through the SEND Bill, we must make sure we get it through. It is a question of balancing out those areas, which may mean that when it comes to the constraints and scrutiny mechanisms that we put in, we have to look at different methodologies. Obviously, you have made suggestions. What has been suggested by legislative advice — this is not a substitute for overseeing the regulations, but at least it could provide a bit of belt and braces in relation to that — is that the Bill, which largely contains a lot of enabling powers, would be subject to high-level constraints on the relevant regulation-making powers, so that there are provisions in the clauses to limit what could be done through the regulations, ensuring that the intention of the Bill is followed through and that it is not a case of saying one thing in the legislation

and the regulations taking it in a different direction. I appreciate that this is maybe a slightly unfair question, but do you have any suggestions? You may want to give a bit of thought to areas that you feel should be subject to high-level constraints, specified in the Bill, on the regulations.

**Ms Yiasouma:** Yes, it is unfair to ask me that question now. *[Laughter.]*

**The Chairperson (Mr Weir):** From that point of view, therefore, if there are issues that you want to come back to us on —

**Ms Yiasouma:** It would be helpful to tie down as far as possible some of the things that we have just talked about, such as clause 1, the duties on the Education Authority, what the plan should look like, the pilot and the extension of the age, without hamstringing the Department and the Education Authority and schools. We will have a bigger think about what all that might look like. That is why this Bill needs to be as strong and emphatic as it can be to make the regulations quite clear. Even something about thorough and proper consultation on the introduction and the review and revision of the code would be helpful. Once you get into drafting legislation, it is like another universe, but we would be very happy to work with the drafters on relevant clauses.

**The Chairperson (Mr Weir):** Again, this may not be something that we can deal with by way of amendment, but it might be at least something that we could make the subject of a recommendation. There is the issue then, below the regulations, of the code of practice, which does not require any form of Assembly procedure at the moment, because it is not on that side. I presume you would agree that there may be value then in adding some level of procedure to that to ensure that —

**Ms Yiasouma:** The code is what is concerning the parents I have spoken to most, because the code is the operational outworkings. Again, we do not want to tie hands, but I absolutely think that it needs to have some sort of regulatory framework and statutory mandate.

**The Chairperson (Mr Weir):** My final question is not directly related to SEND. Because of the time constraints, I will ask you to comment, but we are not in a position to ask you any questions. It is an issue that we will come back to. Particularly in the light of recent events and the very sad death in Tyrone, we believe that, probably in the autumn, the Department will produce anti-bullying legislation. Do you want to make an initial comment on how you see the situation at present? I appreciate that it is outside the remit of SEND.

**Ms Yiasouma:** But it is not outside the remit of NICCY.

**The Chairperson (Mr Weir):** That is why I ask you. We will not have time to question you.

**Ms Yiasouma:** I am happy to put it on record that we have made submissions to the Department broadly welcoming the notion of legislation on bullying. We welcome the idea of having a clear definition of bullying, particularly as it relates to schools, and proper procedures that guide schools on how they should address bullying.

The case of the young man last week is a really sad example of the other big challenge, which is what happens when bullying takes place outside school and how you report that. That is when child protection procedures kick in and when services such as social services and the police need to remember that we are talking about children. Whether or not it is deemed that actions fall foul of criminal legislation, they are frightened children and, therefore, should be treated accordingly and given reassurances. Legislation should be able to give strong guidance and advice to education authorities about bullying that takes place outside school without reducing the obligation to protect children and young people wherever they are. That would be welcomed.

It is also important to remember that there are preventative measures. I would like to see in the legislation good preventative measures on bullying. We know what groups of children are targeted for bullying, and we need to be sure that we have robust personal, health, social and education programmes that make sure that our education environments are inclusive. So, there is prevention, early warning and what teachers and education authorities should do when bullying has been reported, and the other big area is when the bullying happens outside school. You cannot say that you are not responsible for it because it did not happen in school, but you also cannot do too much about it. You need to engage with your partners because bullying, particularly in its severest form, as we saw last week, is a child protection issue and is about the lives of our children. We need to take

that seriously. Again, cooperation across all agencies is crucial. That is better in child protection than it is in other areas, but it could be better.

**The Chairperson (Mr Weir):** Thank you, Koulla and Mairead, for your evidence. I am sure that we will see you again, not least when we get further into the detail of the anti-bullying side of things. There will be loads of other issues as well. If there is any additional information that you want to send us, we would appreciate it, particularly on areas where you feel there should be direct constraints in the legislation.

**Ms Yiasouma:** We will have a look at that.

**The Chairperson (Mr Weir):** That would be helpful. Thank you.