Northern Ireland Assembly

Committee for Education

OFFICIAL REPORT (Hansard)

Special Educational Needs and Disability Bill: Department of Education

1 July 2015

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:
Mr Peter Weir (Chairperson)
Mrs Sandra Overend (Deputy Chairperson)
Mr Jonathan Craig
Mr Chris Hazzard
Mr Nelson McCausland
Ms Maeve McLaughlin
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 welcome Mrs Irene Murphy, the head of the Department of Education's special education and inclusion review team; Mrs Caroline Gillan, the director of access, inclusion and well-being; and Ms Jan Matthews, who is a member of the special education and inclusion review team. The Committee is going to review the clause-by-clause table on the Special Educational Needs and Disability (SEND) Bill and will seek departmental responses to the evidence that has been received to date. That is our main purpose, but if at any stage members want to offer their own thoughts informally, we will be happy to listen, but there is no compulsion to do so.

We will begin at clause 1. The table is broken down into all the issues that have been raised, so I will go through each clause in which issues have been raised with us, and I will put them to the departmental officials. Therefore, there will be no need for an opening statement. When we get the responses, members will have an opportunity to follow them up with questions or comments.

Clause 1 requires the Education Authority to have regard to the views of the child in decision-making. In the clause-by-clause table, points 1.1 to 1.3 suggest that the Bill could be amended to strengthen the obligation on the Education Authority (EA), either directly referencing the United Nations Convention on the Rights of the Child (UNCRC) or changing the wording to remove "so far as reasonably practicable". All the issues that will be raised today have come from stakeholders and those who gave evidence. The Committee is giving no view one way or the other on any of the suggested changes.

Mrs Caroline Gillan (Department of Education): Irene will deal with that point.

Mrs Irene Murphy (Department of Education): The Department considers that the Bill's general provisions are compatible with the European Convention on Human Rights (ECHR). Obviously, while

the UK Government are a signatory to the UNCRC, that does not necessarily mean that each individual part will become part of UK law. The Department considers that the existing proposed provision in clause 1 is sufficiently compliant with the UNCRC. We are aware that a provision has been made in Wales that specifically references the UNCRC, and we understand that that provision relates to wider policies in the education world rather than specifically to special educational needs (SEN) provision. In relation to a specific reference to the UNCRC or other amendments, the Department does not consider that the SEND Bill should be the vehicle to accomplish that.

Do you want me to go through each point on clause 1?

The Chairperson (Mr Weir): There are other comments on clause 1. Let us take each element in turn. You specifically mentioned the UNCRC, but a couple of witnesses made suggestions about the phraseology of "so far as reasonably practicable". The argument is whether that is a get-out clause or whether it is necessary to have it. Can you help us with that?

Mrs I Murphy: I will go through each issue. The Children's Law Centre (CLC) makes a comment on changing "regard" to "due regard". Our view is that changing to "due regard" does not appear to do anything to add to or strengthen the intent of the clause.

In relation to a particular child:

> *"the Authority shall ... so far as reasonably practicable, seek and have regard to the views of that child".*

Generally, it is considered that legislative provision on the Education Authority is sufficiently wide if it is supported by a revised code of practice. We feel that "so far as reasonably practicable" is standard legal terminology to reflect a duty but perhaps not an absolute duty, which would create higher expectations and might be difficult to enforce.

There is a comment about exceptional cases. The Bill does not quantify exceptional cases, but we assume that that comment relates to children who lack capacity. The Bill already provides a duty on the Authority to provide that a child with SEN would be provided with advice and information about SEN matters in general, and that relates to their special educational needs.

There is a comment about schools and the involvement of the child. The current SEN code of practice includes the following the requirement:

> *"As far as the child's levels of maturity and understanding will allow, all reasonable efforts" —*

The Chairperson (Mr Weir): I will pause here to see whether there are any questions on what has been said so far.

Mrs Overend: You say that "so far as reasonably practicable" is normal legislative language. We can accept that it is normal language, but no one is questioning why it should be normal language. What is your opinion on using another phrase such as "always except in exceptional cases"? Have you considered whether you could use that as normal legislative language? If not, why not?

Mrs I Murphy: We are saying that the clause does not specifically define "exceptional cases", but we conclude that those relate to children who perhaps lack capacity. There is further provision in the Bill relating to our setting out terms whereby decisions might be made for children who lack capacity.

Mrs Gillan: The terminology "as far as reasonably practicable" is often seen in legislation and would have been judicially reviewed frequently. It gives an element of certainty. In a scenario in which the Education Authority is taking the view of the child into account, there might be more certainty and the ability to judge whether reasonable steps have been taken. If we introduce the concept of "always except in exceptional cases", given that that phraseology is not as understood either in legislation or in case law, I am not sure whether it would necessarily give as much certainty or clarity to the authority or to children and parents.

If you look at the legislation and the new clause that we are introducing, as well as the existing code of practice, there are already quite clear requirements on taking on the views of the child, which will be re-emphasised further. We feel that there is sufficient protection in this situation, so we do not think that it is necessary in these circumstances. Obviously, we would say that, because we have come up with the proposals and the drafting, but, genuinely, if you are looking at legal interpretation, we feel that it is strong enough.

Mr Rogers: I will go back to the UNCRC. The focus of the SEND Bill, like any part of education, is that the child needs to be at the centre of all this. In the SEND Bill, the special needs child is at the centre. Why do we not just reference the UNCRC anyway? You made a comment, Irene, along the lines that the Bill is not the vehicle to accomplish that. Will you elaborate on that?

Mrs I Murphy: That was about the provision that has been made in Wales, which we looked at in the last few days after that point was made. It is about wider provision for children across the education sector, not specifically for children who have SEN. We feel that the SEND Bill already caters, at an individual level, for children who have special educational needs and places the child at the centre of that process. We think, therefore, that there is already sufficient cover without specifically citing the UNCRC provision.

Mrs Gillan: We worked hard with a lot of the stakeholders and engaged with the Attorney General to ensure that we were meeting UNCRC requirements. That is why a lot of the provisions are in the Bill. I am aware of other legislation that may come forward that reference the UNCRC for particular circumstances. Obviously, a reference of the nature proposed does not give individual rights because the UNCRC does not do that. It is worth considering, but it may be better to consider it at a future point and in a wider context and of the duties on education rather than necessarily doing it at this stage in the context of this issue. I meant to say at the beginning that, in engaging, we have not taken the Minister's views on any of the issues. We will have to do that later as proposals firm up, and we take an official stance on any of the issues.

Mr Rogers: I understand your point, Caroline, and I would be happy enough if it was in at a wider level, but that is not the case.

Mrs Gillan: We feel that the requirements that we have put in meet the UNCRC requirements. Given that they are detailed in the reviews of the child, the rights of appeal and elements like that, we feel that we are meeting all those UNCRC requirements without having the general reference. An element of it will be for the Education Authority. You are introducing an additional requirement that may not always be precise, and there are debates over what the UNCRC necessarily requires in every situation. You are adding an extra layer of complication and potential bureaucracy and litigation to an already pressed system. We do not want funds to be sucked out in the direction of litigation when they should be going into SEN provision. That is a different issue and a different concern for lawyers and those engaged in that area. We feel that we have worked hard to meet the UNCRC requirements, and, when we brought back the new proposals following the consultation, the Minister was very keen that we meet those and engage with the stakeholders, the Attorney General's office and our departmental solicitors to ensure that we had done that.

The Chairperson (Mr Weir): I appreciate, particularly in domestic law and education, that there are a number of examples in which the intention is in the legislation. Are you aware of any other education legislation that directly references the UNCRC? I know that we are bound, particularly at another level, because everything has to be ECHR-compliant.

Mrs Gillan: Absolutely. No, not at the moment. I am aware that the private Member's Bill on children's services and cooperation may make reference to the UNCRC, but that is in a very specific context as opposed to in the context of a duty of this nature.

Mr Craig: Caroline, I take it that "so far as reasonably practicable" is in there because the way in which you will deal with an individual child has to vary with the actual special needs of that child.

Mrs Gillan: Absolutely. To "take reasonable steps" is quite a stringent requirement, and you have to judge it on the position and understanding of the child. That is a well-understood concept. I do not think, therefore, that there would be any room for the authority if it did not make those efforts and adjust its steps to take the child's views according to the child's needs.

Mr Craig: It is always a bone of contention, even with parents, about how much you should listen to a child with special educational needs. There is no right or wrong.

Mrs Gillan: It is a case-by-case situation.

Mr Craig: It is a case-by-case situation, but does that not imply that it could be a lawyer's charter for making a small fortune? How will the Bill or the Department try to define what is reasonable?

Mrs Gillan: Irene will talk about that, but the good practice examples in the code will assist.

Mrs I Murphy: The code already provides guidance on how a school or authority would take on board the views of the child, in accordance with the child's age, maturity and understanding as it is set out. With any actions in relation to the authority's assessment of a child, it is in direct communication with the child and is used to using assistive technologies, interpreters, sign language such as Makaton or whatever to communicate and seek the views of the child. Those will be further emphasised in the revised code of practice. We have been working with Education Authority professionals who have been developing good practice case studies, and we hope to include those in the revised code.

Mr Craig: I take it that that will always be a work in progress and, ultimately, could be challenged, but you just have to accept that.

Mrs Gillan: With the additional rights and additional UNCRC duties, if we have to do them, we will do them, but there will always be a risk of challenge. However, if the authority takes the code into account, and we provide as much assistance as possible through practical examples, we will do that.

Mr McCausland: My question is tied in with a question that the Chair asked. You said that the UNCRC is referenced in the private Member's Bill on children's services. Does any forthcoming draft or any legislation that is being contemplated refer to the UNCRC?

Mrs Gillan: I can speak only for our Department, and I am not aware —

Mr McCausland: I mean legislation that is specific to the Department.

Mrs Gillan: Subject to Executive approval, anti-bullying and shared education legislation is coming forward. I am not aware of UNCRC references in either.

The Chairperson (Mr Weir): We will move on to point 1.4. It has been suggested that the Bill be amended to place a new duty on schools for the provision of SEN support for unstatemented children at stages 1 to 3. What is your response to that?

Mrs I Murphy: It is our view that to place such a statutory duty on schools would be onerous and not without its own risks, with additional bureaucracy and the potential for increased litigation to be levelled, and the risk of resources being diverted from SEN provision made by schools to defending cases.

The SEN code of practice currently includes a requirement — again, as far as the child's level of maturity and understanding will allow — to make reasonable efforts to ascertain the child's views. We feel that the current coverage in the code and how that will be re-emphasised in the new code will reinforce that without the need for legislation. This was not a significant issue that was raised during the consultation stage, when there was widespread consultation with parents, other stakeholders and children. We are not aware of any other widespread evidence to suggest that schools are not seeking the views of children.

The general approach that the Bill has taken on placing a duty on the authority and not on schools is similar to the position in other jurisdictions — England, Scotland and Wales.

The Chairperson (Mr Weir): In the clause-by-clause table, some points have been made by individuals and others have been made by multiple witnesses.

Points 1.5 to 1.7 relate to how the authority will assess the maturity of the child and ensure meaningful participation in decision-making. Would you like to comment?

Mrs I Murphy: We have already talked about the existing guidance in the code, which will be restated to describe the work of the authority and the schools in looking at the child's age, maturity and understanding through the SEN assessment.

The Chairperson (Mr Weir): Point 1.8 relates to SEN provision at Irish-medium schools. Conradh na Gaeilge — members will excuse me if my pronunciation is not correct; I should have gone to those Líofa classes when I had the chance — suggested that SEN provision in Irish-medium education was poorer than in English-medium schools. Have you any comments?

Mrs I Murphy: Significant work has been undertaken by DE and the former education and library boards in this regard. DE remains committed to working with the Irish-medium sector to improve the standard of SEN provision and to enable all young people to fulfil their potential at each stage of their development. Action was undertaken in this area from 2010 through various capacity-building projects. There is evidence from school inspections that the SEN capacity-building programme has led to notable improvements in the Irish-medium sector, including an increased awareness of SEN issues and enhanced knowledge among practitioners and special educational needs coordinators (SENCO). A SEN resource file, for example, was provided to schools through the SEN review capacity-building programme a few years ago, and that was specifically adapted for the Irish-medium sector, as were other resources for early years provision, including a specially adapted Irish-medium early years handbook.

Mrs Gillan: I think that the evidence sessions implied that the Irish-medium SEN resource file was a simple translation, but it was not. It was a substantive adaptation to suit the different contexts in which Irish-medium schools operate. There was significant investment, and structures were put in place for SENCOs in Irish-medium schools to engage and share good practice. As Irene said, we feel, and the inspections would suggest, that SEN provision in Irish-medium schools is improving.

Mr Rogers: You can translate the materials and so on, but the Irish-medium sector is saying that the same level of human support is not coming into schools, because many of these people are not competent Irish speakers.

Mrs Gillan: For that reason, the Belfast region has been leading in the creation of an Irish-medium SENCO group and engaging across the Irish-medium sector to share good practice and consider such issues. There is possibly an issue with the availability of Irish-language speakers as well. However, the Education Authority is engaged with the sector on a number of issues, and we have commissioned tools and testing tools specific to the Irish-medium sector for literacy and numeracy.

Mrs I Murphy: This issue was also raised at point 2.1 for the Irish-medium sector. As Caroline said, there are specific resources, a linked package of training for SENCOs, principals and senior managers in all Irish-medium schools and sector-specific curricular and assessment classroom aids relating to literacy and numeracy to support early identification and intervention for SEN children in the Irish-medium sector.

The Chairperson (Mr Weir): That completes clause 1.

Clause 2 deals with the duty on the Education Authority to produce a plan for SEN. Some comments refer to the content of the Education Authority's SEN plan. The first issue that I want to raise is whether the plan will specify resources and responsibilities and whether it will refer to educational psychology services, vision habilitation services and SEN services in Irish-medium schools.

Mrs I Murphy: The provision of resources for the anticipated plan would be set out and would extend to a range of SEN supports and services; for example, equipment; specialist teaching; special schools or learning support centre provision; adult assistance; general assistance for children in the classroom; and arrangements for training across the grant-aided schools sector for SEN matters. It is also for educational psychology provision, for instance, where it related to advice or guidance for schools. It would really be the whole range of provision that the authority would plan to make for SEN.

The Chairperson (Mr Weir): Irene, a specific concern has been raised about the arrangements that there is an absence of a direct reference to early years or preschool services. Perhaps you can deal with that.

Mrs I Murphy: The services that the authority should make under the legislation relate to grant-aided schools, so all preschool settings in the grant-aided sector, such as statutory nursery schools or statutory nursery units, would be covered through this. There is not statutory provision for the preschool playgroup sector, which is in the voluntary or community sector, but we have implemented proposals for an early years SEN inclusion service. Since 2010-11, we have had an early years SEN pilot, which has operated across all five regions of the authority, looking at early identification and support for the voluntary and community sector. That has been a very successful pilot. You will be aware of the Education and Training Inspectorate's (ETI) report on that, which I think the Committee has had sight of. It made proposals and recommendations for moving forward. As we have moved forward, we have been working with the authority on proposals to mainstream the early years work, which would support the voluntary and community sector from September this year.

The Chairperson (Mr Weir): The issue goes to this point but also maybe to the wider heart of one of the key issues that we are facing. The point is less directly legislative and a bit more on the implications of the legislation. The Department has indicated that it sees the legislation basically as cost neutral, but we have had various witnesses who said that this is going to be implemented at considerable financial cost and, indeed, some witnesses have been saying that it could go further, with increased costs. Given the number of duties that are being placed, for instance, there seems to be a disconnect between the expectations of what will be there and what appears to be potentially increased costs, even though there is the assertion that it will be cost neutral. Can you comment on that point?

Mrs Gillan: Our aim is that the SEN supports and SEN provision would be delivered as effectively and efficiently as possible. I think that we said that we felt that it would be within a budget available to us. We acknowledge that there will be some cost for the mediation service and the additional tribunal rights of appeal and the rights of the child, but we do not envisage that being significant, and we feel that it can be met within the envelope.

As regards the additional duties, for example on boards of governors or the enhanced duties on the Education Authority, many schools deliver the SEN services and meet their standards absolutely effectively at the moment, and really all this is doing is ensuring that every school and every board of governors is giving due attention and support to their SEN pupils. There is an investment anticipated in a capacity-building programme for the schools, but we had the budget set aside for that. Hence, we are essentially saying that it is within our envelope of budget. Obviously, moving forward, we do not know where the Education budget is going or, indeed, where any budget is going. We will have to reassess priorities. Obviously, the Minister will have to do that within the sector.

Mr Rogers: Thanks, Caroline. The Bill states:

> *"The Authority shall prepare a plan setting out the arrangements".*

When you think of complex special educational needs in particular children, you find that many of the people who we have spoken to feel that they know that educational psychology plays a very important role in the diagnosis in dealing with those sorts of things. I know that we do not have a statutory duty on Health. The authority can make out all the best plans it can, which can be great on paper, but unless there is a strong link between Health and Education, particularly in the case of educational psychology and speech therapy, among other things, this will not work.

Mrs Gillan: We will obviously come to the duty between Health and Education. You heard evidence a couple of sessions ago from Clare Mangan from the Education Authority, who indicated that the authority has adequate educational psychology. I know that the authority will be going through a process of regionalisation and considering all its SEN processes and structures, so I think it feels that it has the resources in educational psychology.

Where health cooperation and your allied health professional (AHP) inputs are concerned, which are the speech therapists, language therapists, occupational therapists (OTs) and physios, the Public Health Agency (PHA) is separately reviewing allied health professional support to children with statements. That is quite well advanced. I think it is year 2 of a three-year review. I am on the project board, as is Dr Mangan. That is all to do with enhancing the support and providing a regional model of AHP support to children with SEN. It has looked at children with statements in special schools and in mainstream schools. It is moving on to develop its regional model and has identified where there are problems. That could be in AHP input to statements or access to AHPs over the summer period. That work is more operational, as it should be, and it is with a view to developing protocols between Health

and Education. We want top-down leadership and the support of the two Ministers right into the organisations, that is, the Education Authority and the trusts. That is already being tackled, and some good proposals are hopefully coming out of it in the near future.

Mr Craig: Caroline, the one thing about the responsibility for that being placed on the governors that strikes me — unfortunately, I have experience of this — is that, at the minute, the only person who really comes into contact with that area is the chair of the board of governors and, I suppose, the ultimate adjudicator. What protections are you going to build in for whatever governor takes that role on? The one thing that strikes me about this whole area is that it is probably the most contested area within the educational process of the school. It is only natural that, if your child has special educational needs, as a parent, you will be not only protective but in some cases maybe overprotective of your child and how they are educated. There is a lot of contention and difficulties in dealing with those issues. As we discussed, it is all subjective, because it is all about the needs of an individual child. You do not necessarily always get it right as a school, so, in those areas where there is going to be serious contention, what protections will be built in for the governor who takes on that responsibility? I get the distinct impression that that will be the one role that nobody will want to take on.

Mrs Gillan: First, my understanding is that the duty is on the boards of governors as a whole. Obviously, within boards of governors, there will possibly be a lead governor taking responsibility, but I would say that the legal duty is with the whole. What comes into play there, which we are enhancing further, is the dispute avoidance and resolution service (DARS), which will be more independent. There will also be a duty on the boards of governors to make parents aware of that. So, if you are in a situation at school level where there is a disagreement between the school and the parents about the provision, you would first go into that dispute avoidance and resolution service before the parent would potentially escalate it further.

We also know absolutely that, in introducing and enhancing the duties of boards of governors, we will need to do some capacity building and fully explain to boards of governors what is required. On the duty to develop the personal learning plan (PLP), we will put guidance and assistance in the code of practice for schools that is as useful as possible so that, if boards of governors follow that code of practice and do their utmost and best for the individual child, I guess that is the best protection you can have.If you are a parent in that situation, you will fight for your child to ensure that it gets the best support. Ultimately, if a parent is unhappy with the supports that are being put in place at school level, they can request a statutory assessment. That raises it up to a different level, and you have the different processes there.

Irene, do you want to add anything?

Mrs I Murphy: We think that the setting out of the duties more carefully in the Bill will be a support to governors as well, because they will have greater clarity about what the expectation is for SEN. It will guide them through the actions that they might want to take.

The new role of learning support coordinator, through the guidance and the code of practice, will be to make sure that they fully update the board of governors on how SEN provision and policy in the school is acted out in practice.

Mr Craig: I understand fully what you are saying. I welcome that there are arbitrators and all sorts of mechanisms that you can now use to try to defuse some of this stuff. I take it, though, Caroline and Irene, that ultimately, if the worst comes to the worst and there is a legal challenge against whoever the member of the board of governors is, it is the Education Authority that will take up responsibility for that. Is that right, or who is it?

Mrs Gillan: I have not checked out the legal position, but my understanding is that, if a parent wanted to challenge a school, it would probably be by judicial review at this point, because there is no other vehicle. If the Public Services Ombudsperson Bill goes through — I think that it is before the Assembly or is about to be — it will introduce a role for the ombudsman. Schools are being brought into the ombudsman's remit, so it may be that some element there could be another avenue short of legal challenge that could be pursued.

However, I do not think that it changes the position on the normal duties at the moment. My understanding is that they are with the school. Maybe it depends on whether it is a maintained or a controlled school; I could clarify that. You, as a governor, probably know more than I do.

Mr Craig: It is an important point that we need clarification on. I know of examples where this occurred. In the controlled sector, you are absolutely right: it was the old education boards that took up —

The Chairperson (Mr Weir): Maybe that is an issue that you can take back to get us that clarification.

Mrs Gillan: We can confirm what the position is. In the earlier clauses, there were some suggestions about introducing the statutory duty on schools and maybe later on the rights of appeal to schools. We have not gone down that route quite simply because we do not want schools to be tied up in litigation and their budgets to be whittled away in litigation. At the same time, however, we have to set out the clear duties so that parents and children know what they are entitled to and, likewise, so that the schools know what they have to deliver. The DARS is allied to that. We will certainly clarify the legal position.

Ms Maeve McLaughlin: On a similar vein, alongside this discussion, I am conscious of children in care and the huge numbers of children and young people who are not even aware of how their personal plans are being developed. It goes back to Jonathan's point. I think that we need clarification on what ultimately happens if clause 2 is not implemented. What happens if the authority does not publish the plan?

Mrs Gillan: I cannot envisage that happening. We have a lot of accountability mechanisms that we are developing and have developed with the Education Authority through governance and accountability meetings and engagement between the Minister, the Department and the authority. Ultimately, the Department has its article 101 power of direction on the authority if it is deemed not to be acting reasonably. I do not envisage there being that situation. I cannot imagine that the authority and the board of the authority would feel that they would not be in a position to publish a plan and fulfil a key statutory duty. The Department always has a power of direction.

The Chairperson (Mr Weir): We will move on to the next item, which is comment 2.2 and how the authority will consult on its SEN plans. There is a suggestion of a requirement to consult widely.

Mrs I Murphy: At clause 2(7)(c), the Bill already provides for regulations to make provisions for persons to be consulted by the Education Authority, so provision is already there. It is proposed that the regulations will include consultation with parents; children; schools; boards of governors; other education arm's-length bodies; trade unions; other statutory bodies; and voluntary organisations with an interest in SEN. We will discuss the specific list that will be in the regulations with stakeholders before we draft that provision, but we think it is already well covered.

Mr Rogers: This is a very small point. I am just wondering whether there any intention to consult preschool providers, whether statutory or voluntary.

Mrs I Murphy: That will be included, yes.

Mr Rogers: It talks about grant-aided schools, but will you consult with the voluntary sector as well?

Mrs I Murphy: As I said, the plan would not set out the resources available to the preschool sector, but we think that that would be possible as part of the wider consultation. Obviously, children move from the preschool voluntary sector right through to the statutory mainstream sector, so their view is important.

The Chairperson (Mr Weir): The next comment, which is at 2.3, is a suggested amendment from the Equality Commission about requiring the SEN plans to promote disability awareness and the measurement of effectiveness of SEN provision.

Mrs I Murphy: The plan proposed in the Bill is on the SEN support and advice for students made by the authority, including those students who have a disability. The definition of special educational needs includes children with a disability. The SEN code of practice would promote positive attitudes towards all SEN children who have a disability.

Also, the training plan for boards of governors for schools and others on the new framework would include an introductory DVD promoting positive attitudes. We have already developed that, and it is sitting waiting to be implemented. We went out to schools to take small clips of children with, for example, autism spectrum disorder, Down's syndrome, hearing impairment and physical difficulties, to show how they are working successfully and being included in their schools. That will be a key element of the training.

ETI also routinely inspects schools, including on SEN provision, for children with disabilities. Going forward, as the framework is embedded, the Department will want to consider the effectiveness of the provision made by the authority.

The Chairperson (Mr Weir): Any comments there?

We will go on to the next issue, because I think we have already dealt with the reference to early years in comment 2.4. Comment 2.5 relates to the obligation on the Education Authority and health and social care trusts to cooperate. That comes up again under clause 4, so we will leave that for the moment, folks.

Comment 2.6 is from Autism NI, which suggested that there should be a greater say for parents on how the SEN budget is spent for their child. Would you care to comment on that?

Mrs I Murphy: The parent already has a right to express their views, within the statutory assessment process, on the particular provision that will be set out in the statement. While no specific SEN budget is attributed or attached to an individual child, there is provision that will be set out for the child. When the authority develops the statement, which will set out the provision required, the parent will have expressed a view. Whilst it does not set aside the cost of, for instance, additional teaching, mentoring or classroom assistants, it will set out the provision.

The Chairperson (Mr Weir): Where the specific provisions for individuals are concerned, if there is an equivalent in England, provision can be tailored with those equivalents, again directly with a degree of parental input. They seem to go a little bit further in England, I think, than we do here.

Mrs Gillan: I think the structures may differ in England in the flexibility and the way the budget is dished out to various schools. There is a different ability in how the budget is handled.

Mrs I Murphy: Yes. A lot of the authorities in England delegate some of the budget for their resources, such as for advisory teaching or support service to schools. Parents may have a direct involvement in that, but that is not the situation here. The point that we will make here is that it is about making a provision for a child and the parent. Going forward, the child will be fully involved in those decisions.

Whether a classroom assistant costs £19,000 or £20,000 is not an issue. The provision is for what the child needs to meet its needs.

The Chairperson (Mr Weir): Does anybody else have any questions? OK. That brings us to the conclusion of clause 2.

Clause 3 deals with the duties of boards of governors for pupils with SEN. I should declare an interest — I should maybe have done this earlier — as a member of the board of governors of three primary schools. I will try not to let that have any impact.

Comments 3.1 and 3.2 refer to proposed changes to the Bill. In page 3, line 33 of the Bill, witnesses wanted the obligation on teachers to take reasonable steps to help children with SEN to be strengthened and brought into line with obligations on the boards of governors that require them to make their "best endeavours". The question is one of clarification on what those refer to. What is your response on that?

Ms Jan Matthews (Department of Education): I will touch on point 3.1 and the suggestion to remove the clause relating to boards of governors making their best endeavours. We assume that that relates to removing the terminology "best endeavours". We appreciate that this is an attempt to further strengthen the duty on boards of governors, but I am reminded of concerns that were raised at the Second Stage debate about the increased duties already proposed for them.

We think that the removal of the term "best endeavours" would put an absolute duty on boards of governors that would be difficult to enforce and could result in additional costs for the school. Again, we touched on this. Those additional costs would have to be met from the school's budget, and they would impact on the ability of a school to supply SEN provision. We discussed the views of the child as well, and there was a similar position on the suggested amendment to clause 1 to remove the term "so far as reasonably practicable".

The Department's view is that the duty on the teacher to take reasonable steps is a much more proactive duty when providing SEN support to the pupils who need it. We feel that to remove the term "reasonable steps" in favour of "best endeavours" would dilute the policy intention within the SEN framework. The former boards developed a good practice guidance for schools, including what might be regarded as reasonable steps for a school to take. That is a very useful inclusion.

The Chairperson (Mr Weir): We will pause there to take any questions.

Ms Maeve McLaughlin: Just to clarify, are you saying that the removal of the term "take reasonable steps" and the commentary that was made on best endeavours would change the policy direction?

Mrs Gillan: With a duty to take reasonable steps versus a duty to make best endeavours, again, I think that there is more clarity and proactivity in taking reasonable steps. You do your best endeavours to help the child, but could that be justified? Could you justify that more easily than actually having to take reasonable steps to do something?

Ms Maeve McLaughlin: Did you say that that would change the policy content and direction of the Bill? I am interested in teasing that out.

Mrs I Murphy: The term "best endeavours" relates to the responsibility of boards of governors, and the specific reference to "so far as reasonably practicable" relates to the teacher taking action, so we think that the general provision would be best kept if we retained the general term "best endeavours".

Mrs Gillan: I think that we said it could dilute the policy intention. We feel that it would be, in taking reasonable steps —

Ms Maeve McLaughlin: It would not change it; it may dilute it.

Mrs Gillan: Yes, possibly.

The Chairperson (Mr Weir): Also, if you have different wording for the boards of governors and the teachers, it clarifies the differentiation of role, rather than having exactly the same language for both.

Mrs Gillan: The term "best endeavours" is obviously the one that is already there in legislation.

The Chairperson (Mr Weir): Comment 3.3 relates to the recommendation that there be a legal obligation on schools for personal development plans.A number of the other comments — at points 3.8, 3.11, 3.12 and 3.13 — also relate to that. I ask you for your response to that.

Ms Matthews: In relation to putting that legal obligation on bodies in respect of the delivery of PLPs, clause 3(2)(c) already places that duty on the boards of governors to prepare and keep under review a personal learning plan for each child with SEN. The code of practice will provide further guidance for schools relating to children, particularly as they move between phases of education. The code of practice will set out the format of the PLP and the involvement of the child and parent within the PLP.

The Chairperson (Mr Weir): Point 3.4 relates to the suggestion that there be an amendment to allow parents to appeal governors' decisions in relation to unstatemented children, and also in relation to stages 1 to 3 of the statementing process.

Ms Matthews: The general duty on the board of governors for children with SEN has already been strengthened in clause 3. Under the existing complaint arrangements for a parent who feels that their child is having difficulties, they go through the principal, the board of governors and the Education Authority (EA). That will remain the case, and we touched on that earlier.

Also, clause 8 strengthens the dispute avoidance and resolution services for schools, which we will talk about later, by making the DAR's role more independent. If a parent feels that the provision is not meeting the child's need, they may discuss, within the proposed new framework, the school-based support being made by the EA. If they continue to be unhappy, there is the right to request a statutory assessment, as there is currently.

The Chairperson (Mr Weir): Point 3.5 contains a suggested change to the wording to widen the school personnel who could provide support for children, suggesting that "teach him" is replaced by "are likely to teach him and be concerned with his education".

Ms Matthews: The suggested amendment appears to limit the duty to teachers, which is not the policy intent. In the context of the 1996 Order, if a child has SEN, those needs are made known to all who are likely to be concerned with the pupil's education. That means that it could be the teacher, adult assistance or a therapist working in the school; essentially, anyone who is involved in the child's education. That in no way attempts to minimise the key role of the teacher; it just recognises the greater involvement of other people, so they need to be aware of the child's SEN.

The Chairperson (Mr Weir): Points 3.6, 3.7 and 3.9 refer to the capacity and development of the board of governors and the learning support coordinator. In point 3.6, witnesses called for the qualifications of the learning support coordinator to be specified. In point 3.9, witnesses called for the special educational needs coordinator role to be remodelled instead of replaced.

Ms Matthews: The SEND Bill already provides, under clause 3(3) and clause 3(4), for the qualifications or experience, or both, to be prescribed in regulations with regard to the learning support coordinator. Subject to consultation with the stakeholders, regulations will include the requirement that the learning support coordinator had previously worked as the SENCO, which is the current role, and could include a requirement to have undertaken, or at a future point to undertake, a particular course of study in educational testing.

Clause 3(4) deals with special schools. The regulations will also require particular experience in special schools. There is a specific regulatory power with regard to both grant-aided schools and special schools.

You mentioned point 3.9 as well, on remodelling the SENCO role. We feel that the learning support coordinator role proposed is a remodelling of the SENCO role. The learning support coordinator will be required to take account of factors, such as whether the child has SEN or is a newcomer child or a Traveller. It is recognising that we feel this is a more progressive approach, given that many SEN children do have multiple identities.

The Chairperson (Mr Weir): Are we really dealing with nomenclature here? From that point of view, is it simply a remodelled role of what is there? If it is, is there a reason to change the name?

Mrs Gillan: The learning support coordinator (LSC) looks across all the learning supports that the child might require. There are different identities, such as whether they are looked after, a Traveller or a newcomer. Therefore, it is not just SEN. It is all of the barriers to the child accessing education. The LSC will be responsible for looking across the supports that that child may have and having a more coordinated approach.

Ms Matthews: The focus is on special educational needs, but, in terms of looking at a child from a holistic perspective, it needs to be recognised that there might be other contributing factors. That is how we would remodel.

The Chairperson (Mr Weir): I am playing devil's advocate a little bit, but if we are talking about the financial implications, be it with a different title and wider remit, is it going to add a budgetary pressure on schools? I can see somebody on a school's board of governors say, "I think there should be an additional responsibility point because it is a lot wider than it used to be. It used to be a SENCO, but now we are looking after all of the child's needs. There is a much stronger case for increased pay for this teacher, or whatever." Will there be a budgetary pressure?

Mrs Gillan: Of course the school will have already been looking at the child's needs, hopefully. If there is a looked-after child, Traveller or newcomer in the school, the school is getting additional funding through the formula for that. It reflects the fact that, with the new PLP, the child will be looked

at more as a whole person and not just in respect of the SEN. Schools probably should be doing it in some form already, but it might allow schools to say, "We're going to bring it together under this person", and it would be for schools to determine if it is a point or —

The Chairperson (Mr Weir): That brings us to 3.10 and the issues that INTO has raised on the requirement for an appointment to LSC within a special school. INTO's view is that it should be at the discretion of the board of governors. Will you comment on that?

Ms Matthews: We agree that the role of the learning support coordinator in a special school may be different from a learning support coordinator in a mainstream school. That is why we split the regulation-making powers within the Bill. In recognition of that, it provides the opportunity to specifically set out what the role of the learning support coordinator in a special school will be.

The Chairperson (Mr Weir): From that point of view, will the regulations reflect a range of differences or a certain level of flexibility with that? You may not have like-for-like in roles even within the same sector. The LSC will depend on the school. Even within special schools, I suppose there is a wide range of schools that will deal with a wide range of issues.

Mrs Gillan: Obviously, that is something that we will want to pick up when we are drafting regulations and setting out what the qualifications and rules might be. We have already had some discussions. We met a special school principal recently who picked up on that issue. We will be engaging with the stakeholders to make sure that there is adequate coverage, but sufficient flexibility where required.

The Chairperson (Mr Weir): We touched on this earlier, but can I ask for specific comments on 3.11 and 3.12?

Ms Matthews: You were seeking clarification relating to the personal learning plan. The revised code of practice will set out the format of the personal learning plan and set timescales for completion of the monitoring and review of the plan. For clarification, the PLP replaces the current individual education plan, which, presently, the boards of governors do not have a statutory duty to complete. That is only referenced in the code of practice. One of the comments was that the PLP does not replace the personal education plan, which is specifically for looked-after children, as defined under the Children Order. You referred to that earlier. The DHSSPS Care Matters strategy from 2009 recommended that it should be completed for all LACs. The personal education plan for LACs aims at improving outcomes, taking into account family circumstances, education and emotional need, with education embedded in the care planning process. The PLP will help to inform the personal education plan in the case of a child who is a LAC and has SEN. We will explore opportunities to evaluate the quality and delivery of the personal learning plan once it has been embedded.

The Chairperson (Mr Weir): Does anybody have any comments on that?

Ms Maeve McLaughlin: Will there be clear timelines and timescales for completion in the guidance?

Ms Matthews: Yes.

Ms Maeve McLaughlin: OK.

Ms Matthews: Paragraph 3.12 goes on a wee bit more in seeking clarity about IEPs as well. The personal learning plan will differ from the individual education plan. It provides far greater focus on outcomes, a clearer process for monitoring and review, and greater involvement of the child and parent in PLP development and review. That goes back to the views of the child. It is important that the child's views contribute to the PLP.

The revised code of practice will be very important in setting out the format, content management, timescales, reviews, arrangements etc. The overall aim is to provide greater consistency in setting out clearly the needs of the child and what support should be put in place for the child. In the IEP process, that sometimes does not happen.

With regard to looking at individual education plans, during school inspections ETI already routinely considers the effectiveness of SEN provision, including the impact of the IEP. We absolutely expect that to continue in relation to the personal learning plan.

The Chairperson (Mr Weir): I will ask you, finally, to deal with comments on clause 3 at 3.14 and 3.15 in relation to assurances on the code of practice for educational psychologists and the need for training in specific aspects.

Ms Matthews: As at present, educational psychology will remain a key advice-giver within the statutory assessment process. The legislative base for that is already in the SEN regulations, particularly regulations 6 and 9. That will be carried forward in the revision of the SEN regulations. We can give an assurance that the revised code will set out the support and consultation framework that the Education Authority provides to schools through educational psychologists. There are no plans for any change to the role of educational psychology.

The Chairperson (Mr Weir): OK. We will move on to clause 4, which deals with the Education Authority's duty to request help from health and social care bodies. *[Inaudible.]* At the heart of this, quite often, has been a suggestion of a need for obligatory cooperation and sharing of information and pooling of budgets — a statutory requirement, I suppose, for cooperation. Can you deal with that, particularly with regard to how it links in directly with health?

Mrs Gillan: As you will have heard from health colleagues a number of weeks ago, their view is that there are already significant duties on health under the Children Order, and indeed the Education Order, with regard to health and education. Obviously, the duty under the Education Order is subject to resources as well. As we have moved through this process, our Minister has said that he would welcome a statutory duty on health forming part of the statutory assessment process and the duty to provide the supports. However, he is obviously not in a position to do that; that is a matter for the Health Minister.

While the duty to cooperate would be useful and welcome to some degree, the reality is that the actual cooperation and operational processes on the ground are more key for the trusts and the Education Authority. The Committee will want to form its views on the merits of the duty to cooperate and take into account the views of health colleagues who appeared before it. We have enhanced the duty on the Education Authority so that it must seek assistance from health. We have done as much as we feel we can on the role of education, but we appreciate that health has its own view and position.

We are trying to tackle some of the operational issues around the statementing process. I see questions later on in the commentary about why the Education Authority would necessarily approach health in relation to children who potentially do not have a medical need or are not known to the health sector. However, the Education Authority does not know that, so it has to check. In the new processes, if health has nothing to say about a child who is being statemented, at least that answer could come back as quickly as possible to allow the statementing process to move forward. There is definitely a feeling that, moving forward, whether in the AHP review or through us looking at the statementing process, there is good cooperation on the ground. The real pressure points are in the provision of services, pressures on budgets and whether health is able to prioritise and provide the service. I do not know whether a duty to cooperate will change that.

The Chairperson (Mr Weir): Any comments from anybody?

Ms Maeve McLaughlin: I have a particular view on the importance of a formal statutory duty between both Departments. You cannot answer for the Department of Health, but has a cost analysis been done with the Department of Education on the implementation of a formal duty? Are there any conversations in relation to health if the feedback is around pressures on services?

Mrs Gillan: Our work has been to try to establish those linkages at the operational level, looking particularly at whether it is AHP or other areas. That is more about ensuring that the two sectors work together in fulfilling their existing duties. It would not be an additional resource; it is using your resources more efficiently and streamlining your processes. So we have not done any sort of cost analysis, and because we had not proposed an additional duty in the Bill, no cost analysis was done on that.

Ms Maeve McLaughlin: Is it something that would be considered if a formal duty were proposed? Would the Department then have to analyse the cost impact?

Mrs I Murphy: Absolutely. If there were a finite duty, and not a qualified one, that specifically makes provision for the AHP or others outlined in the statement, the health sector would absolutely need to consider whether there were additional costs. Work would need to be done, yes.

The Chairperson (Mr Weir): I will pick up on a couple of points to tease this out. The argument that I have often heard is that the key thing is what happens on the ground. Does a statutory duty to cooperate necessarily lead to a change on the ground? The counter-argument might be that if people at least had an obligation they would, in some way, feel that they had to up their game. It at least gives a driver.

Secondly, you mentioned specific actions that can be taken. Is there any argument in terms of cooperation from a statutory point of view? We would argue that we want to see as much as possible up front in the Bill, where there is a degree of control. Is there an argument for specifics being there in regulations in terms of cooperation?

Mrs Gillan: I suppose we are differing. Setting aside the duty on health to potentially provide the supports, which would be a massive cost implication for health, and just being specific on a specific duty to cooperate, a statutory duty always focuses minds and gives an extra argument to those who wish to challenge if they feel that they are not getting the services or provision that they think they are due. It would add an extra layer where the two arms of the public sector are both cooperating to fulfil their duties.

Maybe I am being too naive, but in any engagement that I have had with colleagues, whether on the trust side or the authority side, there has been good joined-up working at a number of levels, whether in the early years work that we have done, the AHP work, suicide prevention or a whole range of other areas. We have not taken the Minister's formal views on what his position is, but a duty to cooperate is a good thing. We question whether it is necessary, but, if it is there, we will absolutely fulfil it to the best of our endeavours. The other thing that we are mindful of is the Children's Services Co-operation Bill, which will impose a duty to cooperate right across, not just in relation to SEN. It may be that that overtakes what we are considering here.

The Chairperson (Mr Weir): The only issue with that is on the basis of what is likely to be in a Bill that has not yet been passed. We do not know what the time frame of it is going to be. There is always a slight danger that the people involved with one Bill and the people involved with other Bills look at one another expecting something to be done elsewhere, and nobody ends up doing it.

Mrs Gillan: You need to think about what the duty to cooperate would look like on the ground and what it would look like if it were not done. As things stand, there is a direct engagement between health and education. There is AHP support that comes into schools and is supplemented and complemented by the authority support. So, you have the education supports and the health supports. All of that is happening. I do not know what trying to put your finger on a scenario where they are not cooperating would look like. How could you prove that people were not cooperating?

The Chairperson (Mr Weir): Caroline, we could be very tempted to say that an example of where they would not be cooperating would be if you had a situation where there is a six-week target time for statements to be turned around, and it was being missed in 81% of cases. A devil's advocate could say that that could be a case of a breakdown in cooperation.

Mrs Gillan: But that would be an argument about resources in that particular —

The Chairperson (Mr Weir): I understand that. However, an argument may be that that is showing that there is not proper cooperation even in the flow of information. It may not be a question of people not fulfilling what they are supposed to do, but on the basis that there is a lack of coordination and communication, which says a six-week time target bit is getting missed in 81% of cases, the argument might be either that more needs to be done to meet that six-week target or that six weeks is utterly unrealistic.

Mrs Gillan: We have identified that statistic and brought it to the Committee. We are working separately with health colleagues to address that and, as I said, to try to look at what the blockages are and what ones can be fixed quickly and, if there are fundamental issues in others, whether those relate to diagnosis and proper assessment, which just genuinely takes longer than six weeks —

The Chairperson (Mr Weir): I will take a slightly wider context and bring in 4.2. Blind Children UK has raised a specific issue that may go to a wider point, which is whether there should be some sort general obligation for the Education Authority to cooperate with all other relevant bodies? Is that also something that could be looked at by way of an amendment?

Mrs Gillan: That may be difficult. If we talk about all relevant bodies, not every body —

The Chairperson (Mr Weir): I was drafting off the top of my head. I am not suggesting a particular form of words.

Mrs I Murphy: The SEN framework reflects the provision made by the statutory authorities in health and education. Whilst there is an interface between the statutory sector and the voluntary sector at operational, schools and authority level, it is difficult to see how we could draft a statutory duty to place an obligation on a voluntary organisation to be part of the process.

The Chairperson (Mr Weir): To be fair, the suggestion is for an obligation not on any voluntary body but on the authority, where it is required to seek help or, at least, cooperate. It is not necessarily tying the two together directly, but it would at least ensure that the Education Authority plays its part. Blind Children UK has a very specific issue regarding children who are blind and is looking for some form of direct reassurance in the legislation that it will be cooperated with, worked with and that sort of thing.

Mrs Gillan: I think that is happening. The qualified teachers for the visually impaired have met Blind Children UK to look at procedures and improve communications. If we were imposing a duty, whether on Health or Education, to cooperate with specific voluntary organisations, what would that look like? Would it look like us funding them? If we were asking them to do something, would they want to be funded for that? You are then into lots of different tender exercises. Who do you prioritise?

The Chairperson (Mr Weir): Yes, but, again, if there were a form of wording, whatever way the Bill Office drafts it, that talks about a duty to cooperate with all relevant organisations, that would not place any obligation on the voluntary organisation. It would not produce any particular right or funding requirement for the organisations or place an obligation on the Department. To some extent, the argument may be this: if this is something that is effectively already happening in practice, what is wrong with having it is a requirement?

Mrs Gillan: One example that is in the legislation already is the current article 14 of the 1996 Order, which relates to under-twos. It states:

> *" If ... the health and social services authority is of the opinion that a particular voluntary organisation is likely to be able to give the parent advice or assistance ... that authority shall inform the parent".*

Now, that is more of a signposting duty.

The Chairperson (Mr Weir): Yes, I understand that.

Mrs Gillan: A duty to cooperate is a different situation. I am just thinking of myself in the Department, for example. I have a duty to cooperate with the various voluntary organisations out there on a particular SEN issue. You will have experienced the variety of views, perspectives and priorities in those organisations. I could end up in a position where we cooperate with one that wants a certain end that is not exactly what is envisaged by another. In practical terms, how would I balance all the different perspectives and priorities of the various voluntary organisations and make a considered judgement on what the way forward should be? You are right: the practices that we engage in with various organisations on a weekly if not daily basis —

The Chairperson (Mr Weir): There may need to be, at least, consideration of some form of language to have some level of movement in that direction.

Mrs Gillan: The one in relation to the under-twos in the current article 14 is very good because it recognises that there are voluntary organisations out there that provide excellent advice and assistance and ensures that the statutory authority, the health authority, signposts people to those. That is useful and helpful.

The Chairperson (Mr Weir): We will move on to the broader signposting issue — sorry.

Mrs I Murphy: I was just going to add that there is a very broad range of voluntary organisations. If there were a duty on the authority to make contact, it could be quite tricky to draft that to make sure that the authority would contact all relevant organisations. Would it be all relevant organisations, new organisations or what? On additional bureaucracy and delay, would we have to regulate for the authority to wait for a response from the voluntary organisation before moving forward?

The Chairperson (Mr Weir): To be fair, you could include phraseology such as "as far as reasonably practical". That could be one way that would have some level of resonance. I will leave that point for the moment.

You mentioned signposting. Comment 4.3 deals with the budget issues, which we have already covered. However, there is a specific bit at comment 4.4 from the Southern Health and Social Care Trust that seems to highlight dissatisfaction or confusion amongst parents in respect of the information that needs to be gathered in support of the statementing process. Could you just deal with that issue?

Mrs I Murphy: The clause makes a general provision; it does not actually require the authority to seek the help of the trust unnecessarily. It requires the authority to seek the help of the trust only in the case where it is of the view that the trust could help regarding a specific child.

The provision for statutory assessment is contained elsewhere in the 1996 Order; so, in relation to SEND regulations, that would always require the authority to seek the help of the health and social services trust in relation to any health matters of the children. I think that that is necessary, since the authority could not be expected to determine whether any health-related needs existed in respect of a particular child who may be undergoing statutory assessment. In the case where the health and social care trust does not know about any relevant health-related conditions, we would expect a quick turnaround to say that, so that the statutory assessment process can move forward.

Mrs Gillan: Parents were under the impression that they had to gather a huge amount of information themselves. I think we can make it clearer in the code that they do not have to do that themselves. The duty is on the authority to do that and they will not be disadvantaged.

Mrs I Murphy: Yes.

The Chairperson (Mr Weir): Have members any comments? Let us move to the final point on clause 4 which is in comment 4.5. The Equality Commission is supportive of widening the basis on which redress can be sought. The mechanism for statements is, at the moment, effectively restricted to education provision. The commission asks about the situation where there is an issue in relation to the health component of the SEND provision. Are there comments in relation to that?

Mrs I Murphy: There is currently no right of appeal to SENDIST, as you say, in relation to the non-educational provision outlined in the statement. The duty in article 14 is a qualified one to make non-educational provision subject to the available resources.

The right of appeal to SENDIST in respect of health provision, which is outlined as non-educational provision, would be ineffective in the absence of a statutory duty. SENDIST hears appeals in relation to part 2 of the statement, which details the child's special educational needs; part 3, which details the provision which is considered necessary to meet the needs; and part 4, which relates to the placement. Part 3, in respect of the special education provision, can include therapy provision, if the Education Authority considers that that is required as an educational provision, and that is appealable to the tribunal. Speech and language therapy, for instance, is routinely considered under part 3, educational provision, and is appealable.

Mrs Gillan: In essence, what we are saying is that, without the definite duty on Health to provide, it may not work to have a right of appeal to SENDIST where there is a qualified duty on Health, because it is subject to resources.

The Chairperson (Mr Weir): It may also be useful to check rights of redress and appeal. To be fair, this does not affect the Department, so you can be relieved for the moment. Members are aware that, at present, the Ad Hoc Committee on the Public Services Ombudsperson Bill is sitting. As members

are aware, if the public have complaints about a public decision, they have the opportunity to refer matters, ultimately, to the ombudsman, once all appeals have been exhausted. It may be useful if we can get information from the Ad Hoc Committee on the proposed powers of the ombudsman in relation to schools. It might be useful to obtain that information, if members are agreed.

Mrs Gillan: Can I just say one more thing in relation to the duty, potentially, to cooperate with the voluntary organisations? It occurs to me that there are a number of existing structures, including the Children and Young People's Strategic Partnership, which includes a large number of voluntary organisations as well as Health Department, Education Department and authorities. We engage on that format; that is, with the voluntary organisations round the table in developing the plans. We also engage in the Executive's visual impairment strategy and the steering group, or the group, related to that includes not only the statutory bodies but also the voluntary organisations. I think that there is a myriad of structures specific to different areas and needs that are already in place where we have very direct engagement with voluntary organisations. I feel that there is a lot of engagement going on, and, even in the development of policy and legislation, we are engaged as key stakeholders.

The Chairperson (Mr Weir): That is fair enough. The only issue we will have to consider is on the basis of the argument that there is widespread cooperation taking place. On the one hand there may be an argument that there is no need to put anything directly in the legislation. The flip side of that is that, if that is happening to a considerable extent already, then what is the particular problem with codifying it? It is a bit of a double-edged sword.

Mrs Gillan: That is happening in a particular context, and it would depend how wide the context is.

The Chairperson (Mr Weir): That is something that we will have to look at whenever we come to that point, along with a whole load of other issues.

Moving on to clause 5, which deals with the time limits in relation to the assessment, and will reduce the time limit in which parents can provide information to the Authority on their children's SEN. Comments 5.1 to 5.4 suggest a number of changes to the time limits for parents to provide information. Mostly, witnesses suggested that there should be a longer time and greater flexibility for parents when dealing with complex cases. Can you respond to that?

Mrs Gillan: The reduction in the parent period helped to contribute to the overall reduction in the time for an assessment, from 26 weeks to 20 weeks. What we need to make clear, which we may not have done in the past, is that we completely recognise that not all parents will necessarily be able to meet that time limit. The framework also already recognises that. Therefore, it is not the case that the system would reject any request for an assessment after that time. One of the statutory exceptions, as with the health one, is in relation to late information from parents. All it would mean is that the new limit of 20 weeks would be breached, but it would be breached for good reason, because potentially the parents would have not provided the information.

For us to try and reduce the timescales overall, we need to take them out at every level. We absolutely appreciate that some parents will not meet that, but that is already catered for, and they will not be disadvantaged by that. Apologies if that was not made clear at the beginning.

The Chairperson (Mr Weir): The other area for clarification at comment 5.5 is around the information from health and social care trusts. There appears to be an issue around —

Mrs Gillan: That is what we mentioned. There is no requirement for the parent to produce it. The authority will seek it, and we will clarify that more clearly in the code of practice and the advice.

The Chairperson (Mr Weir): Finally, on this part of it: at comment 5.6, the Association of Educational Psychologists have sought confirmation that their role in statementing will not change.

Mrs Gillan: It will not change.

The Chairperson (Mr Weir): Has anybody any questions about that?

We move on, then, to clause 6, which refers to situations where there is an appeal following the decision not to amend a statement. There are a couple of comments here. At comment 6.1 there is a request for assurance from the Department in respect of provision of advice and support to potential applicants. At comment 6.2, there is a view put forward by the Human Rights Commission, suggesting that the Bill should be amended to guarantee that children always have the right to speak at a tribunal relating to their SEND provision.

Ms Matthews: Clause 6 provides that there is a right of appeal following a board's decision not to amend a statement following an annual review. Like other notifications regarding the right of appeal to a parent — and, in the new framework, the child of compulsory school age — a notice will go out that will include information. That will be prescribed in regulations, which will be subject to consultation. Currently, for the existing right of appeals, it includes additional information about the contact details of the board, the right of appeal, contact details to the tribunal and about the dispute avoidance and resolution (DARS) arrangements. That does not interfere with any decision for a person to make an appeal.

Also, importantly, we are proposing to introduce, through clause 8, the requirements for mediation arrangements. That information would be prescribed in regulations, which, as we said earlier, will be subject to consultation.

The Chairperson (Mr Weir): Are there any comments in relation to that?

We will move on to clause 7 —

Mrs Gillan: Do you want me to talk about comment 6.2?

The Chairperson (Mr Weir): Yes.

Ms Matthews: Already, the president of the tribunal may summons any person to attend as a witness at a hearing for an appeal or a claim. They can also give evidence at the hearing, and produce documents in relation to a matter.

The one proviso in the existing SENDIST regulations is that no child under 12 will be summonsed, except where the president determines that the evidence is necessary and will provide for a fair hearing. Any amendments required to SENDIST regulations would have to be with the agreement of, and progressed by, the DOJ, as these regulations transferred to DOJ under the justice review. The Department has already had discussions with DOJ about the potential for this type of amendment to their regulations. We will therefore raise with DOJ the point that the Children's Commissioner and the Northern Ireland Human Rights Commission have mentioned.

The Chairperson (Mr Weir): I am not suggesting what view we will take on it, but it might be helpful to share the response from DOJ with us. Clause 7 refers specifically to appeals in the case of children under two. We have already dealt with one of the items at comment 7.1. Comment 7.2 was put forward by the CCMS, which called for notice to be given for appeals in a prescribed period.

Ms Matthews: Clause 7(2)(10) in the SEND Bill as introduced provides for that.

The Chairperson (Mr Weir): You feel that is all right. Comment 7.3 is a general comment about the admissibility of evidence from school leaders to appeals.

Ms Matthews: In the case of a child under the age of two, we were not clear what evidence would be required from school leaders, since the child would not be at the school.

The Chairperson (Mr Weir): I think that they were probably a little bit confused. They obviously thought that the child is not at school already. It seems slightly circular. Maybe they were making more of a general point about the extent to which comments of schools leaders will be taken into account in an appeal. We are not in a great position to progress that much more.

We move on to clause 8, which deals with mediations in connection with appeals. There were a number of requests for further information on how the service would work. The Committee recently wrote to the Department seeking more information on the dispute avoidance resolution system. Comments 8.1 through to 8.4 are all about the nature of the mediation service, on issues such as how

the mediation timescale would fit in with the tribunal timescale. Are appellants obliged to use mediation? Are the findings confidential? What will the cost be? How independent will the mediators be? As far as the obligation is concerned, in other circumstances, where there is not an obligation to do something, if it is not done, adverse inferences are probably drawn.

Ms Matthews: I refer to comment 8.1 on mediation and SENDIST appeal timescales. We do not consider that an amendment to this is necessary, or appropriate, given that the Bill already allows for the person to lodge the appeal before mediation. The only requirement is that the prospective appellant should seek and receive information and advice on mediation before lodging an appeal. We anticipate that the time frame for receiving such advice and mediation would be restricted in the regulations to no more than three days; but clearly the regulations will be subject to consultation. Entering into mediation will not be allowed to delay the SEN appeal process and would fit into the appeal time frame.

The Chairperson (Mr Weir): OK. What about the specific issue —

Ms Matthews: Mediation is not compulsory. Engaging mediation is the choice for a parent, or a child over compulsory school age, to make. The process of seeking information about mediation and advice and how it may help resolve an issue is compulsory, but we envisage that it would take no more than a few days to complete. The Department wrote to the Committee recently to set out the arrangements for mediation. One of the points raised is that disagreement and mediation are often used interchangeably. How do they differ? The SEND Bill refers to distinct processes. Disagreement resolution applies more widely in the SEN framework and is voluntary for both parties — the parties being the school and the parent or the authority and the parent. These are distinctively different from the proposed mediation arrangements under clause 8, which apply specifically to those persons who are considering making an appeal to SENDIST.

The existing appeal rights, and those proposed in the SEND Bill, will not be impacted by the agreement to undertake or not undertake mediation. The key issue is that the parent, or the child over compulsory school age, needs to have the conversation about how mediation will help. After that, it is their choice entirely whether they embark on it. The SEN appeals to the tribunal against the decision made by the authority and, therefore, the mediation would be between the authority and the potential appellant and not between the school and the appellant.

There was a question about seeking assurances for the independence and knowledge of mediators. It will be the Education Authority's responsibility to ensure that any procurement exercise it undertakes will stipulate that mediators are able to demonstrate their independence and their knowledge of the SEN framework. That is what operates across the education sector.

Another issue raised was the provision of guidance and advocacy support for potential appellants. Clause 8(7)(e) makes provision for regulations on:

"advocacy and other support services for a person pursuing mediation with the Authority".

A number of questions were asked about the potential for amending clause 8(3) for timescales etc. We do not necessarily consider that such an amendment is necessary. Following the route of the Children and Families Act 2014 in England, the specifics of mediation arrangements are set out in regulations, and the proposal is that our regulations will set out those arrangements. In developing the regulations here we will look to the English regulations when it comes to timescales for the issue of the mediation certificate and for arranging mediation. We also want to be able to provide a speedier process. The mediation service will be free to parents and children, and the Education Authority will be funded by the Department to commission it.

There is no proposal for SENDIST to reimburse expenses for the dispute avoidance and resolution service or mediation. It is anticipated that the resolution service and mediation service will be delivered locally rather than through SENDIST, which is centrally based in Belfast. We have proposed that the timescales for implementing the mediation decision will be in line with the existing SEN regulations, which require the authority to implement the decision of a tribunal. For example, as a result of mediation, if the authority notifies the parent that a statutory assessment is to be completed, it will do so in the same time frames as it would under an order of the tribunal, so it links to the tribunal timescales as well.Confidentiality was another issue that was raised in relation to any mediation exchanges. Any contract for the provision of mediation would again stipulate the confidential nature of mediation.

The Chairperson (Mr Weir): I just want to go back to one point that you mentioned about advocacy. Is this where there is a difficult circle to square? How do we ensure that there is some provision for advocacy, on the one hand, without putting so much additional cost into the system or having a situation where there is not necessarily a level playing field, particularly from an economic point of view, for parents potentially? I appreciate that it is maybe a little bit less likely in the mediation setting than in a tribunal setting, but if you have mediation, and you have representing the Education Authority either an in-house lawyer or a hired lawyer to help represent it or negotiate, you are left with a situation where parents, under those circumstances, have to get the same level of legal representation, as they would see it, at their own expense. Obviously, the potential would be that those who were better able to afford it could do that. Alternatively, parents may well feel that they are going in essentially on their own to try to argue for their child and, on the opposite side, even if it is mediation and ultimately, therefore, there is no question of a ruling being made, you have the legally qualified expert on the authority's side. That discussion by way of mediation is not necessarily on a level playing field. How do you square that?

Mrs Gillan: We would need to make it very clear that we do not envisage mediation to be done by lawyers either by the authority or parents. As regards the authority engaging in mediation or indeed the earlier DARS dispute service, it is not to be a legally argued process. The tribunal has already become that, even though it was envisaged —

The Chairperson (Mr Weir): I understand that.

Mrs Gillan: Certainly on the part of the authority, this would not be a lawyered-up service.

The Chairperson (Mr Weir): Can anything be put into either the regulations or code of practice to try to ensure that? As a former lawyer, I am aware that, with lawyers, there can be a certain level of mission creep when, at times, particular things that are envisaged as being a very informal process do not always evolve into that a few years down the line.

Mrs Gillan: Obviously, there is a difference between lawyered support and that sort of engagement and the genuine advocacy and support services — not that lawyers are not genuine. *[Laughter.]* I am one, too, so I can say that. There is a difference with the assistance for advocacy and support for somebody who really needs it. The regulations will consider the provision of those advocacy and support services. We do not want this to become another layer of legal argument. Obviously, the skills of the mediator will be key in ensuring that they draw out the views of the parent or the child in that context. The tribunal is always there, and there are plenty of lawyers etc in that respect; but, no, we envisage mediation to be much more round the table.

The Chairperson (Mr Weir): I appreciate that you have touched on this, but would you just clarify it, if you do not mind? Who will the mediators be potentially, and how do see them being selected? What will the process be?

Mrs Gillan: That would have to be a procurement process, and I think that we would have to look very closely at what the skills are of those would be offering that service. That is something that we can develop with the authority and probably with stakeholders as well.

The Chairperson (Mr Weir): That will be a little bit of a moveable feast. I appreciate that one of the other issues connected with this is that, for instance, a certain number of cases are envisaged for the tribunal, and you have obviously got the statistics on that.

Ms Matthews: It will be the duty of the authority, in the Bill, to make the arrangements for mediation, so it would be a procurement exercise.

Mrs Gillan: We are stipulating that it is an independent service; it is just the authority's duty to effectively procure and establish it.

Mrs I Murphy: We have experience to draw on from elsewhere. There is a large number of mediation organisations established under —

The Chairperson (Mr Weir): I understand that. The only issue that occurs to me when you say that, and I appreciate that it may be more of a perception, is that you get a situation in which it is the parents on one side and the representatives of the education authority, probably at officer level, on the opposite side and the person who is the mediator has arrived through a process that has been procured by the body that, as a parent, you are up against.

Mrs Gillan: It is something that we can consider.

The Chairperson (Mr Weir): Will that create any perception?

Mrs Gillan: I think that we would build in the requirement for independence. We can look at that. Thank you for drawing that to our attention, but I think that we can build that in to ensure that the mediator has sufficient independence.

The Chairperson (Mr Weir): OK. Does anybody else have any other questions on comments 8.1 to 8.4? There are a couple of other issues. The suggestion in 8.5 is that there should be a regular review of the mediation service. Do you want to comment on that?

Mrs Gillan: We would do that as a matter of good government and at the end of any contractual period. That would be a matter of good government when we fund anything, and we certainly envisage doing that.

The Chairperson (Mr Weir): Finally, on the mediation bit: the Irish National Teachers' Organisation (INTO) has suggested amending the Bill to allow mediation and appeal to SENDIST in respect of the name and type of school on the statement.

Mrs Gillan: We feel that the statementing process already has quite detailed provisions and arrangements under the legislation about engaging when a parent expresses a preference for a school. A lot of engagement is already detailed in the regulations. If you have reached that point without coming to an agreement through the established arrangements for expressing preferences, it will not change through mediation. You are really going straight to tribunal on that particular aspect. There is room for mediation and negotiation on some of the other provisions.

The Chairperson (Mr Weir): OK. Does anybody else have any questions on mediation? No.

Clauses 9 and 10 refer to the rights of SEN children over compulsory school age. The first query, at 9.1, is about clarity. What happens if a child over compulsory school age is unhappy with their statement but wants somebody else to exercise their rights in respect of the SEN framework?

Mrs I Murphy: For children over compulsory school age, the right will move to them and not remain with the parent. Obviously, some children may wish their parent to support them in exercising the right. Clause 9(2) proposes that regulations make provision for the kind of assistance and support that would enable a child over compulsory school age to exercise their right.

The Chairperson (Mr Weir): Clarity on that will come in the regulations.

Mrs I Murphy: Yes. Again, through regulations, there will also be clarity on provision for a child who lacks capacity. That provision is in clause 9(3).

The Chairperson (Mr Weir): OK. Any other questions, members? Point 9.2 in our papers seeks clarity from the Department about whether it will provide advice and guidance.

Mrs I Murphy: Clause 9, again, already provides for the authority's statutory information and advice service to be extended to provide information and advice to the child.

The Chairperson (Mr Weir): In point 9.3, INTO suggests a change, at lines 34 and 36 on page seven of the Bill, from regulations "may make provision" to "shall make provision".

Mrs I Murphy: Again, the wording that we have proposed would follow past drafting convention in that regard.

Mrs Gillan: Generally, the convention is to state that regulations "may". We have simply followed that convention.

The Chairperson (Mr Weir): I appreciate that, but there is —

Mrs Gillan: There may also be instances in which a Bill states "regulations shall".

The Chairperson (Mr Weir): I feel Daniel Greenberg hovering over my shoulder at this point. *[Laughter.]* There is obviously a big distinction between "may" and "shall". May is essentially permissive, and, indeed, in many cases is followed through on. "Shall" ensures that something happens. Other than convention, is there a particular reason why this is may rather than shall?

Mrs I Murphy: No particular reason, but generally, in moving the whole SEN framework forward, the Department is relying on putting in place regulations and a code of practice to support the Bill.

Mrs Gillan: We acknowledged that the key clauses in the Bill will not work unless there are supporting regulations, so it is in our interest to ensure that the regulations include all the provision required to make things work.

The Chairperson (Mr Weir): OK. I think that 9.6 is covered, but the issue raised at 9.5 is about how the Department is to determine the capacity of a child to exercise its SEN rights.

Mrs I Murphy: We have already said that clause 9(3) makes provision for regulations for cases where a child may lack capacity. We will again look to other jurisdictions and to examples set out under the UNCRC, for example, its 'General Comment' of 2009, which looks at the views of the child and how to determine the criteria to use in establishing whether the child lacked capacity. That will be a key feature of the consultation with stakeholders as we develop the regulations. We anticipate that there will be key elements that we will want to consider with stakeholders on whether or not the child, at a point in time, would be able to understand a decision, make a decision and understand the process and the various options that are available to him. We will want to tease out those issues with stakeholders.

The Chairperson (Mr Weir): OK. Does anybody else want to comment on clauses 9 and 10?

Mr Rogers: The acquired brain injury people felt that the age needs to go beyond 19, because a child with an acquired brain injury could be operating as a 16- or 17-year-old, even if they are 20. Do you have any thoughts on the extension of that?

Mrs I Murphy: The Department's brief extends to the end of the post-primary phase. It does not have any brief beyond that. Provision in FE, HE, training or employment are addressed by the Department for Employment and Learning. We do not have manoeuvrability on the extent of our wider duty in relation to children of school age.

Mr Rogers: So it is just until 19, irrespective of their —

Mrs Gillan: Yes, but we are doing other work with DEL, Health and other Departments on transitions and what is available post-19 to young people. Those young people may go into FE, and others may go into HE or training. We are doing other work on that, but our remit is until the end of 19.

The Chairperson (Mr Weir): That covers clauses 9 and 10. We will move on to clause 11, which deals with the pilot scheme, and clause 12 as well. The Children's Law Centre suggested that the pilot be extended to cover children over compulsory school age as an alternative means for them to exercise their rights. Do you have any comments on that?

Ms Matthews: The child who is over compulsory school age is being given rights in the SEND Bill in their own right. The pilot, as introduced, is —

The Chairperson (Mr Weir): It covers where there are no rights already.

Mrs Gillan: They are just given.

Ms Matthews: For the child who is under the upper limit of compulsory school age, the pilot scheme will be developed in due course with stakeholders, including children and others. That covers that.

In comment 11.2, there is a suggestion about removing clauses 11 and 12 on the pilot —

The Chairperson (Mr Weir): This goes on to a range of items. Witnesses came up with very different perspectives on this. It went from, on the one hand, that the pilot should be abandoned or, alternatively —

The Committee Clerk: Seán, we are down to four members. So, if you leave, we will have to stop.

The Chairperson (Mr Weir): I appreciate that this will probably be a little bit longer, but, unless somebody else comes in, we will tie you to your chair at this stage. We have a few more clauses to go through. Once we are through that, I will suggest a short comfort break after this bit anyway. We will try to get through this. I suppose that, as their jackets are there, if either Nelson or Sandra comes in, you may be released. We will have to stop the meeting if anybody else goes.

It varies between the suggestion of abandonment or, alternatively, doing it in much tighter time frames with more obligations. To some extent, the provision was a halfway house between those two positions. Broadly speaking, there is probably a perception that a lot of witnesses did not seem overly keen on the mix that had been put in place.

Mrs Gillan: We are committed to running a pilot. We feel that there needs to be a pilot to test how the rights would operate. In terms of the timescales, our first priority for the moment is trying to get the new framework in place, get the code and the regulations drafted, get the training out to schools and ensure that that is operating. We want to do that first before turning our attention to developing the pilot. The benefit of not doing it straight away is that we want to take into account the lessons learned from the pilot that will be arranged in England. That has not commenced yet. Although one has been operating in Wales, I think that it only led to one appeal in relation to a disability claim. There are not a lot of great examples out there at the moment.

We would want to build up some evidence from what is happening in England and elsewhere to look at how we might operate it and also to engage with parents and children. The 10-year timescale is to give us the opportunity to do that but also to allow the pilot to run for at least two years, because, if you do not envisage a high number of cases, you need to give it an opportunity to get a few cases through the system to ensure that it is operating appropriately and to get the lessons learned.

That is where we are. We are committed to doing it. Indeed, we have taken the further power, having run the pilot, to go straight into making it operational and an actual right of appeal, rather than maybe a further delay of coming back to the Assembly to take a separate power. We felt that that gave us the power to do the pilot, to see how it goes and then, if it is appropriate, depending on results, to go straight into the actual right of appeal. We are obviously working in the context of trying to get the new framework up and running, with an eye on England to see how they are doing on their pilot. I appreciate that it does not please everybody, so we have had to try to be as proactive —

The Chairperson (Mr Weir): Ten years seems quite a long time for it to take to get off the ground.

Mrs Gillan: That is when you think in terms of actually developing arrangements, which will be quite challenging, getting them up and running, running them for a couple of years, then evaluating those arrangements and actually confirming what your final arrangements will be.

The Chairperson (Mr Weir): One of the comments made directly, at 11.6, by NICCY, referred to the maturity and capacity to understand proceedings. It made a suggestion that it be restricted to a minimum of 11 years of age or an age at which the child demonstrates a capacity to understand.

Mrs Gillan: We have not proposed any age restriction on the pilot, so it is any child who has the capacity to understand. Obviously, we will need to support that with —

The Chairperson (Mr Weir): I can see, as well, again —

Mrs Gillan: I am not quite sure.

The Chairperson (Mr Weir): It seems a bit odd to say that it should be an age of 11 but also that it should be on the basis of the ability of the child to understand. That seems to slightly contradict the first point.

Mrs Gillan: It is more restrictive, possibly.

Mrs I Murphy: We have also looked to UNCRC general comments in that regard, where they do not tend to impose a restriction on the age of the child.

The Chairperson (Mr Weir): No other comments, then. That is clauses 11 and 12 covered.

Clause 13 is on definitions of a child. There are a couple of relatively short points here. NICCY and others have sought assurances in respect of supported educational transitions for SEN children.

Mrs I Murphy: There already is provision. Regulation 19(9) of the existing 2005 regulations makes extensive provision for the preparation of a transition plan as part of the first and subsequent reviews of a young person's statement after the age of 14, so there already is well-embedded statutory provision. The Education Authority is supported in that regard by education transitions coordinators. Their role extends to collaborative working between Education and Health, the Department for Employment and Learning's Careers Service, FE colleges and other providers. So, there already is an extensive transition planning process.

The Department is continuing to work with the authority, DHSSPS and DEL in relation to improving transition planning. That work will include consideration of any changes required to the current code in relation to strengthening that process. The September 2014 ETI survey report on transition arrangements from special schools and mainstream schools, including learning support centres, to post-school provision found that the transition programme has improved and that examples of effective collaborative working exist. Again, in moving forward with the code of practice, we hope to include case studies of good transitions arrangements.

The Chairperson (Mr Weir): The comments at 13.2 and 13.3 deal with the age bit. That is the issue that Seán had raised, so we have probably already dealt with that.

I am pleased to hear that there are no comments at all on clause 14. I congratulate everyone in the Department who drafted clause 14.

Clause 15 deals with the commencement and regulation-making powers. Comment 15.1, I suppose, refers to a high level of discretion in relation to the commencement of regulation. Do you want to comment on that?

Mrs Gillan: What we want to do is ensure that the Act will come into operation and the regulations and code of practice will come into force all as a single package. That is why we felt the need to take the commencement powers — to ensure that that happens.

The Chairperson (Mr Weir): I have a couple of other issues with 15.2, which states that the Human Rights Commission recommends that all secondary legislation relating to the Bill be subject to affirmative resolution. Also, the issue, which I suspect the Committee may also come back to, is what level of scrutiny or control there is over the code of practice. There is a suggestion from the Human Rights Commission that the code of practice be made subject to affirmative resolution. Can you comment on that?

Mrs Gillan: The negative resolution proposal has followed on from the previous. In terms of scrutiny, I am not sure what difference negative or affirmative would make, particularly for the Assembly, but we will be guided by the Assembly's preference.

The Chairperson (Mr Weir): Obviously, you are following normal process. Is the current intention that some would be affirmative and some would be negative?

Mrs Gillan: At the moment, the powers are all negative, except for the pilot, which is affirmative. The balance for the negative resolution procedure for the regulations and the code is our commitment to extensive consultation.

The Chairperson (Mr Weir): From a non-legislator's point of view, it is very rarely understood that the distinction between the two is relatively minimal. However, it might make some sense to look at having some of the issues affirmative. What about the code of practice?

Mrs Gillan: Again, that is subject to consultation. It is currently subject to negative resolution, I think.

Mrs I Murphy: There is no process.

Mrs Gillan: There is no process, sorry. It is just a statutory code. It is extremely detailed and deals with every level. So a decision would have to be made on Assembly resources and time and whether you would want to get into that level of detail —

The Chairperson (Mr Weir): Let me put it this way without prejudice to the views of the Committee. I suspect that the Committee will want to send a message back on this. I appreciate that we are working with the Department on this. However, there is some concern that, in the broader level, you have legislation which, by its nature, irrespective of what provisions are put in, will have to be very heavily dependent on the secondary nature of this. Yet, to some extent, the sign-off on the primary legislation, without a degree of insight into the secondary legislation, is one thing; also, a lot of groups made the point that they see a lot of the detail, particularly, I suppose, for those who are at the coalface in terms of their children potentially being affected. They will say that the code of practice is crucial. There is a concern that, I suspect, would be shared by the Committee, which is that if you simply have a code of practice that, at the end of the day, however open the consultation is, simply comes back to a situation where the Department implements what it likes ultimately or does not, without there being any formal opportunity for the Assembly to say yea or nay to it, I think that the Committee would be uneasy with that.

Mrs Gillan: Is there an issue — you will know more than I — with some of the regulations being negative and some affirmative? Would there need to be two sets of regulations, and would there be an issue with coherence, or can you proceed with a single set of regulations with some affirmative and some negative?

The Chairperson (Mr Weir): I do not think that there would be any particular problem in that regard. As you said, perhaps the issue of affirmative and negative, some of that is probably more going slightly to the quality level or may make some level of impact on the scrutiny because it would be physically in front of us. Possibly, speaking personally, I think I may well share the view that, at times, people get a little too hung up on the distinction between the two. From a practical point of view, if a Committee and, essentially, the Assembly, wants to stop something — something being proposed to them and them saying no to it — or if there is a determination for the Committee or anybody else to basically say that they want to block something, they can put down a prayer of annulment; there is a relatively small hurdle between the two.

The bigger concern, I think, to be fair on that, would be a situation where a code of practice, however detailed, was issued without anybody having any say in it. I suppose that the other issue where I suppose it relates to balance between what is in the Bill and what is in regulations, the big distinction as regards regulations is that you are kind of left with a fairly nuclear option and, depending on what the regulation is, you may find that there are three or four good bits to that regulation and only one bit that you do not like, but you cannot amend a regulation. That leaves you in the position of trying to hold up the thing by saying no to it and the Department coming back with something else that, again, would be a position that would not be preferred on that side of things.

Mrs Gillan: We said that we hope to come to you in the autumn to bring you through as much detail as possible on the regs so that you have an opportunity at that stage to comment.

The Chairperson (Mr Weir): That is fair enough. I appreciate that you are not in a position to say anything directly today, but there will be a significance in some form of Assembly input; it will probably be by way of resolution in terms of the code of practice. That will give people a certain level of assurance in that regard.

There is another point on the commencement bits of clause 15. One comment suggests that support be quantified and specified, and the other suggests that statements should follow children rather than institutions. Do you want to comment on that?

Mrs I Murphy: Article 16(3) of the 1996 Order already provides that the statement shall:

"specify the special educational provision to be made for the purpose of meeting"

the child's SEN.

There is guidance in the code of practice, and it is proposed that that will continue.

In relation to whether the statement follows the child, the statement is specific to the needs of the individual child. The current legislation makes provision for the statement to be reviewed annually and following a request by a parent for a statutory reassessment. The provision made in the statement necessarily requires amendment if the child moves between education sectors. It also allows for the name of a school to be changed if a child moves from primary to post-primary. The statement does follow the child and makes the provision appropriate to the sector in which the child is placed.

The Chairperson (Mr Weir): I am sure that you will be greatly surprised that there is no commentary on the short title. I have yet to see any commentary in that regard in any piece of legislation. Maybe there has been, but it does not immediately ring a bell. Similarly, there is no commentary on the schedule dealing with the transfer of rights.

There are a few other general comments in the papers, some of which we have touched on already. Comments 18.1 and 18.3 deal with consultation on the code of practice and regulations. You have, to some extent, touched on that already, but is there anything that you want to add?

Mrs I Murphy: Throughout the process so far, we have engaged in considerable consultation with children and young people through schools, special schools, voluntary groups and groups of children and young people. As we move forward, we would like to engage further with NICCY if it has any other suggestions on how that could be further improved.

The Chairperson (Mr Weir): We have dealt with the budget situation already. In terms of the issue of a threshold for SEN support and extended consequences of a reduction in the number of statements, this is maybe if you like the flip side of the argument. If we are seen to have a Bill that, on the face of it, has additional duties and opportunities in that regard, is there going to be some level of counterbalance in terms of threshold levels to make those more difficult in terms of statements?

Mrs I Murphy: The Bill, the regulations and the code will not set thresholds; it will be for the Education Authority to determine cases where children will need a statement. The general proposal of the SEN review is to try to meet the needs of children earlier and that the supports are more readily available by either the school, through the increased duties on boards of governors, or through the authority as set out in its plan. We want to see the authority being able to make supports to children, perhaps to prevent more significant or more bureaucratic provisions at a later stage of the framework.

Mrs Gillan: I think that we touched on this in our recent correspondence to you, and I think that Dr Mangan mentioned it in her session, that if there is to be any reduction in the number of statements we hope that that would be because fewer parents/pupils need to request statutory assessment because their needs are being met at stages 1 and 2. That would be a positive outcome.

The Chairperson (Mr Weir): The next comment is on the issue of education transition for children with disabilities.

Ms Matthews: There are no proposals to remove or weaken the statutory transition planning process for statemented children as part of the review. There is already a well-embedded statutory transition planning process in schools, with detailed guidance in the code of practice.

We are considering what changes could be made to existing transition planning arrangements in order to better support the process and to strengthen it in certain areas. Any such changes would be reflected in the code of practice, including case studies and models of best practice.

The Chairperson (Mr Weir): Some of the comments at 18.6 to 18.8 about additional costs have been covered, particularly for an EQIA.

Mrs Gillan: We are content with our EQIA screening outcome; we feel that we addressed that appropriately. We engaged with the Children's Law Centre on that issue and explained to them directly our thinking on the screening decision.

The Chairperson (Mr Weir): At 18.9 is the issue of additional training for social workers who deal with SEN support for disabled children. Have you any comments in relation to that?

Mrs I Murphy: DE is not directly responsible for the training of social workers. We will share that view with DHSSPS. The Education Authority boards would have already taken opportunities for joint training. Some of the pilots that we ran in relation to the review would have proactively looked at opportunities for joint training.

The Chairperson (Mr Weir): Sections 18.10 and18.11 relate to calls by the Equality Commission for additional obligations on the authority for schools.

Ms Matthews: The review dealt with matters in the SEN framework. It did not consider the disability discrimination aspects of the Special Educational Needs and Disability Order to make changes to the disability framework. That would require full consideration and consultation.

The Chairperson (Mr Weir): Sections 18.12 to 18.15 contain suggestions about changes to SENDIST, particularly the publication and availability of those.

Mrs Gillan: Section 18.12 is another point around disability discrimination claims and compensation. Disability was not considered in our consultation and piece of legislation. With regard to 18.13, as SENDIST is part of the Courts and Tribunals Service, that would be a matter for them. We are aware that SENDIST has been considering the publication of its decisions, but they will need to take into account data protection and safeguards. That would be taken forward under the Courts Service's website and procedures.

The Chairperson (Mr Weir): Allied to that, at 18.16, is the collection of supporting data.

Mrs I Murphy: The data is already collected through the annual school census in relation to children with SEN and those where the school principal understands that the child may be regarded as disabled. That already happens.

The Chairperson (Mr Weir): I think that 18.17 was largely covered at 1.8. Those were the direct comments. Do members have any comments that were not covered? It has been extensive so far.

I have two final queries on which I want the Department's views. There has been an indication in the Department of working on the regulations. Have you any sort of further clarity of when you anticipate that we will be able to see the draft regulations?

Mrs Gillan: Unfortunately, the team is here, and we have been pretty engaged.

The Chairperson (Mr Weir): That is OK. You can get back to work before lunchtime. *[Laughter.]*

Mrs Gillan: In engaging extensively with the Committee on your queries, as is appropriate, and appearing today, our attention has been on facilitating the Committee's consideration. Moving into the summer and recess, the regulations and code of practice are next for our attention.

The Minister has given a commitment that, as regulations are developed, we will not wait until everything is a final package; we will try to feed things through as they are developed.

The Chairperson (Mr Weir): We regard seeing the draft regulations as pretty critical. Even if we are not in the position of saying what precisely is going to be put through, early sighting is critical.

The other issue is timescale. There is a lot of work for us to go through in relation to this. Timescale will also depend on how quickly we get stuff back. There is a provision for the Committee to seek a certain amount of additional time, although we are keen to get this through. What is the Department's view?

Mrs Gillan: The key is us trying to get it completed in this mandate. We would have to take a view from our legislative section and speak to the Clerk about how things can fit in.

The Chairperson (Mr Weir): OK, if you can liaise a little bit with that. There is a cart-and-horse-type aspect to this as well. The more that we can get back will facilitate how quickly we can move through some of these. I am sure that all sides appreciate the need for this to be done but also to ensure that it is got right.

Thank you for going through that in such a thorough manner, which was very helpful for our deliberations when we come to look at this again at our next session. I thank the three of you for your attendance and your help.