Committee for Employment and Learning

OFFICIAL REPORT
(Hansard)

Inquiry into Post-Special Educational Need Provision in Education, Employment and Training for Those with Learning Disabilities — Special Educational Needs and Disability Bill: DEL and DE Officials

19 October 2015
The Deputy Chairperson (Mr Buchanan): I welcome Mr Andy Cole, head of further education policy and strategic development in the Department for Employment and Learning and Ms Caroline Gillan, director of access, inclusion and well-being in the Department of Education. It is over to you to present to the Committee, and then we will ask questions.

Mrs Caroline Gillan (Department of Education): We are delighted to be here today. We were invited to give you some information on the Special Educational Needs and Disability Bill, which is currently before the Education Committee, from the Department of Education’s (DE) perspective. Given the discussion that you have just had, I want to give you a flavour of the legal structures that relate to the DE and the Minister of Education’s duties.

To provide absolute clarity, we have a number of education Orders and, more recently, the Education Act (Northern Ireland) 2014, which gave effect to the Education Authority (EA). Under our education Orders, the Education Authority has a duty to secure efficient primary and secondary provision and to ensure that that is available. It is also responsible for preschool. Allied to that primary and secondary legislation, it has to ensure that sufficient schools are available, and it has to have particular regard to the need to secure special educational needs provision. That is the context in which we operate. It is useful to understand where DE’s responsibility starts and ends. I am happy to explore some of the questions that you had earlier as we enter our discussion.

The SEND Bill that is currently before the Assembly proposes changes to the Education (Northern Ireland) Order 1996, which particularly sets out the arrangements for children with special educational
needs in grant-aided schools. The background is that the SEN review commenced in 2006, quite some time ago, and consultation on the policy proposals ran from 2009 to 2010. As you can imagine, it generated significant interest. There were over 3,000 responses, and the consultation period was extended twice as a result of the interest. The Executive gave their agreement to the proposals in July 2012 and then in March 2015 agreed to our Bill being introduced.

Through the development of the proposals reviewing our SEN framework, we had constructive engagement from the Education Committee and other key stakeholders, including the Northern Ireland Commissioner for Children and Young People (NICCY), the Equality Commission and the Human Rights Commission and other interest groups. Our challenge and the Minister’s challenge was to balance the huge breadth of opinion that was expressed around SEN, and he sought to strike a balance that, hopefully, would provide a useful way forward.

On the reasons for our review, we wanted to look at the removal of inconsistencies, improve time frames for assessment and provision and, generally, cope better with the increases in the number of children being recorded with SEN, particularly those with complex needs. We also had to be mindful of the increasing expenditure and the pressures on parents, teachers and schools and on the Education Authority. I will give you a bit of a flavour. You may well know that there are growing numbers of children at all stages of our SEN framework. There has been an increase from 17% in 2006 to 21% in 2014. We have five stages. Stage one is just a classroom-based stage, and it goes right up to stage five of statementing. Twenty-one per cent of the school population is between stages one and five, and 4.7% of our school population has a statement. We also needed to reduce the bureaucracy and have a focus on earlier intervention for pupils with special educational needs and generally effective and efficient delivery with the resources. The policy sits within the Minister’s Raising Standards agenda and wants to ensure that the child is at the centre of the framework.

The new framework will be delivered first through the Bill, and we have a new set of regulations in subordinate legislation; a new code of practice that provides guidance to schools and the Education Authority on special educational needs; and a programme of capacity-building and training for schools for meeting the needs of pupils. That capacity-building programme has already commenced. The need for greater capacity building was flagged up during the consultation, and the Minister has already invested money in that moving forward.

I will not go through each clause of the Bill, but I will highlight a couple of the key provisions in relation to the players in our framework. There are new duties or amended duties on boards of governors of schools. There is a duty to raise awareness among those who are involved in identifying and supporting SEN pupils. Also, boards of governors have to put in place a personal learning plan for every child with SEN and designate a teacher as a learning support coordinator (LSC). That is an enhancement of the old special educational needs coordinators (SENCos) who are currently in schools. It gives an enhanced role for the learning support coordinator in looking at all of the needs of the child, who may have SEN and may also be, for example, a looked-after child or a newcomer. There is also a duty on the boards to inform parents of the independent dispute avoidance and resolution service, and that is where there might be a dispute between parents and schools or parents and the EA around the SEN provision that their child receives.

With the changes that we are bringing about through the Bill, the Education Authority will be under a duty to publish its plan of the arrangements for special education provision that it will make every year. That will be the arrangements for SEN supports that it will put into schools and offer to individual pupils and a range of training. That was in response to consultation views that, often, parents and schools were not exactly clear about what supports were available. We also are shortening the time frame for the production of statements from 26 to 20 weeks, and part of that time frame will be shortened through an amendment in the Bill. The rest of it will be given effect through the regulations.

Also, quite a part of the Bill is around enhancing the rights of the child on the basis of the UN Convention on the Rights of the Child (UNCRC). There is a new duty on the Education Authority to have regard to the views of the child. The UNCRC is the driver for that, and similar amendments were made in the English legislation in 2014. Also, we are transferring the rights under the SEN framework for children who are over 16 so are over compulsory school age. Instead of their rights being exercised by the parents, they will now be transferred to the pupils. Obviously, we need to have supporting mechanisms in place around judging the capacity of the child and issues there that are quite complex. Certainly, that was the key driver. The UNCRC said that, for over-16s, those rights should rest with the children. There is a new right of appeal to our SEND tribunal against the authority’s decision not to amend a statement at annual review. Once they are produced, statements can be challenged at tribunal. Until now, there was no right to challenge at the annual review stage,
and that is being put in place. We also have new mediation arrangements for parents and children who might be deciding to appeal to tribunal around a SEN statement, and that is very much in keeping with the move towards the access to justice review findings on alternative dispute resolution. Those are the key provisions.

In terms of the current legislative timetable, we have just completed our clause-by-clause scrutiny in Committee. That finished last week. I understand that the Education Committee will produce its report by early November, and, once that happens, the Minister will be keen to move forward with Consideration Stage as soon as possible. I mentioned earlier that we are conscious of the remaining mandate of this Assembly. Once we get clarity on the content of the Bill and have that agreed by the Assembly, we will move quickly to make our regulations and code of practice because they are based on the regulation-making powers in the Bill. We hope to consult on the regulations and the code of practice in the new year.

I appreciate that this Committee’s inquiry is on post-19 provision. There is a lot that I could say about dealing with that issue and the questions, but I just want to acknowledge that we are aware that there are issues with where our pupils with SEN go once they leave school. We commissioned the Education and Training Inspectorate (ETI) to do a report back in 2014, mostly on the role of transitions in the education sector. The Education Authority has a transition service, and that ensures that every pupil who has a statement must have transition meetings from age 14 onwards. That is about informing parents, the school and pupils and making the linkages for what that young person might go to once they leave school. There are strong links with DEL, DRD, DSD and Health. That ETI survey found that the transitions process was improving and worked fairly well and that there was good engagement with DEL, particularly around FE and training, but it noted that, for the minority of young people with very complex needs, there was a lack of provision. That tends to be in the health day opportunities and issues around where that small minority of young people would go. The recommendations were that we should work to improve transition planning for those young people further and that it would be for Health to look at what we have out there as an offer. DEL is leading on a post-19 transitions group, and I am sure that Andy will be able to touch on that. There are various recommendations and actions for each Department. DHSSPS is already looking at its learning disability day opportunities model with a view to developing that further. Our Education Authority is on some of the working groups, but the Committee might find it useful to ask DHSSPS for some information.

The provision in education, particularly the special school provision, is excellent. I can completely understand that, when you have gone out to talk to parents, pupils and others, the worry and concern is about where those young people will go to after that. I wonder whether the solution is necessarily to say, “Let us just extend special school provision to the age of 25”. Is that really the right thing for those young people? You will have discussions on amendments to the Bill. I can confirm that this would not simply be an amendment to say that, for the purposes of SEN, the child should be 25. Our education provision, as I have said, is layered with the 1996 Order about what is primary and secondary. It is layered with our area planning of the schools estate, the curriculum for primary and secondary and the role of DEL and DHSSPS. It is an intricate structure, and what you will be trying to achieve is not as simple as changing the number in one of the clauses in our Bill. As your researcher rightly indicated, we have that clause in the Bill because it allowed us to maintain the child in special educational needs provision until the end of the term after the 19th birthday. The reality is that we have been allowing kids in special schools who turn 19 to remain there until the end of that year, but we have had to seek extra statutory approval from DFP to allow us to fund the EA to support them. DFP, being DFP, had given us that approval but had said, “At the next opportunity, we need you to amend your legislation so that you're not going the extra statutory route”. That amendment in clause 13 is a tidying up of an anomaly; nothing more, nothing less.

I am happy to answer more questions. Obviously, Andy will talk to you about the role of FE in post-19 provision. I am happy to have the wider discussion on some of the issues that you raised earlier.

Mr Andy Cole (Department for Employment and Learning): Chair, thank you very much for the opportunity to come to speak to you on an area that, I know, is close to your heart. Caroline has painted the big picture with regard to the Bill and has picked up on statementing. I would like to focus on statementing, specifically, and its relevance to HE/FE in that context.

I want to pick up on a couple of things. I will be less than 10 minutes, Chair; I promise you. First, I will touch, briefly, on the legislative position and framework within which we operate, and, secondly, I will give some comparable detail to the interventions that exist and explain how they sit alongside statementing in the context of DE provision, just to provide that context. You know that my role is
primarily FE, so I will probably focus the discussion on that. We can broaden it out in any discussion afterwards. I presented previously to you on students with a learning difficulty and/or disability (SLDD) provision. I will not rehearse all of that; I will try to draw out the relevant elements in respect of statementing.

First, I want to provide some comfort around the legislative requirements that presently exist for FE colleges in ensuring that learners presenting with specific needs are accommodated and their needs addressed. As you know, the Further Education (Northern Ireland) Order 1997 requires colleges to have regard to the requirements of persons over compulsory school leaving age who have learning difficulties. That is where FE picks up that agenda. It is underpinned by the Special Educational Needs and Disability (Northern Ireland) Order 2005 (SENDO), which requires colleges to make reasonable adjustments to ensure that a specific cohort of learners is not placed at substantial disadvantage in accessing FE or HE provision. Importantly, further education is a pathway of choice for learners who choose, and it is appropriate to do so. They come to FE with a core purpose of gaining skills and qualifications; it is not intended to replace statutory day-care provision. Its primary focus is the delivery of qualifications. Colleges have that agenda at their core, and they are legislatively required to do so. We have a well-developed system in place to ensure that such barriers are removed, where possible, and to ensure that learners declaring a disability or special needs are not disadvantaged.

Before I leave the legislation, I want to comment on statements, specifically. Caroline touched on it. Having considered a potential extension of the age of statement, we are unsure if it is feasible to have read-across from the current DE Bill to further education under the FE Order. I am sure that that is something that we will pick up further in discussion.

Secondly, I want to address the comparable information on current interventions to the DE statementing process that exists. Caroline will probably pick up on statementing in more detail, but, in FE, we have mapped across the objectives of a statement to current interventions, specifically in further education. Part 3 of the DE SEN regulations, as you will know, define what the Education Authority is required to provide in any statement in ensuring that the needs of the pupil are addressed. Key aspects of that statement are the provision of appropriate facilities, equipment and staffing arrangements. Those core elements of the statement have direct read-across to the existing arrangements in FE and HE. Eoin has taken you through the additional support fund. That provides for learners who study in mainstream provision and those whose needs determine that their learning is delivered in a discrete setting.

I will go through the detail of that. There are two elements: the basic and the discrete. The basic takes the form of specialised equipment and personal support in the form of support worker, note taker and specialist assessment of the learner. For the discrete, funding is there to address the additional cost, over and above the technical support, of delivery for that smaller cohort. We have increased that funding by half a million pounds in 2013-14 and by a further half a million pounds in 2014-15. Despite the difficult financial context, the Department has protected that level of funding for 2015-16.

One other important feature that I would draw out about the statementing mechanism is the bespoke nature of the support available. The process is a responsive system that, at enrolment, identifies barriers to learning and ensures that the needs of learners are addressed. The vehicle for that tailored support is the supplementary learning agreement (SLA) that is undertaken by appropriate professionals in the sector. The assessment is undertaken for each student, and a programme of educational provision and the additional support required to support the learner in achieving those educational outcomes is agreed. The SLA is reviewed twice annually to ensure that learners’ needs continue to be met. Also integral to the SLA is the concept of progression. The opportunities and expectations for that cohort of learners are the same as those applied to mainstream learners — accredited provision through which the learner can achieve a qualification that is portable and allows for progression. That essentially is the FE product. The supports that the colleges are legislatively required to provide, the SLA process and the associated system are well developed and in place to support that.

There are other elements of the existing statement in DE that do not have a direct read-across to FE. For example, adjustments to or exclusions from the curriculum and the type of school that the Education Authority considers appropriate for the child, including the name of the school. I would suggest that those are not appropriate to the FE model, and it comes back to further education being a pathway of choice rather than that of statutory education as determined by the statement.
In further considering the merits of statementing in the context of FE, it is also useful to examine the data and evidence to assess whether the current arrangements and structures meet the needs of those learners. Almost 5,400 students who declare a disability or barrier are in further education and they undertake over 10,000 enrolments. The breakdown of those students is of interest. Some 1,839 are in mainstream provision and do not require additional support. The remaining 3,542 students benefit directly from the ASF and having individual SLAs in place. Of those, 1,722 are discrete learners and those with the most complex barriers and needs to be addressed.

The data from DE reflects that those exiting the school system with a stage 5 statement from mainstream education total 901 individuals. Those under a stage 1 to 4 intervention total 3,455. The data would not appear to indicate that there is a cliff edge where those leaving with statements or interventions are unable to progress successfully into further education. If you take the full range of DE leavers across stage 5 with only a proportion having a destination of FE — 1,840, to be exact — the comparable figure in further education for learners who had an intervention under the additional support funds is 3,542. FE support and intervention appears to capture a wider cohort of learners than those who leave statutory education with already identified needs and/or a statement.

Also of note is the age profile of supported learners engaged in FE. Some 55% of the total SLDD enrolments are for those aged 19 and over, which is also relevant to the discussion. That data would seem to indicate that learners leaving the school sector with or without a statement are appropriately picked up by FE. The obvious question to be posed is whether the policy interventions are effective, those needs are addressed and the barriers removed. Again, evidence would reflect that retention and achievement success rates compare positively for SLDD learners. Indeed, across all three categories, they perform better than learners who have not declared a disability. I have that data available if you need it. All that demonstrates that a breadth of learning is ongoing for a large number of enrolments, colleges are meeting their legislative responsibilities in addressing the agenda and ASF and SLA policy leavers are addressing barriers and the needs of the learners enrolled.

I will close shortly, but, before I do, I wish to give you a couple of aspects of statementing and read-across that are worth further examination to assess whether they are appropriate to the HE or FE models. The Bill proposes, as Caroline touched on, reducing the timescale for that statutory assessment — the stage 4 and 5 statement — from 26 weeks to 20 weeks. The present FE model and arrangements are agile and responsive to the needs of the learner, and they trigger at the time of enrolment, when the learner arrives at the door of FE. Additionally, the concept of a statement that secures support may not be a development welcomed by individual students making a fresh start in the FE journey in an adult education environment, which, in itself, brings dynamics different from those in the statutory school sector.

Concerns also exist that, given the current positive experience of the system in FE and significant numbers engaged and being supported in achieving outcomes, statementing and the machinery that may exist around it could negatively impact on the current level of support to learners, even setting aside the cost of implementation.

In closing, Deputy Chair, again, I thank you for the time to share with you. We will enter into discussion, no doubt. I am not sitting here saying that everything is perfect. There are wrinkles in the system, and Caroline has touched on transitions, which is a tricky piece that is working across a number of Departments. So, there are improvements to be made in the overall landscape. Thank you for your time and for listening to our views on the statement and its relevance to the FE and HE agenda.

The Deputy Chairperson (Mr Buchanan): Thank you, Andy and Caroline, for your presentation today. By way of opening up discussion, leaving aside the difficulties of implementing such an amendment that we have before us, what are the benefits or otherwise of bringing forward such an amendment? What would be the benefits to pupils over and above what they currently receive?

Mr Cole: Once they leave statutory education and go into FE or HE, for example?

The Deputy Chairperson (Mr Buchanan): Yes.

Mr Cole: I am not clear at present of the additional benefits that it may bring. That is what I was trying to articulate in the opening statement. The interventions in place, whilst everything can be improved, appear to be addressing those needs. The numbers engaging with FE and HE, and the outcomes, appear to be positive. The model of statementing is the machinery that is applicable to the statutory
school sector. There is a different model in place in FE and HE that appears to be addressing those needs appropriately.

Mrs Gillan: Before answering your question, can I just ask for some clarity from the Committee? I am not overly clear about whether the proposed amendment is about asking FE to have a statementing process and to have statements similar to those that we operate in DE about suggesting that DE should remain responsible for young people with statements until the age of 25; i.e., for them to remain, if appropriate, in special schools.

The Deputy Chairperson (Mr Buchanan): We are not sure on that. We are carrying out the inquiry into special educational needs, which covers DEL and the Department of Education. Therefore, in bringing our inquiry into this issue, we are covering the education side and DEL’s perspective. That is why we have you before us today on this issue to determine the benefits or otherwise of bringing forward an amendment to extend the age from 19 to 21 or 25.

Mrs Gillan: In DE, the statements are very focused on supporting pupils to have access to the curriculum in a school setting. It is a very complex process. The Education Authority has to seek advice from the Department of Health. Educational psychologists are involved in assessing the needs of pupils, and it takes in the views of parents. As Andy said, the nature of FE is very different, so it is not for DE to take a view, but one would have to question whether the complex statementing and assessment process that we go through is required in an FE setting.

If your amendment is around suggesting that statemented pupils should stay in special schools until they are 25, as I touched on earlier, that would be completely outwith the current role of Education at the moment. Our special schools are under pressure, and I think that a Member referred to that earlier. The whole SEN framework is under pressure with the rising numbers. If you were to suggest that pupils stay on until they are 25, that would equate to about a 20% to 30% increase in the number of pupils in special schools. The current special schools estate could not sustain that. Therefore the question would arise of which pupils would not be able to benefit.

You may be interested to know that the Minister commissioned a review of special school provision. He received the report recently, in the last number of months, and he has agreed to the recommendations. That report will be published soon. The whole area planning of special schools takes into account children from age three at nursery right up to 19. It has not taken into account anything beyond that. For children who are over 16, when the EA is taking a position on whether to maintain a statement post-16 or not, it will engage with the parents and also have regard to what provision is available in the area in relation to FE, training, and, obviously, through the Department of Health. So, as I said, it is quite a change that is being proposed.

I go back to saying that we are aware that post-19 there is obviously an issue in relation to children with complex needs. I think that Departments and Ministers, in the context of the transition subgroup and the Bamford ministerial group, have recognised that and are working together. In particular, DHSSPS, which has the lead on meeting the needs for day opportunities of those young children, is proactively looking at its model and its policy.

Mr Cole: I suppose that there would be a view that the process of statementing strengthens the rights of the individual to support or whatever. As I tried to articulate in my opening statement, statementing in the DE context is underpinned by legislation, and Caroline outlined the parameters of that legislation, where it starts and stops, and it stops at 19. Colleges also have a legislative responsibility to ensure that the needs of that cohort of learners are protected. I think that it is important for us to get across the point that there is a legislative responsibility on further education colleges to ensure that those needs and barriers are addressed.

The Deputy Chairperson (Mr Buchanan): This is more of a statement. Just so that the Committee is clear, DE and DEL are of the opinion that, while there are still barriers that need to be overcome, which are being worked on, there is not really a benefit in changing the status quo. That is the position of DE and DEL. Is that fair?

Mrs Gillan: We do not think that the solution is to say that, "Special school provision is excellent. Let's allow pupils to stay there until the age of 25." I think that in a couple of years' time, you would be coming to us, saying, "It is really excellent, but what happens at 25?" The Education and Training Inspectorate (ETI) report acknowledged that something needed to change for the minority of pupils with those complex needs, and it called on DHSSPS to look at its model, as the ministerial group also
recognised. It is not that the status quo is OK; it is how you address the gap in provision. We do not believe that this amendment is the right approach.

The Deputy Chairperson (Mr Buchanan): That is fair. That clears up any ambiguity.

Mr Flanagan: With regard to the governance arrangements of — sorry, that is for North West College [inaudible].

Mr Cole: That is the last Committee session; not today.

Mr Flanagan: Neither Department supports a change of this nature. Is that what we are hearing? What did you just say, Caroline? Can you refresh my memory? I was in the middle of typing, and then Tom told me to start talking.

Mrs Gillan: We commissioned the ETI —

Mr Flanagan: No, it was the bit at the very end, about this not being the best way to deal with —

Mrs Gillan: When we looked at how to reform our SEN framework, we held a huge consultation, which took years and gathered evidence on best practice from elsewhere. Eventually, we came forward with the Minister’s proposals, but we had to take into account a myriad of views. I think that you are proposing such a fundamental change that it would be very difficult to stand over it and be assured that it was the right way to go without having a full consideration of models elsewhere, as well as costings and reforms. It is such an extensive change.

Mr Flanagan: It is my understanding that the legislation dealing with special educational needs was in 2005.

Mrs Gillan: Yes. That was the Special Educational Needs and Disability (Northern Ireland) Order 2005 — SENDO.

Mr Flanagan: A consultation was launched in 2007 about a new SEN Bill.

Mrs Gillan: Yes.

Mr Flanagan: This is 2015. What have you been doing in the last eight years that you have not considered what to do for people who are over 19?

Mrs Gillan: We have no statutory remit for people who are over 19, so the Minister of Education has, quite rightly, not considered what to do with those people.

Mr Cole: That is the issue: the parameters of DE end with people who are over 19, with clause 13 on the definition of a child.

Mr Flanagan: So, neither DEL nor DE has any legal responsibility for people who are over 19 with special educational needs.

Mr Cole: No; DEL has legislative responsibility, as I read out, in the 1997 Order to have due regard for individuals coming in with special educational needs or barriers. Anyone who arrives at the door of further education is over and above the statutory school age. Anyone from 16 to 99 can present at FE. A governing body has responsibility to ensure that those needs are addressed. Our lever to address those —

Mr Flanagan: How is that going?

Mr Cole: With regard to the data that I just read out, the number engaged in a supplementary learning agreement —

Mr Flanagan: Is it meeting the needs of people with special educational needs?
Mr Cole: It is, yes. We are engaging large numbers. We are engaging larger numbers than are exiting from the statutory school sector. Those numbers —

Mr Flanagan: But is there a substantial proportion of the population with special educational needs who are being left behind?

Mr Cole: Potentially. Whether the appropriate pathway for those learners is further education, higher education or training is a different question. For anyone for whom engagement in further education is an appropriate pathway, there are systems in place to ensure that their needs are addressed and that barriers are removed where possible, but their education —

Mr Flanagan: You tell us that this amendment is not the way to go, so what is the way to go, Andy? We are not going to sit here and accept that we do not do anything for people who are over 19. That is not good enough. We have heard too many harrowing stories from parents and loved ones of people who have special educational needs who are sitting looking out the same window as somebody of 70 years of age. That is not a good enough environment. What alternative have we to this amendment, which you are telling us is not the way to go?

Mrs Gillan: As I mentioned, an action plan is linked to the Bamford group on post-19 provision for people with learning difficulties. You are referring to people who are sitting in centres with people of different ages. That tends to be a cohort. Twenty-four per cent of pupils who come out of special schools at 19 go into the day-opportunity and day-centre set-up, which is under the remit of the Department of Health. As I indicated earlier, Health officials, who, I am sure, would be happy to come and speak to you, have acknowledged that they need to develop a new model there. As far as I know, that is ongoing. It is around ensuring that the provision is age-appropriate, varied enough to enable choice, based in and includes interaction with local offer, and augmented by other experiences. They envisage that that new model has to be delivered in partnership with providers, volunteers, further education, social enterprises, supported employment and volunteering.

I think that Departments and Ministers who have an interest have recognised the issue. Work is ongoing, but obviously I am speaking outside my own remit here simply because I am aware of the work of Departments. From DE’s perspective, our role is very much on the transitions. It is about training the young person to go on to the next stage.

Mr Flanagan: Caroline, my problem is that you said that this is a radical or transformative change. A policy change has been in the offing for nearly 10 years. Are we going to wait 10 years before we take a chance to do something radical again? That is a whole half a generation of people who will be left behind with nothing between the ages of 19 and 25. I hear what you are saying about the action plan, but it just does not seem like enough.

Mr Cole: The parameters of the changes that are proposed now and the parameters of the Bill going through are for education up to 19. That is the point that we are making. The wider changes that you refer to and improvements that need to be made across the landscape are cross-departmental and across different pieces of legislation. Should you propose to amend the age, for example, in this current Bill, it would not have read-across to the 1997 Order. It has an impact across a number of pieces of legislation. That is what I am saying: it is a different problem that needs to be addressed with perhaps a different solution. We are not saying that everything is perfect or that our provision for post-19 is perfect at all.

Mr Flanagan: Andy, I am not hearing a solution coming from you; I am just hearing you say that this amendment does not work.

Mr Cole: I —

Mrs Gillan: The solution needs to be well considered. Earlier, in the research briefing, reference was made to the education and healthcare plan in England and Wales. That is for ages 0 to 25. Obviously, England and Wales have totally different structures, where the local authorities are responsible for health, education and social care. My understanding is that, although those plans span those ages, that authority has the benefit of being in control of the education element up to a certain stage, and then health or social care comes in. It is not that those plans in England and Wales, or England, envisage pupils staying on in schools per se. Are we sure that staying in a school is a right thing for a young person/adult?
**Mr Flanagan:** Is that what we are proposing?

**Mrs Gillan:** I asked you that. I am not sure.

**Mr Flanagan:** It is my understanding that we are not proposing to make people up to 25 years of age stay in school with children who have special educational needs. Personally, I do not think that that would be suitable. This is not about getting people to stay in special schools for longer; in my opinion — the Committee has not yet agreed what we are should do — this is about making sure that people who are over 19 and no longer in special schools retain support and some Department has a statutory responsibility to do something for them. At the minute, if they are well enough to go to an FE college, then DEL or that FE college has something to do for them. However, there are so many people who will never get near a college, and it is those people who are being left behind.

The gut reaction from the two Departments to the amendment that we are talking about has been: "We are not doing that because it is inappropriate to put adults in with children", and I agree with that, and, "It places additional pressures on special schools", and I agree with that. The amendment that we are looking at is much bigger than just making people stay in special schools. I think that you have not realised that yet.

**Mrs Gillan:** It is useful to have that clarification.

**Mr Flanagan:** I am not speaking on behalf of the Committee. Maybe the Committee will decide that we are going to make everybody stay in a special school until they are 25. I do not know; it is not decided yet. However, that is my personal view.

**Mrs Gillan:** In education, the Education Authority (EA) has this statutory remit in relation to statementing and meeting the needs of pupils with special educational needs. In relation to young adults with special needs, if they choose to stay or go to FE or HE, then, obviously, DEL has a statutory role. Other than that, the responsibility rests with DHSSPS. The question is whether you impose some sort of duty on DHSSPS to meet those needs. However, if that is what is envisaged, the SEND Bill is not the vehicle for it.

**Mr Cole:** That is the point that I was trying to make. The point is about those individuals who, you say, after age 19 are left behind if it is not appropriate for them to go to FE. For those for whom the appropriate pathway is to come to FE, there is a statutory responsibility on the FE colleges and a legislative requirement to ensure that their needs are addressed. However, if FE is not the appropriate pathway, it is not for DEL or further education to pick up what happens to those people. That is a potential gap in the provision, which would appear to be the responsibility of day centres and Health.

**Mr Flanagan:** That is the problem, Andy; if we were in England, it would be up to the local authority.

**Mr Cole:** Indeed.

**Mr Flanagan:** How come the mentality here is "This is not DEL's responsibility, it is the Department of Health"? You do not hear a local authority say, "It is not for the education team; it is for the health team". It is the local authority's responsibility, so somebody in there grasps it. Here, we have this attitude: "It is not DEL's responsibility; it is the Department of Health's". Nobody has any interest in it; there does not seem to be a collective, executive responsibility to put services in place for these people who badly need them. It is as though you are saying, "They are over 19 and not going to school, so they are not DE's responsibility. They are not going to an FE college, so they are not DEL's responsibility, they are DHSSPS's responsibility. They are not in a hospital or a care home and are not really sick, so they are not Health's responsibility either".

**Mr Cole:** That is the cross-departmental work that is being forward out of Bamford by the transition group, to join up those services and improve the offering and the services that are in place.

**Mr Flanagan:** There is legislation currently being debated in the Chamber —

**Mr Cole:** It is not as blunt as saying: "It is not DEL's or DE's problem”. We recognise that.
Mr Flanagan: There is progressive legislation being debated today. The name that Steven has put on it is the Children's Services Co-operation Bill. Is extending that Bill to include people with special educational needs who are up to the age of 25 a better thing to do than trying to amend the SEND Bill?

Mrs Gillan: It deals with children's authorities. It would not change —

Mr Flanagan: We are at Further Consideration Stage, so no amendments to that will be tabled after today. However, that Bill's parameters are to legally force Departments to work together to provide children's services. Do we need some form of legislation to make Departments and FE and HE institutions work together to make sure that all these services are in place for people who have special educational needs, once they reach the age of 19?

Mrs Gillan: From our perspective we see the joined-up work that Ministers and officials do, but it is entirely up to the Committee to take a view on how effective that is. We are at the start of the process.

Mr Flanagan: The evidence that we have taken indicates that people out on the ground are not seeing it. You might see it in officialdom, but when you get out onto the ground and are trying to access these services, it is not apparent to people that Departments are working together to deliver those services effectively.

Ms Sugden: I somewhat concur with Phil. Why has this proposal come up in the first place? It may be a suggestion that the current remit for post-19, which is satisfied through DEL, is not working. This Bill is an opportunity for the Committee to say, “Right, it is not working through DEL. Is there a way that we can make Education responsible for it?” It is kind of why I asked earlier about where this goes when we have the new government structures next year. Should people with special educational needs go into the Department for the Economy? I am not sure. Maybe it is more appropriate that we put it in the Department of Education.

I do not accept the idea that “It is not under my remit”. That is the case currently, and I would fully expect you to say that. However, moving on, we, as MLAs and legislators, can change that. Perhaps this is an opportunity to change it. I agree with Phil that people on the ground say that it is not happening through DEL. Maybe it is through Health and day opportunities, as you say. However, one Department should have lead responsibility to move it forward because, right now, it is not working. Perhaps Education is the most appropriate Department because it follows through from 16. Everyone gets their education up to 16, and maybe the next natural step is to keep them within that, particularly if they have special educational needs.

Mrs Gillan: The Department of Education is around educating children and the delivery of preschool, primary and secondary education to assist each child to fulfil their potential. I am not sure that extending our remit to young people with special educational needs is the right way to go. I totally understand that you have heard a variety of views. The important thing is that each Department ensures that it delivers its functions to support young people with learning difficulties or disabilities. That is very clearly set out in our legislation and, similarly, in DEL legislation. It is around enhancing and ensuring that each Department steps up to the mark and meets the needs of those young people or young adults.

Even if you made this amendment, for a young adult going through life, it is not going to be about just education; it is about them accessing healthcare and other supports — DSD, DRD and transport elements. I do not see this particular amendment as the solution. Cross-departmental focus on these vulnerable adults is absolutely required. As Andy pointed out, that has been highlighted through our transitions inter-ministerial group. Obviously, the big challenge for a lot of Departments, and particularly Health, is the general pressure on resources. We feel it ourselves in Education. That is always going to be a challenge. That is not to say that we do not try to make the best use of our resources in delivering assistance. However, the whole structure of our assessment process is around trying to look at what assistance pupils need to access learning. That is what we are about in the delivery of learning and supporting pupils to access that learning. I am not sure about the supports that the young adults you spoke to need, but maybe the amendment is not the right solution.

Mr Cole: Just picking up on the wider services to that group of individuals, the cross-departmental group's action plan was agreed in May 2015 by the inter-ministerial group on mental health and
learning disability. That will bring a range of actions across Departments that aim to deliver that improved support for young people with severe learning difficulties or disabilities. I think that the Minister is proposing to publish that action plan in a number of weeks' time. That will report to the Bamford ministerial group as well, so that is trying to join up the pieces of what is a complex landscape across a number of Departments, with everybody coming to the fore with the actions they can contribute to making that better for those individuals.

Ms Sugden: How are people post-19 satisfied through education if they have special educational needs? This seemed to be an opportunity for us to address that. Equally, I agree that this is a much wider thing. I feel almost short-changed that we are coming, at this stage of the mandate, to even trying to tackle it. I would even like to see the Department moving forward with the new changes and structures to see how this can be addressed. Ultimately, our priority should be satisfying those with educational needs so that people do not slip through the net. Should the Department of Education have a role? Yes, it should — maybe even more than the current transitional arrangement.

It is difficult. I do not think we will agree or get any way forward in a session like this or in even the next few sessions of the mandate, and it is very frustrating. That is my two cents.

The Deputy Chairperson (Mr Buchanan): One thing you said that we agree with is that all Departments need to step up to their responsibilities and do their bit. That is 100% right, but the difficulty is who then takes the lead. That is where the difficulty is when you are saying that every Department must take on its responsibility, step up to the mark and do its bit. It is all right doing that, but then you have this whole cluster of stuff sitting somewhere about the middle but there is nobody to take the lead and take it forward. That is the difficulty we are finding with the situation before us.

Mr Cole: That is fair, Deputy Chair. In terms of governance and accountability, that action plan will be monitored by the Bamford interdepartmental senior officials group, which reports to the ministerial group. Whilst the action plan is coordinated and led by DEL, there are within it specific actions for each Department. Those Departments will then be accountable through that senior owner group and through to the ministerial group for delivery of the actions that have been agreed. That perhaps provides some accountability and structures around that.

Mr F McCann: Some of the stuff that I was going to raise has been raised. The inquiry that we did into post-19 SEN brought us into contact with quite a number of schools, teachers and parents who raised the very issues that are being raised here today. It was difficult for us to explain, especially for an Assembly, the difficulties that were there. There was no consensus among parents or teachers, but there was a consensus that change was needed.

We have said this a number of times in the past, but in all the schools we visited, the level of care, attention and dedication by the teachers in all aspects of their work was second to none. We learned that, once the transition started to kick in, that was when the major difficulties and problems arose. We learned that up to four Departments may have their fingers in the middle of this.

What concerned us, given the serious nature of what we are speaking about — you mentioned Bamford, which reported in 2007 — is that there seems to be a long run-in before anything happens. I think that that is what annoyed members. There did not seem to be people, whether at ministerial level or senior official level, coming together in the different Departments and saying, "Right, let us get something done here. There are parents and teachers out there who are crying out for help." I think that that is what takes us to this meeting today. Is there any light at the end of the tunnel that will allow us to leave this meeting and say to parents, "Yes, it is being taken seriously; yes, we understand the difficulties and problems; and yes, we are doing something about it"? I think that that is the key thing for many parents.

Mrs Gillan: As Andy said, post-19 provision has been identified by the inter-ministerial group, which has gone away and said to officials, "Look, you need to —". I am sure that, at some stage, the Employment and Learning Minister will be happy to provide a copy of the action plan, once that has been signed off by Ministers. It very specifically looks at the fact that we need better communication at the early transition stage. We need to identify where the gaps in provision are and which Department is going to look at all those issues. I mentioned Health's own area of looking at its day opportunities model. From my perspective, I think that that is a good move forward. It is the first time that we have had all the relevant Departments around the table together.
In Education, what we are doing specifically is using the opportunity in our new code of practice to beef up and emphasise the transitions process that we have control of in schools. Our transitions officers will make contact with FE and careers officers. They also make contact with transitions officers in each trust area. To date, there has maybe been a lack of consistency in making linkages with trust areas, and that may be frustrating for parents. The real issue for us is providing parents with the right information and making the linkages, but, again, it comes down to what opportunities are out there. The landscape is very different. Many years ago, big companies would have had supported working opportunities for people with learning difficulties or special educational needs, but they are working in a much more difficult environment in terms of profits, and those opportunities are not around as much. That is what the Health work is saying. It is not just about the actual centres; it is about working with the voluntary and community sector, charities and social enterprises to look at supports and other opportunities for young people.

**Mr F McCann:** I appreciate that. You mentioned the day-care centres. The one that we visited was Victorian in style. The conditions were atrocious. As soon as we walked through the door, we saw a young woman lying on the floor crying and screaming. That hit us as soon as we went in. It was no place for a young woman to be, condition-wise and probably education-wise. So you have that, but then you can go to a place like Springvale on the Springfield Road that provides training and has good ideas and good practice that it tries to build on. There are probably other places also. We never seem to pull the strings together and say, "That is bad, so let us do away with it. Let us deal with it".

Some parents said to us that what they feared most about the transition was if their young person were to head towards a day centre. They did not want to put their child through that, so they would bring them home, where they would spend the rest of their life in their room. That is what really got to us. It is about trying to create a level playing field that allows parents to have confidence in what will happen to their child after that.

**Ms Lo:** I am fairly new to the Committee, compared with the other members. I can understand Committee members’ frustration about the transition and day care.

I am not too clear in my mind about what this proposed amendment can do and whether it is within the competency of the Bill. The Bill currently covers schoolchildren up to the age of 18. If we were to table an amendment to cover children and young people up until the age of 25, how would that connect the two Departments?

**Mrs Gillan:** At the moment, you could not give effect to changes of that nature through a simple amendment. You would have to go right through all the education Orders, changing the definition of “education” and the EA’s remit. You would have to change the nature of schools to extend it beyond that. The way that special schools are funded only covers students up to 18 or 19, and there is the area planning process. A single amendment of this nature would not be workable. I do not mean to be negative; that is just the factual legal position.

**Ms Lo:** It seems a well-meaning piece of thinking, but I think that the best idea would be to make organisations and Departments such as Health, DEL and further education colleges do more to meet the special needs of these young people under their own remit and power. Day centres have had a bad reputation for a long, long time. I do not know how they have been allowed to get away with it for this long. The Bamford report has been there for a long time, but we all know that it has been sitting there because there is no resourcing and, perhaps, a lack of political will to address it. Professor Bamford used to teach me. I am so sorry for him; he did not even finish. He spent so long doing that big report — four or five years — and he did not live to finish the report. I just query whether this amendment, though well-intentioned, is workable.

**Mr Cole:** Improvement is needed, probably across the complex landscape. Other policy interventions are coming forward to try to make improvements. The disability employment and skills strategy is out for consultation at the minute. The intention is that that will provide better service across a range of measures. A new transitions service within that strategy has been proposed and is currently out for consultation.

Caroline touched on the transitions service under EA as well as the Careers Service and engagement with DE: that has improved over the years. There have been positive improvements over a number of years, but we acknowledge that there is certainly more to do.
The Deputy Chairperson (Mr Buchanan): Caroline and Andy, thank you very much for coming to the Committee, presenting to us and taking questions. It is something that the Committee wants to consider.