

Children's Law Centre

COMMITTEE SUBMISSION

THE EDUCATION (SPECIAL EDUCATIONAL NEEDS) REGULATIONS (NI) 2026

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Introduction

The Children's Law Centre (CLC) is an independent charitable organisation in Northern Ireland (NI) which works towards a society where all children can participate, are valued, have their rights respected and guaranteed without discrimination and where every child can achieve their full potential.

Founded upon the principles enshrined in the United Nations Convention on the Rights of the Child (UNCRC), CLC leads for NI NGOs in co-ordinating the submission of evidence to the Committee on the Rights of the Child (CRC) to support and inform its periodic monitoring and reporting work on the UK's compliance with children's rights standards.

Since establishment in 1997, CLC has provided free legal advice and information as well as strategic legal representation on a growing and increasingly complex range of issues affecting children. As a multi-disciplinary organisation, we offer training and research on children's rights, we make submissions on law, policy and practice affecting children and we provide a free legal advice, information and representation service. We have a dedicated free phone legal advice line for children, young people, their parents and carers as well as a Live Chat service for young people. Our work is underpinned by a youth advisory panel, Youth@CLC.

Our model of practice is very different to that provided by solicitors and legal practitioners working in private practice. Our expert legal advice, information and representation service is child-accessible and jurisdictionally unique in that regard. The service is free and accessible to children who contact us directly for legal advice and support. Our policy and advocacy work is informed by analysis of our casework, children's lived experiences as communicated to us through Youth@CLC, research and legal analysis.

While we work on behalf of all children in NI, our focus is on vindicating the rights and unmet legal needs of the most marginalised and disadvantaged groups of children in society including but not limited to, children with severe and complex health and mental health needs, special educational needs and disabilities, social and emotional or additional learning support needs and children in or at risk of contact with the criminal justice system.

Caveat

The time permitted at the current stage of the Committee process through publication of the SL1 and associated documentation enables CLC to take an initial high-level view on the questions asked by the Committee.

Due to the complexity of the issues, the delay between drafts of the Regulations and Code and the extensive volume of material that requires to be reviewed along with the importance of the matters at hand for children and young people, CLC reserves the right to amend our views when time for scrutiny and availability of information permit a fuller assessment.

Citizen Space Survey

CLC provides this paper in response to the Committee for Education's call for views on the Department of Education's proposed Special Educational Needs (SEN) Regulations (NI) 2026, known as the "SEN Regulations 2026". The production of a paper enables us to provide a higher level of analysis to the Committee.

It is hoped that CLC's analysis will assist the Committee in considering whether or not it is content with the general direction of travel of this proposal for delegated legislation; whether any difficulties identified can be remedied before the proposed Regulations are laid before the Assembly and ultimately whether or not to recommend that the proposed Regulations should be affirmed by the Northern Ireland Assembly.

To aid the collation of survey responses, a short summary of CLC's answers to the three standard survey questions is provided:

Survey Question	CLC Answer
1. Is the information provided accurate?	No
2. Is the information complete?	No
3. Do you foresee unintended / unanticipated consequences?	Yes
4. Any other matters you wish to raise	See below

All of these matters are set out in more detail below.

Acknowledgement

CLC wishes to recognise that the Department of Education has worked extensively with us and other stakeholders for a period of almost 2 decades in relation to reviewing and seeking to improve the operation of the SEND framework to improve the experiences and outcomes of children with SEND, who face well documented and continuing inequalities in accessing their right to education.

CLC has invested significant time and expertise into assisting both the Department and the Education Authority throughout this time, including through collaboration with multiple interested organisations and individuals.

In relation to the development of and consultation upon revised SEN regulations, there has been significant positive recognition by the Department of issues raised by CLC to date, reflected in provision and amendments that have been made. CLC is hopeful that with further collaborative working, remaining concerns can and will be resolved. However, as highlighted in CLC's open letter, the current timeframe and pace is untenable at this critical juncture for scrutiny and potential resolution of all of the remaining issues, and any additional new issues which may emerge.

The issues CLC has been able to identify to date with the current version of the proposed Regulations are significant due to the potential practical impacts upon children and young people, in particular as regards legal compliance with the rights they hold, and will continue to hold in strengthened form in line with the intention of the legislature under the relevant primary legislation.

CLC reaffirms its ongoing commitment to supporting the work of the Department to ensure that the implementation of the SEND framework achieves the Department's aim, set out in its Financial and Explanatory Memorandum, that "*children with SEN receive appropriate support to achieve their full potential, while promoting inclusion, equity, and collaboration among education authorities, schools and other relevant bodies*".

Is the Information Accurate?

It appears to CLC that the information provided is not sufficiently accurate.

A range of impact assessments carried out by the Department of Education are significantly out of date, having been carried out during 2020. These are set out in the Explanatory and Financial Memorandum submitted with the SL1 and include the Human Rights and Equality Impact Assessment, the Rural Needs Assessment and the Data Protection Assessment.

It is unlikely that these impact assessments (which in some respects CLC strongly disagreed with in 2021) can have accounted for the current effects caused by the covid-19 pandemic, a 2-year suspension of the Northern Ireland Assembly, school workload and workforce pressures, health and social care workforce pressures, significant school non-attendance, and a growing cost of living crisis.

The financial effects of passing the Regulations are not clear. Information has been provided about the costs incurred to date of preparing and training schools in readiness for implementation of the revised SEND framework. It is not clear what the ongoing and future costs of implementation would involve in terms of financial commitment.

Schools have been trained on the operation of aspects of the revised SEND framework in advance of the SL1 process which appears to be procedurally irregular as it pre-dates scrutiny of the revised Regulations and Code and the affirmation resolution process for the Regulations. This approach risks predetermining legislative outcomes and undermining the role of the Committee and the Assembly in scrutinising delegated legislation.

Significant concerns have been raised by CLC and other organisations, including 5 teaching trade unions and a non-teaching trade union, within an open letter dated 22/04/26, to which the Education Committee has been copied: <https://childrenslawcentre.org.uk/category/news/>

If the concerns highlighted in the open letter are not properly and fully addressed before the regulations have been laid before the Assembly, then in

CLC's view the Committee should strongly consider recommending that the Department pause or withdraw SL1 until the identified deficiencies are addressed.

The revised framework, including the impacts of implementation, may require to be scrutinised in fuller detail over a reasonable time period, or withdrawn and reformulated to enable the successful conclusion of the process in line with the policy aims of the Department and the purposes of the primary legislation.

The basis of the Regulatory Impact Assessment is unclear i.e. it has not been explained how the Department has reached the conclusion that the Rule (i.e. the proposed revised Regulations) will have no impact on charities and voluntary bodies. CLC has been inundated with unplanned work as a result of the publication of the revised regulations. A wide range of charitable and other organisations report to CLC that they are overwhelmed and cannot understand what the proposed changes mean.

There is no analysis about whether the proposed revised Regulations and closely associated revised Code are proportionate and transparent or whether they reduce or increase the administrative and bureaucratic burdens faced by children, families, education providers which SEND reform was supposed to address.

In the absence of up-to-date impact assessments, it appears to CLC that the information is potentially inaccurate.

It is unclear at present whether the revised framework, as it has evolved over a very prolonged period within the Department and EA, has been designed to be system-driven or to serve children and young people who hold legal rights and entitlements under the primary legislation. It certainly appears to be process heavy, and the majority of activity has been directed to process rather than demonstrating outcomes for children.

Is the Information Complete?

There has been insufficient time for interested stakeholders to understand and analyse the potential impacts of the proposed revised Regulations and the associated revised Code (which is some 400 pages in length), particularly in light of substantial delays in their development and publication.

Some of these delays have been outside the Department's control, such as the suspension of the Assembly from February 2022 to February 2024. However, this does not explain all of the substantial delays to date.

Due partly to the passage of time and also due to the inability to track drafting changes over a very lengthy period between published drafts, it is unclear from the published documentation which parts of the revised Regulations and Code have been amended, deleted or added post-consultation (which last took place 5 years ago with a targeted consultation in 2021, after an initial consultation in 2016).

The changes made to the revised regulations since the most recent consultation process in 2020/2021 have not been highlighted or colour-coded in the newly

published version provided to the Committee and the document is not in a searchable format. It is therefore difficult to see what the changes are to the Regulations and what the intention is in relation to specific changes. The Committee should consider requesting searchable versions of both the Regulations and the Code of Practice with all amendments fully tracked or colour coded before proceeding further with scrutiny.

The documents released are substantial in volume and complexity, however they do not provide a full picture of the potential consequences of affirming the proposed Regulations and consequently enabling commencement of the closely associated revised statutory Code, to which a large proportion of the detail is delegated within this legal framework.

It is a feature of this framework that substantive provisions, such as the 3 stages of intervention, are delegated into the Code rather than being part of primary legislation or regulations. Reflecting this high level of co-dependence, the draft revised Regulations and draft revised Code were consulted upon simultaneously.

The “stages” of the Code of Practice, alongside access thresholds to those stages, both in the primary legislation and detailed throughout the Code, are absolutely fundamental parts of the SEND framework.

The proposed revised Regulations and revised Code of Practice are therefore interdependent with each other but they are also inextricably linked with a wide range of other legislative provisions and related policies, including, but not limited to:

- The Education (NI) Order 1996 [the primary legislation for these revised regulations]
- The Special Educational Needs and Disability (NI) Order 2005
- The Education (SEN) Regulations (NI) 2005 [to be revoked]
- SEN Code of Practice 1998 and Supplement 2005 [to be revoked]
- The Children’s Services Co-operation Act (NI) 2015
- The SEND Act (NI) 2016 [primary legislation amending parts of the 1996 Order and making a range of new provisions, such as mediation and appeal rights for children over compulsory school age. A small number of provisions have been commenced to date]
- DE SEND Policy Statement, Reform Agenda and 5-Year Delivery Plan along with an Outcomes Framework [February 2025]
- EA Graduated Response Framework [June 2025, based on the revised SEN Code with schools’ training having already commenced pre-publication]

- EA Proposed Enhanced Support Model [March 2026, potentially impacting compliance with article 16, 1996 Order, as amended by section 7, SEND Act (NI) 2016]
- An SL1 in progress through the Justice Committee as of 30/4/26 [regarding new SENDIST processes for mediation and additional appeal rights for children]

All of the “working parts” of the existing SEND framework and the revised SEND framework require to be considered together with the Regulations to ensure that the full implications of affirming the Regulations can be assessed and understood.

CLC policy responses to previous consultations which touch upon implementation of a revised SEND framework, are attached as background and context, and these illustrate the co-dependency between all parts of the SEND Framework:

- CLC response to draft revised SEND Regulations – March 2021ⁱ
- CLC response to draft revised Code of Practice – March 2021ⁱⁱ

Failure to carefully consider how these proposed Regulations impact upon the working of the system as we move forward has potential to cause the situation of children with SEND to continue to deteriorate at pace.

Such an approach may well frustrate the intention of the Northern Ireland Assembly when it enacted new primary legislation 10 years ago (the SEND Act (NI) 2016) in anticipation of having sight of the associated, and inextricably linked, revised Regulations and Code.

It is CLC’s view, in light of the above analysis, that the information submitted by the Department of Education to the Committee for Education has been excessively delayed, is insufficiently detailed and is incomplete.

Changes Requested by CLC and Made by the Department re Draft Regulations

It is important to acknowledge the collaboration of the Department in reviewing CLC recommendations and making changes for the benefit of children, young people and families. Positive changes connected to issues raised through CLC’s 2021 consultation response on the Regulations include:

- Removal of the “alternative person” concept to avoid technical difficulties related to capacity issues for children over compulsory school age
- Ensuring sufficiency of qualification of persons carrying out capacity assessments (now assigned to EA Educational Psychologists)
- Removal of time limits connected to mediation certificates which would have impeded efficient access to justice via SENDIST

- Removal of draft regulation 9, which provided for a discretion from EA to seek advice from schools which need not be in writing, when considering a statutory assessment

A number of changes recommended by CLC have not been carried out. Given the stage of development of the revised Regulations, CLC is focusing upon those issues which we have been able to identify to date which are deemed to be of sufficient gravity to merit scrutiny by the Education Committee at this stage.

Potential for Unintended / Unanticipated consequences

The SEND legal framework is a complex network of interdependent legislation, regulation and statutory code. It is a critical vehicle for the realisation of children's rights. It is not possible to consider the import of the proposed revised Regulations in isolation from the legal framework into which they will be transplanted. These concerns are not theoretical but reflect patterns already observed in CLC casework and engagement with children, families, and professionals.

Further, the SEND legal framework is underpinned by Education Authority (EA) policies, procedures and both external and internal operational guidance. Whilst EA policy and operations are not "law", they purport to flow from the law and to describe legal parameters. They significantly influence the understanding and actions of educators and parents about what is "allowed" under the legal framework. Ongoing transformation of EA operational systems, including the implementation of the Graduated Response Framework, Local IMPACT Teams and proposals around an "Enhanced Support Model" (consulted upon over the Easter break) will ultimately drive either legal compliance or a continuation of the substantive legal breaches which triggered the Department and EA's SEND Transformation process.

It is extremely important that any "reverse engineering" through the Code and the Regulations which might have the unintended consequence of diluting the effectiveness of existing statutory duties is prevented.

In its analysis to date, which is incomplete given the complexity of the task, the length of time available to date and the lack of visibility of the changes to the proposed revised Regulations and the associated Code of Practice, as well as the lack of up to date impact analysis available through the Department, CLC has identified a number of potential unintended or unanticipated consequences which require significant scrutiny to ensure the legal framework is not undermined and that intended improvements brought forward via the Education (NI) Order 1996, the SEND Act (NI) 2016 and the revised Regulations and Code are realised.

CLC is concerned that elements of the revised framework, including the operation of the Code of Practice and the EA Graduated Response Framework, appear to shift practical responsibility for identifying, assessing and meeting special educational needs increasingly onto schools. While schools play a critical role, statutory duties in respect of identification, assessment and provision (as well as planning to meet the needs of the SEN population) remain with the Education Authority under the Education (NI) Order 1996, as amended.

Any movement of responsibility in practice must not have the effect of diluting these statutory obligations, creating barriers and additional delay in children's access to suitable provision, or introducing inconsistency in provision across schools. CLC's casework consistently demonstrates that where accountability is diffused, children experience delays in identification and assessment, reduced access to specialist provision and increased reliance on parental advocacy to secure legal entitlements.

The Committee should seek assurance that the revised framework will not result in unlawful delegation of statutory functions to schools, and that the EA remains clearly accountable for compliance with its own legal duties.

The issues we have identified at present that cause concern in terms of unintended consequences include:

1. Changes to the format of a statement (via regulation 17, Schedule 2, revised Regulations 2026) require line by line scrutiny due to a potential move to facilitate reduced specification of provision in Part 3 (Special Educational Provision), for which the EA has legal responsibility.
2. There are also changes which potentially conflict with the intention of the Northern Ireland Assembly to strengthen specification in statements of SEN, when it enacted SEND Act sections **4** (health/education co-operation), **5** (HSC help, "relevant treatments and services" – inserted via Education Committee amendment at consideration stage) and **7** (specification - nature and extent). Specification in statements may in fact be weakened due to the new formatting in proposed Schedule 2.
3. There is conflict in the drafting of the new format of the statement. Part 3 (correctly) states that health provision which is educational in nature should be in Part 3, with any health provision which is non-educational being separately listed in Part 6 (again correctly). Part 6 (non-educational) states "*In particular set out any **relevant** treatment or service identified by a health and social services authority as likely to be of benefit in addressing the special **educational needs** of the child*". This is legally incorrect positioning in Part 6, for provision that is clearly educational provision. It also conflicts with Part 3 of the new format of the statement and with section 5 of the SEND Act, as well as going against the intention of the Committee and the Assembly.
4. Disabled children are most vulnerable to weakening of the longstanding legal position that health services which enable access to education must be specified as educational provision and arranged by the EA with help from Health. Their educational experiences drove the enactment of the Children's Services Co-Operation Act (NI) 2015 and the related cooperation clause inserted in the 1996 Order by the SEND Act. It is essential that progress of co-operation work is not undermined.

5. Educational objectives of provision in Part 3 have also been moved so that they follow “provision”. Objectives should remain before provision, so that the provision then states how the needs and objectives are to be met. Notably, during the consultation processes, the Department did not highlight changes to the format of statements and did not include any question in the consultation survey about this, which heightens the importance of scrutiny at this stage.
6. The removal of parental “advice” (and no provision for advice from a child over compulsory school age) as part of the statutory assessment process. Statutory advices inform the drafting of the statement. Currently, parental advice is summarised at the beginning of Part 2 (needs), which then informs Parts 3 (provision) and 4 (placement). It is appended to a statement along with all of other statutory advice. Devaluing parental advice represents a disservice to the child. Parental advice is in CLC’s experience of very high value as part of ensuring needs are fully stated in Part 2, which then strengthens the provision in Part 3. In a judicial review taken by CLC, the High Court of Northern Ireland warned of the dangers of devaluing parental evidence. ⁱⁱⁱ
7. Healthcare Professional (HCP) advice, (which would include Allied Health Professionals’ advice) as part of a statutory assessment remains optional at the discretion of the EA. There is a restriction on recommendations to be given by professionals within statutory advices, alongside maintenance of the existing restriction on specification of provision required. HCPs have a duty of care to their client and should not be impeded in exercising their professional judgment in stating their professional advice and recommendations. This restriction, which CLC is aware has caused difficulties for HCPs for a long period is now codified in the current draft and this requires to be removed.
8. This approach may also limit the identification of “relevant treatments and services likely to be of benefit” in meeting the child’s SEN, as intended by Section 5 of the SEND Act (NI) 2016. Section 5 strengthens the obligations of the EA to seek help from health and social services authorities (through article 14 of the 1996 Order as amended by section 5 of the SEND Act).
9. The regulation of EA advice-gathering for statutory assessment in revised Regulation 9 is set out in a much less child-centred manner than in the current Regulation 6 and is unduly complex and difficult to follow and navigate. It appears likely to reduce the clarity, breadth and quality of information provided to inform drafting of a statement. This will compound a current pattern whereby substantive medical advice is not provided in many cases that CLC caseworkers receive due to the use of templates, with a “box ticking” exercise to confirm the child need not be seen which is then noted in Part 2 of the statement in the absence of any specific advice. Under the proposed regulation, this would leave only

educational and psychological advice to inform the “needs” of the child, weakening the drafting which leads to “provision”.

10. Proposed regulation 9(9) provides that updated educational, medical or psychological advice shall not be obtained should relevant parties be satisfied it is not needed. CLC has previously raised that this will lead to statements being drafted based on outdated advice, lowering the quality of the statement. We have seen this in practice over a number of years.
11. Introduction of an excessive upper limit on time to produce a statement where valid exceptions apply, so that a statement could take 34 weeks to produce, which is against the stated aim of reducing the time it takes to make a statement from 26 weeks to 22 weeks (with the original proposal having been 20 weeks). CLC has no difficulty with valid exceptions per se, as they are “valid”, but the extension to 34 weeks appears excessive given the impact of delay upon the child. Up to date data about the current operation of valid exceptions would be useful to assist in understanding the Department’s position on this lengthy process.
12. Narrowing of the boundaries of access thresholds which are set in the primary legislation, including through the revised Code and the EA Graduated Response Framework (which is already operating based on the revised Code), in potential conflict with the lawful statutory interpretation of the scope and effect of Article 3 (definitions of special educational needs and special educational provision), 15 (statutory assessment) and 16 (statementing) within the 1996 Order.
13. The minimum standard to be an LSC in a special school is 3 years teaching experience, with one of those being in a Specialist Provision in Mainstream (or a special school). This appears to be a relatively low experience level gained within a mainstream school in terms of moving to managing the complexity of needs of children in special schools.
14. Rolling back on Boards of Governors’ duties regarding time afforded for the LSC’s role from “sufficient time” (in the previous draft) to “reasonable time” with no limit on the number of children that one LSC can expect to cover.
15. The increasing shift of operational responsibility onto schools through the revised Code’s graduated response and EA frameworks, which risks creating unlawful de facto delegation of statutory duties, inconsistency in provision, lack of accountability, barriers to accessing statutory assessment and secure, enforceable provision.

Revised Code of Practice

CLC has consistently raised in a variety of settings, including the EA SEND Transformation Project Advisory Group, that the revised Code is being implemented “by the back door” through the Graduated Response Framework (GRF). A review of the GRF against the revised Code reveals the crossover quite clearly. The revised Code is infiltrating the SEND Framework before the Regulations that it should flow from have been scrutinised and affirmed. Whilst it may contain a range of positive elements, and has been driven by positive policy intentions, CLC had raised serious concerns in our response to the previous published draft about some of the impacts the revised Code may have upon children’s access to support and inclusion at school.

The revised Regulations and the revised Code are inseparable due to the level of delegation into the statutory Code, such as the 3 Stages of the Code, which essentially regulate access to intervention and to statutory provision via statutory assessments and statementing.

Upon initial review of the proposed revised Code, and pending further more detailed analysis, CLC has concluded that the revised Code, compared to the current operative Code and Supplement, is too lengthy, complex and bureaucratic, too difficult to navigate and contains inaccuracies, (such as omitting the primary legislation, the 1996 Order, from diagram 1.1 on the SEND framework), as well as potential misinterpretations of the law which will serve to narrow access to the SEND framework, such as the scope of article 3 or the 1996 Order which defines special educational needs and special educational provision.

In CLC’s response to the 2021 consultation on the draft revised Code, CLC stated that we had *“significant concerns that the level of instruction and direction within the Annexes will cause decision makers to become entangled in unduly complex processes and to lose sight of the child. It needs to be simplified to strike the correct balance between guidance about evidence gathering and enabling exercise of professional judgment as to what is required at a particular time”*. These concerns remain.

The passage of significant time since the revised Code was first envisaged, and the more challenging educational environment in which it will operate, alongside a series of changes in teams and drafters has, in CLC’s view, been the cause of many of these issues.

Any attempt to recalibrate the scope of legal rights and legal thresholds set in primary legislation, using changes to the statutory Code in an effort to move disproportionate levels of responsibility towards schools and away from the EA, can only serve to undermine and reduce the intended effect and enforceability of legal protections, particularly for those who do not have the resources, confidence, knowledge, information or empowerment to seek redress for denial of children’s legal rights through appeals to SENDIST or other legal means.

It is difficult to assess fully at this stage to what degree the suggestions of CLC and others during the 2021 consultation have been employed, as the 400-page revised version published does not highlight amendments, deletions or additions and

significant further time is required to effect proper scrutiny. On a high-level review, CLC can see that a number of our suggestions have been carried out which is welcome, but serious concerns remain about potential lengthening of the SEND pipeline in the absence of school capacity to meet the presenting needs of children and young people.

As an example, despite concerns raised by CLC previously, the revised Code of Practice continues to place strong emphasis on “whole school provision” as a preliminary stage **before** registering a child at Stage 1 and recognising them as having SEN. School flowcharts indicate that schools should implement and monitor whole school provision for a suitable time period to assess if the child has made progress. This is very evident in the, “*Where there is a concern*” school process flowcharts and checklists for schools in the annexes to the revised Code across nursery, primary and post-primary sectors.

CLC remains concerned that the revised Code seeks to introduce “whole school provision” as an additional barrier within the SEND continuum of support which must be exhausted before a school can even register a child as having SEN. Under the current Code, schools must register and monitor the child, and do all that they can within their own resources before seeking help from the EA. A child will be registered as having SEN if they require provision that is different to that received by peers e.g. differentiation of work/materials or if they have a disability which hinders access to the usual facilities.

We note the incongruent statement in the revised Code that “*normal differentiation is not special educational provision*”^{iv}. Differentiation, is by definition different, and not inside the normal provision that the majority of children receive. There also appears to be a concerted effort to narrow the scope of article 3 of the 1996 Order by consistently overemphasising the word “**significant**” (difficulties) and indicating strongly that when a teacher differentiates the work or materials for a child, they are not making special educational provision. The statutory interpretation of “significant” is that it should have its ordinary and natural meaning which is “more than minor or trivial”. The Code cannot be used to try to move children out of a definition set by primary legislation. Nor can it be used to disguise special educational provision as ordinary provision to try and hold children back from the SEN Register at Stage 1.

The current Code provides that the Stages are not hurdles to be crossed and we had welcomed retention of that statement in the 2021 version of the Code because it sits well with a child receiving “the right support at the right time”. This appears (from our review to date) to have been removed from the new version, although there is still exceptional provision for a move straight to statutory assessment requests by schools.

The Code should not detract from professional judgment of LSCs and teachers alongside experience and knowledge of parents to determine when a child requires access to Stage 2 SEND support and should not perpetuate delay in commencing the child’s access to special educational support.

Local Impact Teams are working under capacity currently and are unable to meet demand, with significant numbers of children being placed on waiting lists. This will

perpetuate the problem that children are “stuck” in the system and falling behind in learning, without appropriate intervention. This is one of the key issues that reform was supposed to address.

In CLC’s view, what is immediately clear pending a fuller analysis, is that this version of the Code as drafted still requires significant revision before it could act as a practical replacement for the current Code or as a clear, plainly expressed and practical guide to all those who must by law have regard to it under article 4 or the 1996 Order, including school staff, the EA, SENDIST and those advising about legal rights and thresholds, including CLC and others.

Allowing the revised Code to pass into operation in its current form could be extremely damaging to the rights of children with SEND as it may serve to increase bureaucracy and undermine existing legal rights and legal thresholds which sit above the Code. In CLC’s view, this would damage the potential of the SEND Act and the proposed revised Regulations to enable the intended improvements to the SEND framework.

CLC is therefore of the view that the Code is not ready for issue, should not be issued and is not capable of implementation in its current form.

Commencement

The proposed commencement date for the SEN Regulations 2026 is 1st September 2026. It is CLC’s understanding that the Department intends to commence the entirety of the revised framework at the same time, including the SEND Act (NI) 2016, the revised Regulations and the revised Code of Practice.

It is unclear from the information available, how an unstable SEND system would be able to cope with this level of change or whether the school workforce is in a position to facilitate full implementation, given recent reports about workload pressures and concerns expressed by a significant number of Trade Unions who had endorsed CLC’s open letter.

Although there has been a level of implementation of the revised SEND framework in advance of proper scrutiny processes, which CLC has objected to repeatedly, there would be substantial work remaining to be done and financial and human resources needed in bringing the education system along the path to commencement of full implementation of a revised SEND framework, alongside a wide range of additional SEND transformation projects and processes.

Reflections

The purpose of the proposed revised Regulations is to bring into operation the legislative intent of the primary legislation so that the regulations are “intra vires” (within the Department’s legally enabled powers).

Regulations cannot be properly made which have the unintended consequence of frustrating the operation of the primary legislation, and the same principles apply to

the statutory Code. Failure in this regard could lead to potential legal challenge through judicial review with a view to seeking declarations that the revised Regulations frustrate the purpose of the Education (NI) Order 1996 and the SEND Act (NI) 2016, are unlawful and should be quashed.

There are a number of critically important provisions within the SEN Regulations 2026 which, in CLC's initial assessment, indicate a strong likelihood of unintended adverse consequences, by replicating and even codifying some of the fundamental mistakes of the past.

Reflecting upon the long series of highly critical reports that have driven forward the SEND Reform Agenda, it is clear that the difficulties children have faced in accessing early intervention which meets their needs has been almost entirely driven by operational failings, including:

1. Operational systems that slow the flow of children through the stages of the Code of Practice and hinder early identification, assessment and provision for SEND.
2. Failure to provide suitable and timely levels of support pre-statement in line with the level of presenting need.
3. Unjustifiable refusals of statutory assessments with concessions at appeal.
4. Failings in co-operation across education and health systems, including provision of allied health therapy advice and input which enables access to education.
5. Failures to properly specify special educational provision in Part 3 of statements of SEN as required by article 16 of the Education (NI) Order 1996.

The Department has developed the revised SEND framework with the intention to address failings in the system is applied, to reduce bureaucracy, to streamline and improve the identification, assessment and provision for SEND and to create a range of new legal rights, duties and processes, many of which have potential to strengthen the system and improve children's outcomes.

CLC remains fully committed to ensuring that the positive intentions behind this reform are met. Unintended consequences which may result in weakening of the legal thresholds for children's access to special educational provision must be recognised, understood and prevented. These have potential to significantly undermine the effectiveness of intervention at Stages 1 and 2 of the revised Code (pre-statement) and the legal enforceability of special educational provision at Stage 3 (statements of SEN), which would be in direct opposition to the documented intentions of the Department, the Executive and the legislature.

Conclusion

CLC welcomes the Education Committee's scrutiny of this extremely important set of revised regulations within the context of the SEND legal framework, together with ongoing transformation of the practical operation of the legal framework.

CLC will be pleased to assist the Committee and continues to work together with the Department and the Education Authority on shared goals to ensure that the current legal framework is not weakened but is actually strengthened and becomes less bureaucratic as intended, whilst respecting legal rights, so that children with SEND experience a more responsive, legally compliant, integrated support system that meets special educational needs early, enabling children to achieve their full potential within an inclusive education system.

ⁱ <https://childrenslawcentre.org.uk/?mdocs-file=4678>

ⁱⁱ <https://childrenslawcentre.org.uk/?mdocs-file=4676>

ⁱⁱⁱ <https://www.judiciaryni.uk/files/judiciaryni/decisions/LC%E2%80%99s%20%28a%20minor%29%20Application.pdf>

^{iv} Para 4.7, Proposed revised Code of Practice