

**DEPARTMENT OF EDUCATION**

**CONSULTATION ON DRAFT  
SPECIAL EDUCATIONAL NEEDS  
(SEN) REGULATIONS**

**30 September 2020**

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## **Minister's Foreword**

This consultation seeks views on the new draft Special Educational Needs Regulations.

The draft SEN Regulations are one part of a new improved and more responsive SEN Framework the first element being the Special Educational Needs and Disability Act (Northern Ireland) 2016 (the SEND Act). The SEND Act introduces new duties for Boards of Governors of grant-aided schools and the Education Authority, provides for greater co-operation with health and social care authorities and brings in new rights for parents and children. Many of these new duties and rights have not yet been introduced as they need to be supported by **new SEN Regulations** and the new SEN Code of Practice. The draft SEN Regulations are the subject of this public and targeted consultation. A draft of a new SEN Code of Practice is also being consulted upon at the same time. It can be found on the Department's website. I will consider carefully the timing of the commencement of the SEND Act provisions, many of which will dovetail with the start date (known as the commencement date) of the new SEN Regulations and the new SEN Code of Practice.

Children with special educational needs are among the most vulnerable in our society. With around 67,000 children reported as having special educational needs in 2019, I recognise that the priority for schools and the Education Authority is to identify and put in place the right special educational provision to help the child or young person make progress and achieve improved outcomes.

The Executive's **New Deal, New Approach 2020** states that "it will deliver a new Special Educational Needs Framework to support young people with special needs to achieve their full potential". This consultation on the draft SEN Regulations is a key step forward in that direction.

I encourage all those with an interest in this important area to contribute to the consultation and thank those who have helped the Department in the development of the draft SEN Regulations.

**Peter Weir MLA**  
**Minister of Education**  
**30 September 2020**

## Consultation Description

1. The focus of this consultation is on:

### New SEN Regulations

2. The Department proposes to revoke and replace the current Education (Special Educational Needs) Regulations (Northern Ireland) 2005.
3. The draft SEN Regulations support the primary legislation - the Education (Northern Ireland) Order 1996 (the 1996 Order), as amended most recently by the Special Educational Needs and Disability 2016 Act (Northern Ireland) (the SEND Act). The draft SEN Regulations provide the detailed processes and timescales to be followed by Boards of Governors, the Education Authority (EA) and health and social care authorities (this includes the Health and Social Care Trusts – HSC Trusts) to carry out their statutory duties to identify and assess if a child has, or may have, special educational needs and to put in place special education provision for those children who have SEN.
4. This consultation asks a series of targeted questions about the new draft SEN Regulations to inform the Department about whether any further changes may be required. Following consultation, the Department will analyse responses and, if relevant, make amendments. Ultimately, the NI Assembly will scrutinise and make the new SEN Regulations.
5. In addition to this public consultation, the Department also intends to complete targeted consultation to obtain the direct views of:
  - parents;
  - children (of compulsory school age);
  - young people (over compulsory school age); and
  - the Special Educational Needs and Disability Tribunal (SENDIST) panel members.

6. At the same time as the consultation on the new draft SEN Regulations the Department has:

- issued a separate consultation on the new SEN Code of Practice (the SEN Code);
- published a Data Privacy Impact Assessment;
- published an Equality and Human Rights Policy Screening; and
- published a Rural Needs Impact Assessment.

(See [www.education-ni.gov.uk/consultations](http://www.education-ni.gov.uk/consultations) for links to the above documents.)

## **Introduction and Background**

7. The proportion of children being recorded with SEN has been steadily rising over recent years creating additional pressures for children, parents and all those that care for and work with children with SEN. Following the agreement from the NI Assembly, the Department has been developing a new Special Educational Needs and Inclusion Framework (the SEN Framework).

8. The new SEN Framework focuses on early identification and assessment of children who have, or may have, SEN and making special educational provision for those children with SEN, so that they get the support they need, when they need it in order to help them make progress and improve outcomes.

9. The more responsive and effective SEN Framework has three parts:

- the Special Educational Needs and Disability Act (Northern Ireland) 2016 – (the SEND ACT);
- **new SEN Regulations**; and
- a new SEN Code of Practice

## The SEND Act 2016

10. The SEND Act was subject to significant scrutiny through Assembly structures and received Royal Assent in 2016. This was the first element of the revisions to be made to the legislative base for the new SEN Framework. Much of the SEND Act has still to be commenced as the majority of the provisions, duties and rights are dependent upon the introduction of the **new SEN Regulations** which need to be supported by a new SEN Code.

11. The SEND Act will introduce a range of new duties to be placed on the EA, Boards of Governors and health and social care authorities (this includes HSC Trusts). It will also provide for some new rights to children over compulsory school age and to parents. **ANNEX 1** provides a summary of key changes that will come into operation once the SEND Act is fully commenced.

**Key point: The new duties and rights in the SEND Act are not part of this consultation.**

### About the new Draft SEN Regulations

12. The draft SEN Regulations are divided into 9 parts containing 52 regulations and 3 Schedules as follows:

<b>Part I</b>	<b>General</b>
<b>Part II</b>	<b>Education Authority Plan of Arrangements for Special Educational Provision</b>
<b>Part III</b>	<b>Board of Governors</b>
<b>Part IV</b>	<b>Assessments</b>
<b>Part V</b>	<b>Statements</b>
<b>Part VI</b>	<b>Children over Compulsory School Age</b>
<b>Part VII</b>	<b>Mediation and Appeals</b>
<b>Part VIII</b>	<b>Compliance with Tribunal Orders and Unopposed Appeals</b>
<b>Part IX</b>	<b>Revocation and Transitional Provisions</b>
<b>Schedule I</b>	<b>Additional Information to be contained in Notices</b>

## **Schedule 2 Statement of Special Educational Needs**

## **Schedule 3 Compliance with Tribunal Orders and Unopposed Appeals**

13. **Parts II, VI and VII are completely new.** Other parts include significant changes to the 2005 SEN Regulations in order to bring improvements to the processes and statutory timeframes within the SEN Framework. A brief summary of the draft SEN Regulations can be found at **ANNEX 2**. Further information and more detail can be found in the 'Summary Guide – SEN Regulations for Parents and Young People' – see [www.education-ni.gov.uk/consultations](http://www.education-ni.gov.uk/consultations) for a link to the Summary Guide.

### **Why is the Department Consulting Again?**

14. A consultation on the previous version of draft SEN Regulations took place in 2016. All relevant documentation (which includes the Summary Report of the Consultation on the Draft SEN Regulations 2016) regarding that 2016 consultation can be found at <https://www.education-ni.gov.uk/consultations/draft-special-educational-needs-sen-regulations>.

15. During the 2016 consultation, the Department received feedback from a wide range of stakeholders. Having considered those comments, the Department reviewed the 2016 draft SEN Regulations and identified a number of areas that could be strengthened through some pertinent changes. The Department also decided that there were some further amendments that needed to be made. The Department's proposed amendments now provide for a more refined, detailed set of draft SEN Regulations that enhance the statutory procedures supporting the SEN Framework and focus on improving provision for children with SEN and their families.

16. In the course of drafting the new SEN Regulations, the Department discussed and considered comments from the Education Authority and health and social care authorities who are key to ensuring the effective delivery of the new SEN Framework. The Department wishes to thank all those who provided input/views.

## What is the focus of this Consultation?

17. Given the 2016 consultation on draft SEN Regulations (the 2016 Consultation), the focus of this consultation (and the questions being asked) is on the key changes being proposed in these new draft SEN Regulations having taken account of the earlier feedback from the 2016 Consultation. The key changes relate to:

- a) experience requirements for a Learning Support Co-ordinator;
- b) new upper time limit for the EA to issue a completed Statement;
- c) a streamlined Annual Review Process (for Statemented children) for both schools and the EA (Annual Review Meeting and Timescales for Annual Review Process);
- d) children over compulsory school age – assistance and support, and who can raise a question about a young person’s lack of capacity; and
- e) revised timescales for new mediation arrangements.

18. More detailed information on the proposed changes in relation to the areas above and the questions the Department would welcome feedback on are detailed in **ANNEX 3** – Consultation Questions on the new draft SEN Regulations.

## Consultation Arrangements

19. A copy of the new **draft SEN Regulations** is available on the Department’s website at <https://www.education-ni.gov.uk>. Also on the website for the purpose of targeted consultation you will find:



- SEN Regulations - Summary Guide for Parents and Young People; and
- a Child Friendly Explanation of the draft SEN Regulations.

### How to Respond to the Consultation

20. During the consultation period we wish to gather the views of a wide range of stakeholders with an interest in SEN including parents, children and young people, schools, other educationalists, the EA, statutory organisations including health and social care authorities, voluntary and community groups, and unions.

21. We would strongly encourage you to respond using the online version of the Consultation Questions on the draft SEN Regulations (**ANNEX 3**) which can be accessed via the link below:

<https://consultations.nidirect.gov.uk/de-special-education-inclusion-review-team/sen-regulations>

22. If you are unable to respond online via this method then the Consultation Questions at **ANNEX 3** can be completed electronically via a Word version of the consultation questions (or manually if necessary) and forwarded to:

Email: [senregsconsultation@education-ni.gov.uk](mailto:senregsconsultation@education-ni.gov.uk)

OR

Special Education and Inclusion Review Team  
Department of Education  
Rathgael House  
43 Balloo road  
Rathgill  
Bangor  
BT19 7PR

23. All responses must be received by 5.00pm on Tuesday 22 December 2020.

24. Any queries about the consultation, or requests for alternative formats, should be directed to the email or postal address above. You may also make contact by telephone on 028 91 279889.

#### Privacy, Confidentiality and Access to Consultation Responses

25. For this consultation, we may publish all responses except for those where the respondent indicates that they are an individual acting in a private capacity (e.g. a member of the public). All responses from organisations and individuals responding in a professional capacity will be published. We will remove email addresses and telephone numbers from these responses; but apart from this, we will publish them in full. For more information about what we do with personal data please see our consultation privacy notice.

26. Your response, and all other responses to this consultation, may also be disclosed on request in accordance with the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR). However, all disclosures will be in line with the requirements of the Data Protection Act 2018 (DPA) and the General Data Protection Regulation (GDPR) (EU) 2016/679. If you want the information that you provide to be treated as confidential it would be helpful if you could explain to us why you regard the information you have provided as confidential, so that this may be considered if the Department should receive a request for the information under the FOIA or EIR.

#### Equality and Human Rights Policy Screening

27. The draft SEN Regulations (and SEN Code of Practice) have been considered in the context of Section 75(1) and Section 75(2) of the Northern Ireland Act 1998 and the decision was taken not to conduct an equality impact assessment. Although there is a minor impact on one or more of the equality

of opportunities and/or good relations categories, mitigation/alternative policies will offset the minor adverse impact(s). The Department would welcome any comments or views with regard to the screening. See [www.education-ni.gov.uk/consultations](http://www.education-ni.gov.uk/consultations) for a link to this screening.

### Rural Needs Impact Assessment

28. Due regard has been given to Section 1 of the Rural Needs Act (Northern Ireland) 2016. A Rural Needs Impact Assessment has been carried out and it has concluded that the draft SEN Regulations (and SEN Code of Practice) will not have any material impact on the social and economic needs of people in rural areas. See [www.education-ni.gov.uk/consultations](http://www.education-ni.gov.uk/consultations) for a link to this Assessment.

### Data Privacy Impact Assessment

29. The Department has carried out a Data Protection Impact Assessment (DPIA) on the new Personal Learning Plan (PLP), as a PLP will be created for every child who has SEN and is recorded on the school's SEN register. New activities that involve collecting and using personal data can result in privacy risks. The DPIA is a process to help systematically analyse, identify and minimise these risks. The result of the DPIA is that a number of potential privacy risks and corresponding mitigating actions have been identified. The Department would welcome any comments or views with regard to the DPIA. See [www.education-ni.gov.uk/consultations](http://www.education-ni.gov.uk/consultations) for a link to the DPIA.

## **Summary of the Key Changes introduced by the SEND Act (Northern Ireland) 2016**

- The Act will strengthen the co-operation between education and health in the identification and assessment of children who have, or may have, SEN, and in the provision made for children who have SEN and in the preparation of a transition plan (to prepare a child with a Statement for adulthood).
- The EA will be required to seek and listen to the views of the child.
- Each school will be required to have a Learning Support Co-ordinator (LSC) – the new name for a Special Educational Needs Co-ordinator (SENCO).
- Every child who has SEN is to have a Personal Learning Plan (PLP).
- Young People (children over compulsory school age) are to be given their own rights within the SEN Framework.
- A new right of appeal at annual review of a SEN Statement is to be introduced.
- A new right of appeal of an EA decision not to make a SEN Statement for a child under two or about the content of a Statement is to be introduced.
- Strengthened independence from the EA of arrangements for dispute avoidance and resolution.
- New arrangements for independent mediation about EA decisions that carry a right of appeal.
- EA will be required to produce an annual plan of its arrangements for special educational provision, including resources, advisory and support services and training, which will support the need for an open and transparent approach to how the EA determines the SEN services it will provide.

## Summary of Draft SEN Regulations

Regulation Number	Brief Summary of Regulation Content
1	Name of Regulations and date they will take effect.
2	Interpretation of words used in the Regulations.
3 & 4	Format, content and procedures to be followed by the Education Authority regarding its plan of arrangements for special educational provision.
5 - 8	Duties for Boards of Governors, in particular those relating to the Learning Support Co-ordinator.
9 - 13	Sets out the type of information and advice the Education Authority is required to seek and consider when a statutory assessment is requested and in making an assessment.
14	Details the time limits and steps to be taken by the Education Authority regarding a statutory assessment and making and maintaining a Statementing.
15	Sets out exceptions to EA having to comply with a timescale and new upper time limits for the statutory assessment and statementing process that the Education Authority and Health and Social Care Trusts are required to comply with.
16	Makes provision for a child who does not have a Statement of special educational needs (Statement), to be admitted to a special school while the Education Authority carry out a statutory assessment.
17	Sets out information about a Statement.
18 & 19	Provides for the procedures to be followed at the annual review of a Statement.

<b>20</b>	Sets out the procedures to be followed when starting to plan for the transition of a child with a Statement to adulthood i.e. the preparation of a transition plan during the year a child turns 14.
<b>21</b>	Other matters to be considered in relation to the annual review of a Statement and transition planning.
<b>22</b>	Sets out when and who a Statement can be disclosed to.
<b>23</b>	Details who can provide assistance and support to children over compulsory school age and what form the assistance and support can take.
<b>24</b>	Details who can ask for a determination relating to the capacity of a child over compulsory school age to exercise their own rights in the SEN Framework.
<b>25</b>	Sets out the principles to be followed by the EA when determining capacity of a child over compulsory school age to exercise their own rights in the SEN Framework.
<b>26 &amp; 27</b>	Provides the meaning of 'lacking capacity' and 'unable to make a decision'.
<b>28</b>	Sets out the steps to be taken, in so far as is practicable, to help a child over compulsory school age make a decision.
<b>29</b>	Sets out what is reasonable for the EA to have sufficiently established that it has complied with the principles in determining capacity.
<b>30</b>	Sets out who can act on behalf of a child over compulsory school age if it is determined by the EA that the child lacks capacity to exercise their own rights and that an alternative person or parent can be appointed to act in the best interests of the child.
<b>31</b>	Sets out more information on what the alternative person or parent must consider and do to ensure they act in the best interests of the child.

32	Provides that if a person acting on behalf of a child reasonably believes they are acting in the child's best interests and have complied with regulation 31 above, they have done so.
33	Explains that any reference in the 1996 Order and the SEN Regulations to a child over compulsory school age, are to be taken as references to the parent or alternative person where the child has been deemed to lack capacity.
34	Sets out the information to be included in Notices about mediation and appeals including timescales.
35	Provides the timescales for a person to contact a mediation adviser if they intend to appeal and the timeframe for the mediation adviser to issue a mediation certificate.
36	Details the timescales for a person to contact a mediation adviser if they intend to appeal and wish to pursue mediation and the timeframes for the mediation adviser to set up a mediation meeting.
37	Sets out that the mediation adviser cannot issue a mediation certificate if a person does not make contact within the specified timeframes.
38	Details who can attend a mediation meeting and that a mediator is required to take reasonable steps to obtain the views of the child.
39	Explains what training and experience independent mediators are required to have.
40	Sets out what happens if a mediation agreement is reached – links to Schedule 3 of the Regulations about timescales within which the EA is to comply with the mediation agreement.
41	Links to Part 1 of Schedule 3 of the Regulations and details the timescales within which the Education Authority must comply following an Order of the Tribunal.

<b>42</b>	Links to Part II of Schedule 3 of the Regulations and details the timescales for the Education Authority to take action if they do not oppose an appeal.
<b>43 to 52</b>	Details the legislation and processes to be followed by the Education Authority during transition from the 2005 SEN Regulations on the date the new SEN Regulations take effect.



	<b>Schedules</b>
<b>Schedule 1</b>	Sets out the information to be included in Notices including any specific information.
<b>Schedule 2</b>	Sets out the format and content to be included in a Statement.
<b>Schedule 3</b>	<p>Sets out:</p> <ul style="list-style-type: none"> <li>• the timescales for the Education Authority to comply with an Order made by the Special Educational Needs and Disability Tribunal; and</li> <li>• the timescales for the Education Authority to take action if they do not oppose an appeal.</li> </ul>

## CONSULTATION QUESTIONS ON THE NEW DRAFT SEN REGULATIONS

1. Your Name

2. Are you responding:

as an individual (please complete a) to b) below)

on behalf of an organisation / company (please complete c) to f) below)

If you are responding as an individual:

a) Email address

b) Address

If you are responding on behalf of an organisation/company:

**c) Organisation/Company**

**d) Position within Organisation/Company**

**Contact Details**

**e) Email address**

**f) Address**

## Experience Requirements of the Learning Support Co-ordinator (LSC) – (regulations 5 to 8 refer)

**Current position:** There is no requirement for a special educational needs co-ordinator (SENCO) to have experience of working with children with SEN. Under the SEND Act, once commenced (on the start or commencement date), every school will be required to have a LSC (the new name for the SENCO) with responsibility for co-ordinating the special educational provision for every child with SEN.

**Feedback from the 2016 Consultation:** The concept of a LSC was broadly welcomed. However, some concern was raised about the experience needed to fulfil the role. Some people suggested that LSCs should have at least 2 years' experience of working with children with special educational needs, while others thought 5 years was appropriate.

**Department's proposal:** To introduce a minimum level of experience for this role as follows:

- In a mainstream school – at least 3 years' full time equivalent of working with children with special educational needs.
- In a special school – at least 3 years' full time equivalent of working with children with special educational needs, one of which is to be obtained in a special school.

### 3. Do you agree that the proposed experience requirements for LSCs are sufficient for them to fulfil their role?

Strongly agree	Agree	Neither agree or disagree	Disagree	Strongly disagree	Don't know

If you disagree or strongly disagree please provide additional comments:

## New Upper Time Limits for the EA to Issue a Completed Statement (regulations 14 & 15 refer)

**Current Position:** There is a 26 week statutory timeframe for the EA to complete a statutory assessment and make a Statement (if necessary). This timeframe includes the making of an assessment (if one was necessary), issuing a proposed Statement (if one is necessary) and then issuing the completed Statement following representations by a parent. This timescale may be subject to circumstances which make it impracticable for the EA to meet the required timescales – these circumstances are known as “exceptions”. These exceptions mean that the issue of a completed Statement can, and does in practice, take longer if advice and information is required, for example from a Health and Social Care Trust (HSC Trust). At present, there is no explicit ‘end date’ for the EA to complete the entire process once a valid exception applies. There is significant criticism of EA delays in statutory assessment and issuing a completed Statement.

**Feedback from the 2016 Consultation:** The 2016 proposal was to reduce the number of weeks for the issue of a completed Statement from 26 weeks to 20 weeks. Some stakeholders felt that meeting these time limits would be unachievable. Comments highlighted difficulties surrounding the receipt of advice for the purpose of the assessment, e.g. advice from HSC Trusts. This in turn was leading to significant delays in completing the assessment in order to determine if a Statement is necessary and issuing a completed Statement.

**Departmental Proposal:** The Department’s proposal in the new draft SEN Regulations is to reduce the time limit for the issue of a completed Statement from 26 weeks to 22 weeks (providing no exceptions apply). The Department further proposes that if exceptions do apply, there is a new upper time limit of up to a maximum of 34 weeks within which the EA must issue a completed Statement to a parent or young person. The SEN Regulations set out those exceptions which include, e.g. a HSC Trust has not previously kept records or information on a child, a failure to keep an appointment or in instances where further advice or information is necessary.

### 4. Do you agree with the proposal to introduce a maximum upper time limit for the EA to issue a completed Statement?

Strongly agree	Agree	Neither agree or disagree	Disagree	Strongly disagree	Don't know

If you disagree or strongly disagree please provide additional comments:

## Annual Review of a SEN Statement (regulation 18 refers)

**Current position:** Under the 1996 Order a child's SEN Statement must be reviewed annually. A meeting involving parents and others must be held each year to inform this review. There are no timescales set for the EA to inform the parent about the outcome of the annual review i.e. whether the EA will maintain, amend or cease a SEN Statement.

**Feedback from the 2016 Consultation:** There was little mention of annual review. However feedback from the stakeholder engagement by the Education Committee and through talking to schools highlighted the anxiety felt by parents about the annual review and the bureaucracy attached to the annual review process both for parents and schools.

**Department Proposal:** The Department's proposals relate to flexibility with regard to holding an annual review meeting and introduce timescales for the EA to inform parents or a young person (child over compulsory school age) of the outcome of the annual review. In every year, the principal will have to seek representations and advice to complete an annual review report and submit it to the EA. It is proposed that the principal may have a meeting in any year, but there should always be an annual review meeting:

- at least once in each key stage\*;
- when a child is preparing to transfer to another school or institution; and
- during the school year in which the child attains the age of 14.

In a year **that there does not have to be an annual review meeting, a parent or young person or the EA can ask for one.** It is expected this would be if it was thought the special educational provision needed to change. However, if all parties are content that the provision in place for the child is working and everyone agrees that a meeting is not needed, then one is not required.

The **new timescales** associated to annual review in the draft SEN Regulations include the EA informing the school (at which a child with a SEN Statement is registered), by the second week of September each year, of the date that the annual review report needs to be submitted to the EA. Within 4 weeks after the receipt of the report the EA should make its determination about the Statement i.e. whether it remains appropriate, or requires amendment, or the EA should cease it; for example, if the decision is not to amend the Statement then the EA will need to notify the parent or the young person if they are over compulsory school age within 14 days of its decision. The decision not to amend a Statement carries a new right of appeal.

\* Years 1-2 = Foundation Stage, Years 3-4 = Key Stage 1, Years 5-7 = Key Stage 2, Years 8-10 = Key Stage 3 and Years 11-12 = Key Stage 4.

**5. Where an annual review of a Statement is taking place in any year a meeting is not required, do you agree that the parent or young person over compulsory school age can ask for a meeting?**

Strongly agree	Agree	Neither agree or disagree	Disagree	Strongly disagree	Don't know
If you disagree or strongly disagree please provide additional comments:					

**6. Do you agree with the introduction of time limits for the EA to inform the parent or young person over compulsory school age of the outcome of the annual review of a Statement?**

Strongly agree	Agree	Neither agree or disagree	Disagree	Strongly disagree	Don't know
If you disagree or strongly disagree please provide additional comments:					



## Children over Compulsory School Age – assistance and support, and who can raise a question about a young person’s lack of capacity (regulations 23 and 24)

**Current Position:** Currently the rights in the SEN Framework are exercised by a child’s parent. Once commenced, the SEND Act brings in new rights for young people (children over compulsory school age) who have, or may have, SEN.

**Feedback from the 2016 Consultation:** The opportunity for children over compulsory school age to participate in decision making was welcomed. However, there was opposition to the regulation prohibiting the child to have a legal representative to act on their behalf or participate in discussions with the EA. In addition, there were a wide range of comments regarding lack of capacity of a child over compulsory school age to exercise their rights.

**Departmental Proposals:** The Department proposes that children over compulsory school age can appoint someone to help them exercise their rights, if they so wish to do so. The EA will be required to respect the appointment and recognise the assistance and support for the young person. Such assistance and support can include: legal advice; services and representations; assistance with the young person’s understanding of any information or Notices received from the EA; attending meetings, discussions, mediation, appeals etc; assistance in the completion and submission of any necessary paperwork; provision of, or assistance with, representations for submission to the EA; or in accepting the service of Notices. The proposed people are:

- A parent.
- A representative (over age 18).
- A solicitor, barrister or other legal representative.

The Department also proposes to add to the list (when compared to the 2016 draft version of the Regulations) those who can raise a question about a young person’s lack of capacity to exercise their rights within the SEN Framework. Namely, the Department has added ‘the child’s school’ and separated out ‘health care professional’ and ‘social worker’. The proposed people are:

- The young person (child over compulsory school age).
- The parent of the child.
- The EA.
- The child’s school (the responsible body).
- The Tribunal.
- A health care professional who has experience working with the child in a professional capacity.
- A social worker who has experience working with the child in a professional capacity.

**7. Do you agree with the proposed list of people who can assist and support a young person (child over compulsory school age) to exercise their rights within the SEN Framework?**

Strongly agree	Agree	Neither agree or disagree	Disagree	Strongly disagree	Don't know

If you disagree or strongly disagree please provide additional comments:

**8. Do you agree with the proposed list of people who can raise a question about a young person's lack of capacity to exercise their rights within the SEN Framework?**

Strongly agree	Agree	Neither agree or disagree	Disagree	Strongly disagree	Don't know

If you disagree or strongly disagree please provide additional comments:

## Revised timescales for new Mediation Arrangements (regulations 35 & 36)

**Current Position:** The requirements surrounding mediation, as under the SEND Act, have not commenced (or started). It is a new process within the SEN Framework. The SEND Act, once commenced, will provide parents and young people with an informal way of resolving disputes about a decision made by the EA which carries a right of appeal to the Tribunal - the Special Educational Needs and Disability Tribunal (SENDIST). Mediation does not take away the right of parents or young people if they still wish to appeal to the Tribunal. A parent or young person does not have to engage in mediation but they must seek information about mediation and if they wish to make an appeal, they must have a mediation certificate.

**Feedback from the 2016 Consultation:** While the introduction of independent mediation was broadly welcomed, parents expressed their concern about some of the timescales. For example the 3 day timescale proposed in the 2016 draft SEN Regulations, in relation to the time they had to tell the mediation adviser (after receiving information about mediation), that they want to pursue mediation. This was considered too short and it could disadvantage parents.

**Departmental Proposals:** The new proposed timescales for the required steps within the mediation arrangements are:

- If a person is considering making an appeal, then contact must be made with a mediation adviser **within 4 weeks** of the date of the EA's Notice which included the decision.
- The mediation adviser must provide information and advice about how to pursue mediation **within 2 working days** of the person making contact.
- A mediation certificate is to be issued **within 3 working days** from the information and advice about mediation being provided.
- If a person intends to pursue mediation, they must contact a mediation adviser **within 6 weeks** of the date of the EA's decision (a Mediation Certificate will only be issued if a parent or young person has made contact with the mediation adviser **within 6 weeks** of the date of the EA's Notice which included the decision).

The EA are required to comply with the terms of any mediation agreement within certain timeframes, the same as if an Order came from SENDIST.

Whilst not exhaustive, the appealable decisions include a decision not to make an assessment; not to make a Statement; about the content of a Statement; and a decision not to amend a Statement following annual review (new).

**9. Do you agree with the timescales regarding the mediation process?**

Strongly agree	Agree	Neither agree or disagree	Disagree	Strongly disagree	Don't know

If you disagree or strongly disagree please provide additional comments:

**General Comments**

**10. Do you have any other comments you wish to make on the draft regulations?**