



Department of
Justice

An Roinn Dlí agus Cirt
Máinnystrie O tha Laa

Summary Report of Consultation Responses

**Draft Special Educational Needs and Disability Tribunal
(Amendment) Regulations (Northern Ireland)**

April 2026

Contents	Paragraph
Introduction	1.1 – 1.12
Consultation Methodology	2.1 - 2.2
Summary of the Consultation Responses	3.1 – 3.18
Responses to the Equality and Human Rights Policy Screening and Rural Needs Impact Assessment	4.1 – 4.4
Next Steps	5.1 – 5.3
Responses Received to the Consultation	Annex

1. Introduction

1.1 The Special Educational Needs and Disability Act (Northern Ireland) 2016, (“the SEND Act”), received Royal Assent in March 2016. The SEND Act introduces important changes to the Education (Northern Ireland) Order 1996 (which contains the current statutory provisions relating to Special Educational Needs (SEN)) and the Special Educational Needs and Disability (Northern Ireland) Order 2005 (which makes provision in relation to disability discrimination in education and makes further provision in relation to special educational needs). Before the provisions of the SEND Act can be commenced, the Department of Education is required to put in place new Regulations to replace the Education (Special Educational Needs) Regulations (Northern Ireland) 2005 (the SEN Regulations). Consultation on the new SEN Regulations ended on 2nd March 2021 and the Department of Education has continued, since then, to work with stakeholders to finalise the draft Special Educational Needs (SEN) Regulations (Northern Ireland) 2026.

1.2 As a consequence of the provisions of the SEND Act and the proposed SEN Regulations, amendments need to be made to the procedural Regulations of the Special Educational Needs and Disability Tribunal (SENDIST). This tribunal provides an appeal mechanism for those seeking to challenge various decisions made by the Education Authority in relation to special educational needs provision for children and in relation to discrimination in education. The procedure of SENDIST is provided for by the Special Educational Needs and Disability Tribunal Regulations (Northern Ireland) 2005 (the 2005 Regulations).

Consultation on amendments to the 2005 Regulations

1.3 The draft amendments to the 2005 Regulations were subject to a targeted consultation which launched on 13th September 2021. The consultation ran for 8 weeks until 5th November 2021.

1.4 The consultation sought views on the proposed amendments to the 2005 Regulations and included a draft set of amending Regulations for consultees to consider.

1.5 The Department of Justice (the Department) attaches great importance to the consultation process and has taken care to fully understand and reflect the range of perspectives that respondents provided. The Department wishes to take this opportunity to thank all those who responded to the consultation for taking the time to express their views.

1.6 The purpose of this summary of consultation responses is to:

- provide a summary of the views expressed by respondents together with a response from the Department; and
- outline the next steps that the Department intends to take.

Proposed amendments to the 2005 Regulations

1.7 The amendments fall into three main areas:

- Amendments relating to the provision of mediation services;
- Amendments to make provision for new appeal rights and categories of applicant to SENDIST; and
- Amendments in relation to the capacity of a child over compulsory school age to appeal to SENDIST.

Amendments relating to the provision of mediation services

1.8 The SEND Act makes provision to allow for mediation services to be put in place as an alternative dispute resolution process for individuals who are intending to appeal to SENDIST against a decision of the Education Authority. Amendments to the 2005 Regulations are required to ensure that time limits for appealing to SENDIST allow enough time for mediation to be undertaken by the parties to any potential appeal.

Amendments to make provision for new appeal rights and categories of applicant to SENDIST

1.9 Currently, only parents can appeal to SENDIST in relation to a number of decisions made by the Education Authority. However, the SEND Act makes provision to allow children over compulsory school age to appeal to SENDIST. In order to facilitate this new appeal right, the 2005 Regulations need to be amended to allow both parents and children over compulsory school age to make applications to SENDIST.

1.10 Therefore, all references to “parent” or “parent’s” in the 2005 Regulations require to be changed to “applicant” or “applicant’s”, which is defined as meaning a parent or a child over compulsory school age.

1.11 The SEND Act also makes provision for appeals against a decision *not* to amend a statement following annual review and also provides for appeals in relation to statements that are made for children under the age of two.

Amendments in relation to the capacity of a child over compulsory school age to appeal to SENDIST

1.12 During an appeal to SENDIST taken by a child over compulsory school age, a question may arise about whether that child has capacity to participate in the tribunal proceedings. Amendments to the 2005 Regulations are, therefore, required to deal with that scenario. A child who lacks capacity to take proceedings before SENDIST will be unable to continue those proceedings. Therefore, in accordance with the proposed Department of Education SEN Regulations, should SENDIST raise a question as to the child's capacity and the Education Authority subsequently makes a determination that the child lacks capacity, then it is proposed that the hearing will continue as if the parent had taken the proceedings, rather than the child.

2. Consultation Methodology

2.1 The consultation was forwarded to the targeted consultees directly and consisted of the following four documents:

- a) Consultation paper on the Special Educational Needs and Disability Tribunal (Amendment) Regulations (Northern Ireland);
- b) The draft Special Educational Needs and Disability Tribunal (Amendment) Regulations (Northern Ireland);
- c) Equality Screening Form; and
- d) Rural Needs Impact Assessment.

2.2 The targeted consultees were invited to comment on the proposed amendments to the 2005 Regulations. A list of organisations that responded to the consultation can be found at the Annex to this document.

3. Summary of the consultation responses

3.1 This section of the summary of consultation responses focuses on the five responses received by the Department.

3.2 The responses in relation to each of the proposed amendments to the 2005 Regulations are discussed below.

Amendments relating to the provision of mediation services

3.3 There were 3 responses that contained comments on this particular issue.

3.4 A summary of the comments received is as follows:

- Respondents supported the offer of mediation to applicants as they believed that it might provide the resolution of issues that parties desired and would, therefore, remove the need for a full tribunal hearing.
- Respondents stressed the importance of making applicants aware that the mediation is between them and the Education Authority and not the school.
- One respondent considered that proposing lodgement of a Notice of Appeal in SENDIST cases within a two-month time limit contingent upon the issue of a mediation certificate is unfair, as without a certificate, it is not possible to file an appeal. They suggested that the Regulation should be altered in a way that will enable a parent or young person who attempts to file an appeal without a mediation certificate (after the deadline for informing the Mediation Service has passed but before the appeal deadline) to obtain one at any time during the 2-month time limit for filing an appeal to SENDIST. They further suggest that this may be especially disadvantageous to applicants within Section 75 protected groupings or who may otherwise need additional protection or mitigations.
- One respondent highlighted that not all types of SEN appeals are going to be subject to mediation, therefore not all applications can have a time limit that is contingent upon issue of a mediation certificate or the ending of a mediation process.
- One respondent was concerned at the potential ambiguity of the phrase used in the draft Regulations “within two months of issue of a mediation certificate or “at the end of the mediation process – whichever is the later date” as the timescale for applying to SENDIST and recommended that the alternative time-lines for appeal, where there is entitlement to mediation, and mediation does take place, are clarified.
- One respondent suggested that the Regulations be amended in such a way that a mediation process is enabled to run alongside the SENDIST process without delaying or obstructing access to appeal rights, whilst also allowing for mediation to occur at the earliest possible juncture for those who wish to avail of it.
- Respondents were concerned that the Regulations did not specify how the mediation process was to be funded, who this mediator is, what criteria the role needs to meet, what the parameters are around the mediator, and the workload implications for all involved in the tribunal process.
- Respondents believed that mediation needs to be led by a qualified independent mediator, well versed in SEN.

3.5 The Department is grateful for the comments received from consultees and have worked closely with the Department of Education to ensure that the amendments to the 2005 Regulations fully reflect the intended policy of the Department of Education. It is noted that some of the comments are more connected to the

Department of Education policy than the procedure of SENDIST and we have shared those comments with that Department to enable them to consider the issues raised. Comments in relation to mediation being unavailable for some appeals have been considered and appropriate changes have been made to the proposed amendments to the 2005 Regulations.

Amendments to make provision for new appeal rights and categories of applicant to SENDIST

3.6 There was one response that contained comments relating to this proposed amendment to the 2005 Regulations. This response broadly supported the amendment to allow young people over compulsory school age as a new category of applicant to SENDIST but stressed the importance of ensuring that where such an individual assumes this role, he/she is not provided with a recourse some years later in adulthood.

3.7 The Department notes the response but is not sure how an appeal mechanism to SENDIST would be useful beyond a certain timeframe when, potentially, any relationship with the Education Authority may have ceased.

Amendments in relation to the capacity of the child over compulsory school age to appeal to SENDIST

3.8 There were 3 responses that contained comments on these amendments to the 2005 Regulations.

3.9 A summary of the comments received is as follows:

- One respondent noted that the draft Department of Education SEN Regulations provides a list of 7 parties who can raise a question around the capacity of the child and requested consideration be given to an 8th category (the child's representative). They questioned whether it is adequate to refer only to the scenario where SENDIST raises the capacity issue, or whether the Regulation should cover situations where any relevant person raises the issue.
- One respondent found it difficult to fully assess the proposed amendment to allow for capacity determinations by the Education Authority. They wondered whether the Education Authority can make such a determination unilaterally that a child over compulsory school age lacks capacity. They also considered that guidance on this issue should be prepared as a matter of urgency.

- In relation to the interface between the Mental Capacity Act (Northern Ireland) 2016, the ECHR¹, UNCRC² and UNCRPD³ and the amendments to SENDIST procedure proposed in this Department of Justice consultation, one respondent recommended that the Department reviews the decision in the case of *ML v SENDIST and the Education Authority* [2021] NI Fam 15 and considers any impact on provisions for capacity assessments in SENDIST cases.
- One respondent was unclear about which professionals will be carrying out capacity assessments relating to education settings and ask for clarity about what the capacity assessment process will be, who will carry it out and when and how will the child's human rights, including the right to a fair trial, be protected if the Tribunal or another relevant party raises a question about the child's capacity to exercise their rights under Part II of the 1996 Order.
- One respondent sought clarification on the challenge mechanism or safeguards (other than judicial review) put in place to enable a young person to challenge a determination that they lack capacity. This respondent sought confirmation that where an individual beyond compulsory school age is determined not to have the 'capacity' to proceed, that a designated responsible adult deputises for him/her at any tribunal.

3.10 The Department is grateful for the comments made and notes that most of the observations relate to the policy of the Department of Education. We have shared these views with that Department. In relation to the ability of a child to challenge any determination that they lack capacity, we note that there is an option of judicial review. However, as the question of determining capacity falls within the policy responsibility of the Department of Education, we have highlighted the comment to that Department, although we note that *ML v SENDIST and the Education Authority* appears to be concerned with whether arrangements made for educational purposes can amount to a deprivation of liberty under the Mental Capacity Act (Northern Ireland) 2016, rather than the issue of whether a young person lacks capacity to take proceedings before a tribunal.

Other Comments received by the Department

Transfer of Appeal Rights

3.11 One respondent responded that there may be circumstances in a small number of cases where a parent is not the appropriate substitute for a child over compulsory school age who does not have capacity to participate in SENDIST proceedings. The respondent suggested that the proposed amendments to the 2005 Regulations will

¹ European Convention on Human Rights

² UN Convention on the Rights of the Child

³ UN Convention on the Rights of Persons with Disabilities

require to be amended to cover persons other than the parent who may be appointed to exercise the young person's appeal rights.

3.12 The Department is grateful for this comment and has raised the matter with the Department of Education.

Remedies for discrimination and Legal Aid

3.13 Two respondents made comments about remedies for discrimination and the availability of legal aid.

3.14 One respondent drew attention to the ongoing lack of an effective remedy for disability discrimination in education. It was suggested that there can be situations where one child could be harassed because of race and one because of disability and the first child can seek compensation, whilst the second child cannot. They commented that the only remedy is a forced apology at the door of the Tribunal and a commitment to staff training. It was suggested that the remedies available to SENDIST are not proportionate to the potentially long-term harm, distress and loss of opportunity caused to children by disability discrimination. Respondents also highlighted that claimants are not entitled to legal aid for representation at SENDIST. It was suggested that such discrimination claims are extremely arduous and adversarial and that education providers will generally be legally represented. The respondent considered that these are technically very difficult cases which no lay person could fairly be expected to be able to navigate.

3.15 The Department welcomes these comments, but notes that any policy change to introduce an element of a compensation remedy falls out-with the scope of this particular exercise. In relation to the provision of legal aid, it is not usual for publicly funded legal costs support to be made available for tribunals of this nature; however, legal aid may be available in exceptional circumstances.

Timing of the Consultation

3.16 Four respondents commented in relation to the timing of the consultation.

3.17 Respondents were concerned that the consultation was launched before the full extent of changes to be implemented by the Department of Education were known and were concerned that it was not possible to understand what the final operation of the SEN framework would look like in full detail.

3.18 The Department notes this concern, but seeks to reassure consultees that it is liaising closely with the Department of Education in relation to these reforms.

4 Responses to the Equality and Human Rights Policy Screening and Rural Needs Impact Assessment

Equality and Human Rights Policy Screening

4.1 Two respondents disagreed with the Department's decision to screen out the draft SENDIST regulations.

4.2 These respondents were concerned about how the data on the number of children with disabilities was collected. Limiting this to children recorded in the census as being assessed by a medical professional as having a disability, in their view, was likely to be an underestimate. Moreover, the numbers of children & young people pending diagnosis or assessment, for example the figures for pre-school, may not be accurate if taken early in the school year. The respondents indicated the need for more data capturing the percentage of parents and carers who have a learning difficulty, in order to ensure planned support and, if necessary, equity of access to SENDIST process. The respondents considered that the Equality Screening appeared to be defective as it did not identify linked policies and failed to recognise that children and young people with disabilities are within Section 75 categories which stand to benefit from the policy e.g. by accessing their own appeal rights on a fair and equal basis with others. These respondents felt that the decision to screen out the policy was potentially unsound as it would result in failure to identify and mitigate potentially significant negative adverse impacts upon equality of opportunity for children and young people, including those who have disabilities. Further, respondents felt that there appeared to be no analysis of human rights impacts, most notably the right to a fair trial under Article 6 ECHR in conjunction with Article 14 ECHR (non-discrimination).

Department Response

4.3 The Department has reviewed its Equality Screening and has fully considered the likely impact of the proposed amendments to the 2005 Regulations on the section 75 categories and in light of human rights obligations. The proposed amendments to the 2005 Regulations operate under the new SEN Framework which is set in the context of a well-developed inclusive educational policy environment. An underpinning aim of the revised Framework is that the educational needs of all children with SEN should be addressed and that the children should be integrated fully and accepted by all on an equal basis into the life of the school; therefore, as the new SEN Framework promotes equality of opportunity for all, the proposed amendment Regulations support this perspective.

Rural Needs Impact Assessment

4.4 No respondents to the consultation provided comments on the Rural Needs Impact Assessment.

5 Next Steps

5.1 The Department proposes to take forward amendments to the 2005 Regulations in light of the comments received by respondents to the consultation.

Legislative process

5.2 Any amendments to the 2005 Regulations are subject to the negative resolution process in the Northern Ireland Assembly. In accordance with this procedure, the Department will engage with the Committee for Justice on the responses to the consultation process and the proposed amendments to the 2005 Regulations.

5.3 When the Assembly process is complete, it is intended that the Regulations will be made and come into operation on 1st September 2026.

Annex

Responses Received to the Consultation

Organisations

The Children's Law Centre

The Irish National Teachers' Organisation

The National Association of Head Teachers NI

The Equality Commission NI

The Association of School & College Leaders NI