



**Include Youth Response to Department of Education and
Department of Employment and Learning Consultation on Proposal
for a Draft Order in Council The Special Educational Needs and
Disability (Northern Ireland) Order 2004**

July 2004

Introduction

Include Youth promotes best practice with young people at risk of social exclusion. We achieve this through the development and promotion of resources, the provision of training, information and support of practitioners and organisations. We also undertake activities which attempt to influence public policy and public awareness locally and nationally.

Amongst the young people at risk with whom, and on whose behalf Include Youth works are young people from socially disadvantaged areas, those with a learning disability, those with special needs, those who have been truanting, suspended or expelled from school, those from a care background, those who have had a negative parenting experience, young people who have committed or are at risk of committing crime, misusing drugs or alcohol, undertaking unsafe sexual behaviour or other harmful activities, or of being harmed themselves. Therefore, it is clear that these current proposals have a direct impact on the lives of the children and young people with and on whose behalf we work.

Include Youth welcomes the opportunity to respond to the consultation by the Department of Education and Department of Employment and Learning on the Draft Special Educational Needs and Disability (Northern Ireland) Order 2004. We are aware that a number of organisations have made detailed submissions in relation to the draft legislation, and we wish to endorse in particular the responses of the Equality Commission's SENDO Consortium, Children in Northern Ireland (CiNI) and the Children's Law Centre. In the interests of avoiding duplication, Include Youth has therefore decided to focus specifically on how this legislation could impact upon the children and young people at risk with and on whose behalf we work.

General comments

Include Youth broadly welcomes the thrust of SENDO in that it seeks to promote the inclusion of disabled children in 'mainstream' schools and provides some protection for disabled people against discrimination in education.

The legislation must be implemented in full and at the earliest opportunity, to bring this jurisdiction into line with the rest of the UK. We are opposed to a phased implementation of this much – needed legislation, which will leave Northern Ireland continuing to lag behind UK. Clearly it is essential that all key stakeholders are in a position to fulfil their duties under the impending legislation. It is therefore essential that these stakeholders are fully informed about developments and implications for their future policy, practice and service delivery, and it is incumbent upon both DE and DEL to begin a process of educating and informing relevant stakeholders. A number of suggestions in this regard include providing increased SEN training for teachers, both as part of teacher training for student teachers, and professional development for current staff; and ensuring that the curriculum within schools has a focus on encouraging respect for and understanding of diversity, and educates and informs non-disabled children.

In addition we believe that this full and prompt implementation must be accompanied by thorough and independent evaluation.

In addition we concur with the view of CLC, CiNI, and Equality Consortium that the scope of the draft legislation lacks clarity in terms of its scope – for example does it apply to alternative education settings? Furthermore, we believe that Government must make real its commitment to realising the rights of children with special educational needs or with a disability to education by investing in and supporting specialist support staff.

Section 75 Northern Ireland Act 1998

Include Youth welcomes the proposed extension of protections against disability discrimination in education, but views this very much as a first step. We believe that schools must be included as designated bodies under Section 75 of the Northern Ireland Act, to help ensure that a more universal approach is adopted to the promotion of equality, and crucially ensure that the voices of children and young people affected by making of school policy would have an opportunity as of right to be consulted and have their views taken into account.

We understand that many detailed submissions made in respect of the Special Educational Needs and Disability Bill in 2002 do not appear to have been taken into account in the current drafting. We therefore submit that following the close of the current consultation period, and prior to the laying of draft legislation, that the Departments publish their analysis of the submissions, and if or where they have failed to take on board the views of respondents, reasons should be given.

Finally, in relation to Section 75, we are concerned by the Departments decision not to conduct an EQIA in respect of the draft Order. In line with the SENDO Consortium, Include Youth believe that the Departments should conduct an EQIA in the interests of further promoting equality of opportunity for disabled people in education.

Voice of the Child

Include Youth believes that the legislation is fundamentally flawed in that it fails to give any recognition to the views of children and young people, and their right to have these views taken into account in decisions which impact upon their lives. As such the draft Order is in contravention of Article 12 United Nations Convention on the Rights of the Child, to which the UK Government is a signatory.

Single Equality Bill for Northern Ireland

We are concerned that little cognisance would appear to have been taken of the wider policy context in Northern Ireland, and to the very positive commitment shown by the former NI Executive to securing children and young people's rights in this jurisdiction. In particular we believe that little regard has been given to the current proposals introduced by OFMDFM in respect of developing a Single Equality Bill for Northern Ireland. Clearly it is essential that legislation is harmonised, and harmonised upwards in line with other existing anti-discrimination legislation; and that the term 'joined up government' is implemented as an effective reality, to help ensure that the rights of children with special educational needs or a disability are protected.

Limited Extension of Disability Discrimination Act (DDA) to schools

Include Youth is disappointed to see that the draft Order does not extend the DDA in full to schools, and believes that this is a wasted opportunity to provide much stronger statutory safeguards for the protection of the rights of disabled children to education. Clearly if a child's de facto participation in mainstream education is precluded by the physical design of a school or the absence of particular auxiliary aids or services, we believe that steps should be taken to mitigate against this situation.

Special Educational Needs and Disability Tribunal (SENDIST)

We wish to lend our support to the position adopted by Children's Law Centre, CiNI, and the Equality Consortium in respect of SENDIST, and in particular make the following points – in terms of harmonising and preparing the way for the Equality Tribunal envisaged by the Single Equality Bill, all further and higher education disability discrimination cases should have recourse to SENDIST, in the same way as schools. Secondly, it is essential that SENDIST has strong enforcement powers, as this has been identified as a limitation of the position in England and Wales. In addition, separate representation for children is needed in order to help ensure that government obligations under Article 12 of the United Nations Convention on the Rights of the Child are complied with.

Children at risk with complex needs including SEN or Disability

Include Youth wish to focus now on the particular situation of children who may have a complex range of issues, including special educational needs and disabilities. In 2002 the Give and Take Scheme - a supported volunteering scheme operated within Include Youth for young people aged 16-21years - compiled a profile of participants, and found that 7% had a physical disability; 18% had been statemented as having a severe to moderate learning disability; 89% had literacy and numeracy difficulties; 83% had mental and emotional health problems; 38% had survived physical and sexual abuse; 76% came from a care background. In the same year Include Youth's Young Voices participation project for young people at risk with similar life experiences to those listed above, carried out a pre-consultation exercise in relation to developing a ten-year strategy for children in Northern Ireland. All those young people taking part were or had been disenfranchised from school, either through being suspended or expelled. Crucially they ALL stated that they would have preferred to

have remained in school. They all had experienced significant family trauma, some at an early age, and others over a protracted period.

It is essential that policy and practice tackling the subject of children with special educational needs or disabilities takes the experience of such children and young people who have a range of complex needs into account. These may include psycho-social, emotional, mental and physical health needs, familial issues, as well as educational concerns. However, if one takes the example of children with particular educational needs who come from a family experiencing acute difficulties, what often happens is that all services become directed towards families in crisis – either with the aim of receiving children into care or keeping children at home - rather than tackling these inter-related and multi-faceted problems in a coherent and holistic manner. Whilst this is important, we are concerned that in such cases family disruption may at times mask the educational and emotional needs of children, neither of which are assessed. This may particularly be the case if a child has a mild or mild to moderate learning disability. It is imperative that these children are provided with early assessment, and appropriate levels of highly trained and experienced support staff and other appropriate resources to help ensure their full and positive participation in mainstream education. A multi-disciplinary approach is essential in meeting the needs of these children.

However, what can happen when educational or emotional needs go unnoticed and unmet, is that the child becomes frustrated and can either become withdrawn or disruptive. Disruptive pupils displaying behavioural difficulties then become labelled as troublemakers, and a ‘problem’ to be ‘managed’. However, it is our view that quite often the behavioural problems are actually a manifestation of educational, emotional or mental health needs which have been unmet. Surely rather than storing up problems for the future, it makes much more sense to identify and deal with any difficulties which children may face, in a mainstream and inclusive environment.

In the case of care experienced young people, it is clear that more understanding and a more joined up approach is needed to address the multi-faceted needs of looked after children. Children who are looked after are identified as children in need under the Children (Northern Ireland) Order 1995 for the following reasons: they are vulnerable

young people who are markedly failing to achieve in education; they have poor levels of school attendance; high levels of suspension, expulsion and self-exclusion, and a higher incidence of special educational needs. Findings from studies strongly suggest that a number of looked after children and young people are identified as having a special educational need. For example, 30% of the sample in Kilpatrick and Barr's study (1999) had statements of special educational needs compared to 2% for the general school age population. Reasons given for a statement of special educational needs included learning difficulty, behavioural difficulty and a combination of behavioural and learning difficulties. A further 29% of this looked after sample was on the special educational needs register of their school. 60% of the pupils on the special educational needs register in Kilpatrick and Barr's study were there because of numeracy and literacy problems.

It is estimated that young people in care are six to eight times more likely to have a statement of special educational needs than pupils in the general population. (Ofsted, 1995; The Education of Children who are looked after by Local Authority). Pre-care experiences, disrupted schooling and previously unmet needs may explain why they are so over-represented. The Dfes Guidance on Education of Young People in Public Care states that it should not be assumed that all children and young people looked after will have special educational needs and that great care should be taken to ensure that their needs are met in a non-stigmatising way.

It is very important that the rights of these children to education be met at all times, and clearly this involves the Department of Education working in close partnership at all levels with the Department of Health and Social Services, Health Boards and Trusts. Some of the current problems in this area of multi-agency collaboration include a lapse in time between information being shared between schools on young people in care, which often results in learning difficulties not being picked up early enough, difficulties securing new placements after moves in care and exclusions and lack of alternatives to mainstream education being offered. In addition, information can be lost between professionals when children and young people move placements and schools and we would suggest giving consideration to the idea of introducing a tracking system. The pilot of personal education plans (PEPs) in some Trusts and Education and Library Boards should go some way towards collating education

information for looked after children and young people as part of the LAC review process.

Training and awareness raising for professionals in all disciplines who work with young people in care and who have special educational needs and / or disabilities is required. Advice and information on SEN should continue to be available to parents and foster carers from the education and library boards. The code of practice on the identification and assessment of SEN needs to be kept under review to ensure that they address adequately the needs of these children.

In addition, Include Youth believe that at a strategic level, the Departments should have current information on looked after children with special educational needs, such as what proportion of children and young people in care have statements compared to other children; how many are placed in mainstream schools and how many in special schools; how many are placed in provision in other Education Board areas; and how many do not receive full time provision. The Departments should also monitor closely the attendance and exclusion rates for the young people in care population, particularly those with special educational needs, as referred to in the Dfes Guidance, 1995.

Conclusion

Include Youth welcomes the opportunity to have been involved in this consultation process, and hope that legislation to fully provide for the rights and complex needs of all children with special educational needs and disabilities will be introduced and implemented at the earliest opportunity.