
SCOTTISH STATUTORY INSTRUMENTS

2017 No. 356

The Additional Support for Learning Dispute Resolution (Scotland) Amendment Regulations 2017

Amendment of the 2005 Regulations

- 2.—(1) The 2005 Regulations are amended in accordance with this regulation.
- (2) Regulation 2 (interpretation) is amended as follows—
- (a) in regulation 2(1), in the definition of “application”, after “section 16(1)(a),”, insert “(aa),”;
 - (b) in regulation 2(2), after “parent”, insert “, child”.
- (3) For regulation 3(1) (application for referral to dispute resolution), substitute—
- “(1) Where any person mentioned in section 16(1)(a), (aa), (b) or (c) of the Act submits an application in writing to the Scottish Ministers in relation to any specified matter, the Scottish Ministers must, within 5 working days of receipt of the application, refer the application to the appropriate education authority and the education authority must consider the application further in accordance with these regulations.”.
- (4) After regulation 3 (application for referral to dispute resolution), insert—

“3A. Assessment of capacity

- (1) Where the applicant is a child who has attained the age of 12 years, the education authority must—
- (a) in accordance with section 3A of the Act, assess the child’s capacity as respects views or decisions relating to the purpose of resolving disputes; and
 - (b) notify the applicant and the applicant’s parent of the outcome of that assessment (“the determination”) as soon as possible after it has been completed.
- (2) Where the education authority is satisfied that the child has capacity, regulation 4 applies.”.
- (5) For regulation 4 (preliminary arrangements), substitute—

“4. Preliminary arrangements

- (1) Where the education authority consider an application submitted under regulation 3 relates to a specified matter and that all of the supporting material required under regulation 3(2) has been provided then the education authority must send to the applicant confirmation of acceptance of the application.
- (2) At the same time as sending such confirmation the education authority must send a request to the Scottish Ministers for a nomination by them of an individual to act as an independent adjudicator and include with such request a copy of the application and such of the supporting material as the education authority consider appropriate to assist the Scottish Ministers in making their nomination.

(3) Where an education authority consider an application submitted under regulation 3 does not relate to a specified matter or is not accompanied by all of the supporting material required under regulation 3(2), or is otherwise unreasonable then the education authority must send to the applicant notice of their decision not to proceed with the application, and include within such notice their reasons for that decision.

(4) Where, following notice under paragraph (3), an applicant provides further information or supporting material relevant to the application and in consequence the education authority decide to accept the application, then paragraph (1) applies as if the education authority had received the application on the first working day after the day on which the further information or supporting material was received.

(5) Where the applicant is a child who has attained the age of 12 years, the education authority must send to the applicant—

(a) confirmation of acceptance of the application under regulation 4(1), or

(b) notice of their decision not to proceed with the application under regulation 4(3)

within the period of 10 working days of the determination under regulation 3A.

(6) In all other cases, the education authority must send to the applicant—

(a) confirmation of acceptance of the application under regulation 4(1), or

(b) notice of their decision not to proceed with the application under regulation 4(3)

within the period of 10 working days of the receipt of such an application.”.

(6) In regulation 5(1) (panel of independent adjudicators), after “section 16(1)(a),”, insert “(aa),”.

(7) After regulation 10(2) (outcome of review), insert—

“(2A) Where the applicant is a child, the education authority must, without charge, give a copy of the notice of their decision and of the independent adjudicator’s report and recommendations to the child’s parent at the time of giving notice to the child under paragraph (1).”