

POLICY NOTE

THE EDUCATION (MISCELLANEOUS AMENDMENTS) (CORONAVIRUS) (SCOTLAND) (No. 2) REGULATIONS 2021

SSI 2021/462

The above instrument was made in exercise of the powers conferred by sections 28A(5), 28D(3) and 28H(5) of the Education (Scotland) Act 1980¹ and section 22 and paragraphs 4(3) and 6(6) of schedule 2 of the Education (Additional Support for Learning) (Scotland) Act 2004². The instrument is subject to negative procedure.

Purpose of the instrument. This instrument amends 3 sets of regulations that support the process for determining requests from parents in relation to the allocation of school places outside of the normal catchment area and also the determination of exclusion appeals³. This instrument reverts back to the pre-Coronavirus procedural timescales, as these timescales were extended by amendments made in 2020 and 2021 and are no longer considered to be necessary. The instrument does not remove the ability for appeal hearings to be held remotely or by way of written representations, which is being retained for the time being to provide some flexibility in how hearings can be carried out.

Policy Objectives

Background

The 2022 school admissions round will be the third to have been affected by the Coronavirus pandemic. Given the changing impact of the Coronavirus pandemic and the use that is being made of remote hearings, a return to the pre-pandemic timescales is considered to be appropriate. To enable education authorities and appeal committees to meet those deadlines while disruption due to the pandemic continues, the ability to hold appeal hearings remotely or to determine appeals by way of written representations with the agreement of all parties will remain in place for the time being. This will ensure that, as far as possible, the appeal process will be completed in good time for the start of the new academic year, providing certainty and reassurance to pupils and parents.

Changes made by this instrument

The changes made by this SSI means that all procedural deadlines in the 3 sets of regulations revert to the original timescales pre-Covid. These timescales relate to an education authority's consideration of placing requests and any subsequent appeals

¹ 1980 c.44. Sections 28A, 28D and 28H were inserted by section 1(1) of the Education (Scotland) Act 1981 (c.58).

² 2004 asp 4.

³ The Education (Appeal Committee Procedures) (Scotland) Regulations 1982 (S.S.I. 1982/1736), the Education (Placing in schools Etc—Deemed Decisions) (Scotland) Regulations 1982 (S.S.I. 1982/1733) and the Additional Support for Learning (Placing Requests and Deemed Decisions) (Scotland) Regulations 2005 (S.S.I. 2005/515).

heard by an appeal committee, including those regarding children and young people with additional support needs. The timescales relating to appeal committees also apply to exclusion appeals. The changes are as follows:

- The deadline for responding to placing requests received by education authorities by 15 March has reverted to the original deadline of 30 April. Under the regulations as amended in 2021, education authorities had to respond to such requests by 15 May.
- An appeal committee must hold a hearing on a placing request or exclusion appeal within 28 days of receiving an appeal, which reflects the pre-2020 position. By virtue of the amendments made in 2020 a hearing had to be held within 3 months and that was reduced to 2 months by the 2021 amendments.
- The period of time after which the failure of an appeal committee to hold a hearing is deemed to be a decision upholding the refusal by an education authority of a placing request or exclusion appeal is reduced from 3 months to 2 months. By virtue of the amendments made in 2020, appeal committees had a 4-month window to hold a hearing and this was reduced to 3 months in 2021.

Consultation

The Scottish Government has engaged with local government bodies, including the Convention of Scottish Local Authorities, Association of Directors of Education in Scotland and Society of Local Authority Lawyers and Administrators in Scotland, as well as Children in Scotland, the Children and Young People's Commissioner's Office and the National Parent Forum for Scotland in relation to the development of these regulations. The amendments made in this instrument seek to reflect the concerns raised and to minimise any impacts on children, young people and parents.

Impact Assessments

An Equality Impact Assessment, an Island Communities Impact Assessment and a Children's Rights and Wellbeing Impact Assessment have been completed on the instrument and will be published. There are no data protection or business regulation impacts of these regulations.

Financial Effects

The Cabinet Secretary for Education and Skills confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Learning Directorate
December 2021