Executive Note

The Additional Support for Learning Dispute Resolution (Scotland) Regulations 2005 SSI/2005/501

The above instrument was made in exercise of the powers conferred by Sections 16 and 34 of the Education (Additional Support for Learning) (Scotland) Act 2004. The instrument is subject to negative resolution procedure.

Policy Objectives

Section 16 of the Education (Additional Support For Learning) (ASL) (Scotland) Act 2004 enables the Scottish Ministers to make regulations requiring education authorities to put in place procedures to resolve disputes between an education authority and any parents or young people in the local authority's area, as may be specified in regulations.

Under the 2004 Act use of the dispute resolution procedure by parents, and young people, is voluntary and they cannot be required to pay any fee or charge for using the procedure.

Dispute resolution is a generic term and covers a range of processes for dealing with disagreements. Within the context of the Act, dispute resolution is the process for a formal review of an individual case by an independent third party, external to the local authority, who considers the disagreement, forms their own view, and makes a written report with recommendations to the education authority on how they think the dispute should be resolved.

The Schedule to the Regulations prescribe the disputes that can be referred to dispute resolution

Broadly parents on behalf of their child, or the young person, can ask the Education Authority to refer a dispute about a matter outwith the jurisdiction of the Additional Support Tribunal for Scotland set up under section 17 of the Act or to an appeal committee under the Education (S) Act 1980 which deals with exclusions and placing requests. It is expected that the most common disputes referred to Dispute Resolution are likely to be over assessment of additional support needs or the provision required or being provided to meet the needs of the pupil.

Process and time limits for Dispute Resolution

An illustrative flow chart of the process is attached for information.

Application for referral to dispute resolution

The education authority will consider an application, and if it relates to a specified matter and all the supporting material required under the regulations has been provided, then within 10 working days of receipt of the application, the education authority must send the applicant confirmation of acceptance. The date on this

correspondence is the start of the statutory process of dispute resolution.

Appointment and panel of independent adjudicators

At the same time as sending the applicant confirmation, the education authority must send a request to the Scottish Executive for nomination of an individual to be appointed as independent adjudicator from a panel of suitably experienced individuals established and maintained by the Scottish Executive on behalf of Scottish Ministers.

Education Authority response

The education authority must within a period of 25 working days, beginning on the first working day after the day on which the applicant is sent confirmation of acceptance, provide the independent adjudicator with the necessary documentation as specified in regulations.

In addition, within the 25 day period, the education authority must send their response to the applicant within 10 working days after sending the applicant confirmation of acceptance. Parents and the authority then have a further 10 working days to provide each other with any further observations on the application or the authority's response. Any further observations submitted by the parent or authority as a result of this process will also be included in the material sent to the independent adjudicator.

Review by an independent adjudicator

The education authority must appoint the person nominated by the Scottish Executive as the independent adjudicator to consider the application and pay the adjudicator a standard fee as set by Scottish Ministers under their powers of direction in section 27 of the Act or where no direction is given at a level that the Education Authority considers appropriate. The independent adjudicator will have 15 working days, beginning with the first working day following receipt of all specified papers, to review the case, and provide a written report to the education authority with recommendations as to how the dispute should be resolved.

The adjudication process will normally be a paper based exercise. However, where necessary to carry out the review the adjudicator can ask for further information or advice as they consider appropriate. Exceptionally they can arrange to meet the applicant, education authority or such other person as they consider appropriate which might be a health board.

Where the adjudicator becomes aware that the time limit cannot be complied with because it is impractical to do so, the adjudicator must explain why to the education authority and applicant, and must set a new date for completion of the process.

Outcome of Review

The education authority must within 10 working days of the receipt of the adjudicator's report and recommendations, give notice of their decision in writing to the applicant and any other persons including any relevant appropriate agency as the authority consider appropriate.

On becoming aware that the 10 working day time limits cannot be complied with because it is impractical to do so, the education authority must explain to the applicant the reason for this and must set a new date for completion of the process. The date established must not exceed the time limit by longer than is necessary in the circumstances and in any event must not be more than 60 working days beginning with the day the authority sent the applicant confirmation of acceptance.

Consultation

Policy proposals were published (Consultation Paper (06) Dispute Resolution) for public consultation from 29 November 2004 until 25 February 2005. The consultation generated 435 written responses from across local authorities, NHS Boards, voluntary organisations, further education colleges, Careers Scotland, parents and individuals, schools, school boards, professional bodies and CoSLA. In addition to the written consultation, the Scottish Executive held fourteen consultation seminars in venues across Scotland including seminars on Orkney and Shetland. The seminars were attended by around 1000 delegates and included representatives from all of the groups mentioned above. A report of the consultation was published on 18 May. This set out the main changes to the scheme for regulations as a result of the consultation. We have also had informal consultation with COSLA on developing the scheme for the regulations.

Financial Effects

The financial effects of dispute resolution were set out in the Financial Memorandum accompanying the Education (Additional Support for Learning) (Scotland) Bill (SP Bill 11). Education Authorities will be responsible for paying the independent adjudicators and for any costs associated with their own arrangements for Dispute Resolution. Scottish Ministers will have additional administrative costs regarding the establishment and maintenance of a panel and this can be met from central funding held to meet the implementation costs of the Act.

The instrument therefore has no additional financial effects on the Scottish Executive, local government and Health Boards or business.

Scottish Executive Education Department

October 2005

DISPUTE RESOLUTION

For illustrative purposes only – all references are to Regulations in
The Additional Support for Learning Dispute Resolution (Scotland) Regulations 2005

