Executive Note

The Additional Support for Learning (Placing Requests and Deemed Decisions) (Scotland) Regulations 2005 SSI/2005/515

The above instrument was made in exercise of the powers conferred by sections 22 and 34, and paragraphs 4(3) and 6(6) of Schedule 2, of the Education (Additional Support for Learning) (Scotland) Act 2004 ('the 2004 Act') and of all other powers enabling them in that behalf. The instrument is subject to negative resolution procedure.

Policy Objectives

The 2004 Act replaces the system for assessment and recording of children and young people with special educational needs with a new framework around additional support needs. Additional support needs are defined more broadly than special educational needs.

A small number of children and young people with additional support needs arising from enduring complex or multiple factors, for whom the education authority are responsible for providing school education, and who require significant additional support from local authorities beyond their education functions or from another appropriate agency such as a health board, will receive a co-ordinated support plan.

As a result of the change from special educational needs to additional support needs, sections 28A, C, E, F and G of the Education (Scotland) Act 1980 (which make provision as to the making of placing requests and appeals in relation to the refusal of such requests) do not apply to children and young people with additional support needs. Instead the provisions in Schedule 2 of the 2004 Act will apply.

While the scheme in Schedule 2 is broadly similar to the one in the 1980 Act, there are two main differences.

The first is that under Schedule 2, paragraph 2(2), parents of children with additional support needs can make a placing request for their child to attend an independent special school or grant-aided special school, being a school which solely or mainly provides education suited to the additional support needs of children or young people selected for attendance there. A similar right applies to a young person.

Secondly, parents of a child with additional support needs can refer a decision by an authority to refuse a placing request to the education authority appeal committee in terms of Schedule 2, paragraph 5(1). However, the 2004 Act makes specific provision for placing request references in which there is an issue relating to the co-ordinated support plan enabling that issue to be referred to a Tribunal under section 18 of the 2004 Act. An appeal against a refused placing request may be referred to a Tribunal instead of an appeal committee when:

- a child or young person has a co-ordinated support plan, or
- it has been established that the child or young person requires a co-ordinated support plan but one has not been prepared, or
- the education authority have decided that the child or young person does not require a co-ordinated support plan and that decision has been referred to a Tribunal.

Paragraph 4(3) of Schedule 2 allows Scottish Ministers to make regulations applying to an education authority's failure to notify the parents or young person making the placing request in writing of their decision within a set timescale. Paragraph 6(6)(b) allows Scottish Ministers to make similar regulations in relation to an appeal committee failing to notify the parents or young person of their decision or to take other specified action. These are referred to as 'deemed decisions'.

The purpose of making provision in these Regulations in respect of deemed decisions is therefore to allow the parents or young person to move the reference on to the next appropriate stage of the appeal process where a decision has not been reached within a prescribed period rather than having to wait indefinitely for an outcome.

These Regulations also deal with the provision of information by an education authority, with the purpose of ensuring that the appeal committee have all the relevant information as quickly as possible for consideration, and to ensure that the parents or young person are fully aware of the information being relied on by the education authority in reaching their decision, prior to the hearing.

Deemed decisions

The concept of deemed decisions is not new. The procedures and specified timescales for deemed decisions relating to education authority and education authority appeal committees about placing requests are set out in the Education (Placing in Schools Etc – Deemed Decisions) (Scotland) Regulations 1982. These Regulations make provision for the general school population as well as making specific provision for children and young people with special educational needs and those with Records of Needs. The provisions for pupils with special educational needs and recorded pupils will no longer apply once the 2004 Act is fully operational.

The Regulations being made under sections 22 and 34, and paragraphs 4(3) and 6(6) of Schedule 2 of the 2004 Act, therefore make provision for children and young people with additional support needs and/or co-ordinated support plans. To a large extent, they make similar provision to those in the 1982 Regulations.

Deemed decision of an education authority

If a parent wants their child to start at the school of their choice at the beginning of the school year in August, and their placing request reaches the education authority by 15 March that year, the parent must be given an answer by 30 April. If the education authority do not provide a written answer by 30 April the placing request is treated as if the education authority had refused it and the parent may appeal.

If a parent makes a placing request for their child to attend a different school during the school year, the education authority must reach a decision within 2 months. If not, the placing request is treated as if the education authority had refused it and the parent can appeal.

Deemed decision of an appeal committee

The Regulations make provision for deemed decisions in relation to appeal committees. An appeal committee will be deemed to have confirmed the decision of the education authority refusing the placing request if they have failed to hold a hearing within 2 months or failed to fix a date for a resumed hearing within 14 days or failed to notify the parents or young person and the education authority of their decision within 14 days of the hearing.

These timescales will also apply when a refused placing request reference has been transferred from a Sheriff to a Tribunal and the Tribunal subsequently transfer the reference back to the appeal committee following its decision to uphold the education authority's decision on the co-ordinated support plan.

Deemed decision: placing requests referred to a Tribunal

Where an appeal committee have not disposed of a placing request reference before they are made aware by a Tribunal that a reference has been made to it about the refusal of a co-ordinated support plan, the appeal committee must transfer the placing request reference to the Tribunal for decision.

The appeal committee are not required to take any further action until the Tribunal's decision on the co-ordinated support plan is made known to them. As a result, the deemed decisions timescales will be suspended during that period. Once the reference is returned to the appeal committee, it will have whatever number of days remaining from the original statutory period (for example 2 months or 14 days depending what stage the committee had reached prior to the transfer to a Tribunal) but will always have no less than 10 working days within which to take the action required.

Consultation

A paper outlining the policy proposals was issued for consultation from 11 May 2005 until 3 August 2005. The consultation generated 216 written responses from across local authorities, NHS Boards, voluntary organisations, further education colleges, parents and individuals, schools, school boards, and professional bodies. In addition to the written consultation, the Scottish Executive held two consultation seminars in Glasgow and Edinburgh, attended by around 100 delegates.

Financial Effects

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

Scottish Executive Education Department
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