POLICY NOTE

The Education (Deemed Decisions) (Coronavirus) (Scotland) Amendment Regulations 2020

SSI 2020/149

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 28D(3)(b) and 28H(5)(b) of the Education (Scotland) Act 1980 and all other powers enabling them to do so. The instrument is subject to negative procedure.

Purpose of the instrument. The instrument amends regulations that relate to an appeal against the decision of an education authority to exclude a pupil from school, by amending the time period after which failure of the education authority to hold an appeal committee hearing becomes a deemed decision from one month to four months.

Policy Objectives

Education authorities have expressed significant concerns that they will not have the capacity to meet the statutory requirements of the school exclusions appeals process this year due to the Coronavirus outbreak.

The instrument amends regulation 5 of the Education (Placing in Schools Etc-Deemed Decisions) (Scotland) Regulations 1982. It extends the time period after which the failure of an education appeal committee to hold a hearing on an exclusion appeal is deemed to be a decision confirming the original exclusion decision of the education authority. On the date that such a failure becomes a deemed decision, a parent or young person can appeal to the sheriff court. This time period is extended from one month to four months to align with the current provision for placing requests which was recently amended(**1**), therefore giving education authorities further time to ensure that any exclusion appeal can be heard, before it becomes a deemed decision. In a period where administrative resources are stretched, this change will ensure that education authorities and education appeal committees have sufficient time to complete the procedural elements of the process.

In extending this time period where an exclusion appeal converts to a deemed decision, this does not extend the duration of an exclusion. The majority of exclusions from school are for less than seven days, therefore in such cases the pupil have returned to school by the time of the appeal and any successful appeal in such circumstances would result in the exclusion being effectively cleared from the record of the pupil.

Whilst this instrument extends the deemed decision period to four months, by virtue of the Education (Appeal Committee Procedures) (Scotland) Regulations 1982 an appeal committee must hold a hearing as soon as reasonable practicable within a period of three months unless due to circumstances which are outwith the control of the education authority.

The amendment made by this instrument is not time limited but it is intended to be temporary. We intend to revoke the instrument once the current outbreak is over and this

---

1 The time period relating to placing requests was amended by the Education (Miscellaneous Amendments) (Coronavirus) (Scotland) Regulations 2020 (SSI 2020/128).

would be done by 28 February 2021. However, if there was to be a further Coronavirus wave either prior to or subsequent to revocation of these changes, and social distancing measures were reintroduced, we would have to consider retaining the changed timescales or introducing similar measures again, depending on the circumstances.

Consultation

The Scottish Government has engaged with local government bodies, including COSLA ADES and SOLAR, in relation to the development of these regulations. Due to the current Coronavirus outbreak it has not been possible to conduct the consultation and engagement activity that would normally take place.

Impact Assessments

An Equality Impact Assessment and a Children's Rights and Well-being Impact Assessment have been completed on the draft SSI and will be published separately. There are no data or business regulation impacts of these regulations.

Financial Effects

Following consultation and assessment against the policy objectives it is considered 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

14 May 2020