POLICY NOTE

THE EDUCATION (MISCELLANEOUS AMENDMENTS) (CORONAVIRUS) (SCOTLAND) REGULATIONS 2021

SSI 2021/31

The above instrument was made in exercise of the powers conferred by sections 28A(5), 28D(3), 28H(5), 56A, 56B and 56D of the Education (Scotland) Act 1980[1] and section 22 and paragraphs 4(3) and 6(6) of schedule 2 of the Education (Additional Support for Learning) (Scotland) Act 2004[2]. 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 appeals[3]. These amendments will ensure that education authorities and education appeal committees retain greater flexibility in how they carry out their statutory responsibilities in relation to these matters. This instrument reduces the current timescales provided for in amendments made to the 3 sets of regulations in 2020, as they are no longer all considered to be necessary. The instrument retains the ability for appeal hearings to be held remotely.

This instrument also makes amendments to the Nutritional Requirements for Food and Drink in Schools (Scotland) Regulations 2020 (S.S.I. 2020/153) which are due to be commenced on 8 April 2021 and which are discussed separately at the end of this note. The amendments will ensure that those Regulations better reflect the original policy intention in relation to hostel meal provision in secondary schools and in relation to caffeine content of sugar free soft drinks where they are provided in secondary schools.

Policy Objectives

Background

In 2020, as the impact of the coronavirus pandemic began to be felt and schools were closed, education authorities expressed significant concerns that they might not have the capacity to meet the original statutory timescales in relation to school admissions placing requests and exclusion appeals, and the consequent appeals processes. In light of these difficulties, amendments were made to the relevant regulations in April 2020, which extended key timescales to provide greater flexibility for education authorities and education appeal committees during the 2020 school admission round[4].

([1]) 1980 c.44. Sections 28A and 28D were inserted by section 1(1) of the Education (Scotland) Act 1981 (c.58). Sections 56A, 56B and 56D were inserted by section 3 of the Schools (Health and Nutrition) (Scotland) Act 2007 (asp 15).

([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).

([4]) These amendments were made in the Education (Miscellaneous Amendments) (Scotland) (Coronavirus) Regulations 2020 (S.S.I. 2020/128) and the Education (Deemed Decisions) (Scotland) (Coronavirus) Amendment Regulations 2020 (SSI 2020/149).

The measures introduced for the school admissions round of 2020 were not expressly time limited but were intended to be temporary. However, it was noted at the time that if there was to be a further coronavirus wave either prior to, or subsequent to, revocation of these changes, consideration would have to be given to retaining the changed timescales or introducing similar measures again, depending on the circumstances.

The recent restrictions across Scotland, in January 2021, have confirmed that the 2021 school admissions round will not take place in a normal environment and that the coronavirus pandemic will continue to cause disruption. Concerns have been raised by education authorities around their capacity for the 2021 school admissions round if we reverted back to the original statutory timescales. Therefore, the measures being introduced for the 2021 school admissions round, while reverting back to the original timescales for most procedural steps, have retained some flexibility in regard to certain timescales relating to decisions and hearings and also in relation to how those hearings are conducted.

Changes made by this instrument

This instrument continues the provision for remote hearings which was introduced by the 2020 amendments, providing increased flexibility so appeal committees may continue to hold hearings virtually, either by video or telephone conference or, if all parties agree, entirely in writing, where holding face-to-face appeal hearings is not possible due to social distancing requirements.

It also reduces the extended timescales permitted by the 2020 amendments. These timescales relate to an education authority's consideration of placing requests and any subsequent appeals heard by an education appeal committee, including those regarding children and young people with additional support needs. The timescales also apply to exclusion appeals. These changes are as follows:

- The deadline for responding to placing requests received by education authorities by the main deadline of 15 March has been shortened to 15 May. Under the original regulations education authorities had to respond to such requests by 30 April, and this was extended to 31 May in 2020. The 15 May deadline provides education authorities with a cushion period to absorb any potential issues and reduce the risk of deadlines being missed leading to requests becoming deemed refusals.

- The period of time education authorities have to consider placing requests received at any other time during the year, i.e. after 15 March, is reduced from 3 months back to the original 2 month period.

- An appeal committee must hold a hearing on a placing request or exclusion appeal within 2 months of receiving an appeal. Under the original regulations a hearing had to be held within 28 days and that was extended to 3 months by the 2020 amendments. Importantly, it is a requirement that a hearing should be held as soon as practicable within this timescale.

- The timescale for an appeal committee to notify appellants of the outcome of an appeal (including an exclusion appeal) has been reduced to 14 days, as per the original regulations, from the 28 days provided for by the 2020 amendments.

- The period of time after which an appeal committee is deemed to have upheld the refusal of the education authority on a placing request or exclusion appeal is reduced from 4 months to 3 months. Under the original regulations appeal committees had a 2 month window and this was extended to 4 months in 2020. The 3 month deadline for the 2021 school admissions round provides education authorities with a cushion period to absorb any potential issues.

- The period of time an appeal committee has to acknowledge a placing request or exclusion appeal has reverted back to 5 days, rather than the 28 days provided for by the 2020 amendments.

- In relation to placing request appeals for children with additional support needs, the requirement for an education authority to provide the appeal committee and parents with all information relevant to their decision has reverted back to a requirement to do so "immediately", rather than "as soon as reasonably practicable".

In a period where administrative resources and capacity are stretched, we have concluded, after careful consideration, that these additional time periods and consequent flexibility is required to ensure that education authorities and appeal committees will be able to complete the procedural elements of the process and make effective decisions. And in some cases we have been able to reduce the timescales from those applied in 2020 to mitigate the impacts upon children and parents during the 2021 school admissions round. Parents continue to have the right of appeal against a decision to refuse a placing request, or exclusion.

These measures are not time limited but are intended to be temporary and we have undertaken to review these regulations before the 2022 admissions round.

Consultation

The Scottish Government has engaged with local government bodies, including COSLA, ADES and SOLAR, as well as the Equality and Human Rights Commission, 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.

With regard to exclusion appeals, the consultation with COSLA, ADES and SOLAR did not raise any issues in relation to the timescales for holding an appeal and communicating a decision to parents.

Impact Assessments

An Equality Impact Assessment, an Island Communities Impact Assessment and a Children's Rights and Well-being Impact Assessment have been completed on the instrument and will be published. There are no data 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.

School food and drink amendments

Policy objectives

This instrument also makes amendments to the Nutritional Requirements for Food and Drink in Schools (Scotland) Regulations 2020 ("the 2020 Regulations"). The oily fish, pastry and pastry products and fried food standards set out in the 2020 Regulations are intended to apply separately to the secondary school day and the secondary school hostel evening meal rather than as a combined total. Amending the wording to make this intention clearer will help ensure that the standards are interpreted in a way that results in a young person being able to access an appropriate amount of nutrients and energy at each mealtime. As there are no school hostels maintained by education authorities serving primary school pupils in Scotland at this time, these amendments are only required for secondary school pupils.

For sugar free soft drinks permitted to be provided in secondary schools, a correction is required to the make it clear that only those products which contain no more than 150mg per 1000ml (1 litre) of caffeine will be permitted.

Impact Assessments and Financial Effects

The 2020 Regulations are due to come into force on 8 April 2021. A BRIA, CRWIA and EQIA were carried out prior to those Regulations being made. The amendments referred to above are consistent with the original policy intention and as such no further consideration of the impact assessments or BRIA is required for these amendments.

Scottish Government
Learning Directorate

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