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SCOTTISH STATUTORY INSTRUMENTS

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**2005 No. 501**

**EDUCATION**

**The Additional Support for Learning Dispute  
Resolution (Scotland) Regulations 2005**

*Made* - - - - - *6th October 2005*  
*Laid before the Scottish*  
*Parliament* - - - - - *7th October 2005*  
*Coming into force* - - - *14th November 2005*

The Scottish Ministers, in exercise of the powers conferred by sections 16 and 34 of the Education (Additional Support for Learning) (Scotland) Act 2004(1) and of all other powers enabling them in that behalf, hereby make the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Additional Support for Learning Dispute Resolution (Scotland) Regulations 2005 and shall come into force on 14th November 2005.

**Interpretation**

2.—(1) In these Regulations—

“the Act” means the Education (Additional Support for Learning) (Scotland) Act 2004;

“the 1980 Act” means the Education (Scotland) Act 1980(2);

“advice and information” includes advice or information within the meaning of sections 12 and 13 of the Act;

“application” means a request from any person mentioned in section 16(1)(a), (b) or (c) of the Act for a specified matter to be referred to an independent adjudicator for consideration;

“independent adjudicator” means a person appointed by the education authority under regulation 6 to consider an application under these Regulations;

“request” means a request within the meaning of section 28 of the Act;

“specified matter” means a decision or failure specified in the Schedule to these Regulations;

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(1) 2004 asp 4.  
(2) 1980 c. 44.

“supporting material” in relation to an application means any information provided under regulation 3(2) and in relation to the response of the education authority means any information provided under regulation 7;

“working day” means any day which is not—

- (a) a Saturday;
- (b) a Sunday;
- (c) a day from 27th December to 31st December inclusive;
- (d) a day in July; or
- (e) a day specified as a bank holiday in Scotland in or by virtue of the Banking and Financial Dealings Act 1971(3).

(2) Any reference in these Regulations to the doing of anything in writing shall be construed in accordance with section 29(5) of the Act, except where a parent or young person reasonably requires a particular form of communication, being a form which, by reason of its having some permanence, is capable of being used for subsequent reference (as, for example, an audio or video recording).

(3) Any reference in these Regulations to the receipt of anything which is posted, is to be presumed to be a reference to such a thing having been received (unless the contrary is proved)—

- (a) on the day after the day on which it was posted; or
- (b) if posted on a Friday, Saturday or Sunday, on the Monday next following.

#### **Application for referral to dispute resolution**

3.—(1) Where any person mentioned in section 16(1)(a), (b) or (c) of the Act submits an application in writing to the education authority in relation to any specified matter, the authority must, unless they consider regulation 4(3) applies, make the arrangements specified in regulation 4.

(2) An application must include—

- (a) the name and address of the applicant, and where that person is not the child or young person the subject of the application, the name and address of the child or young person who is the subject of the application;
- (b) the specified matter and a summary of the circumstances giving rise to the application;
- (c) a copy of any advice, information or request relevant to the subject matter of the application and, where applicable, a copy of any decision of the education authority which the applicant wishes to be taken into account by the education authority and the independent adjudicator in considering the application;
- (d) the grounds, by reference to the provisions of the Act relevant to the specified matter, on which the specified matter is to be considered by the independent adjudicator;
- (e) the views of the applicant of the means by which, or the manner in which, the specified matter could be resolved; and
- (f) where known to the applicant, any views expressed by the child or young person on the application.

#### **Preliminary arrangements**

4.—(1) Where the education authority consider an application submitted under regulation 3 relates to a specified matter and that all of the supporting material required under regulation 3(2) has been provided then, within the period of 10 working days of the receipt of such an application, the authority must send to the applicant confirmation of acceptance of the application.

(2) At the same time as sending such confirmation the education authority must send a request to the Scottish Ministers for a nomination by them of an individual to act as an independent adjudicator and include with such request a copy of the application and such of the supporting material as the authority consider appropriate to assist the Scottish Ministers in making their nomination.

(3) Where an authority consider an application submitted under regulation 3 does not relate to a specified matter or is not accompanied by all of the supporting material required under regulation 3(2), or is otherwise unreasonable then, within the period of 10 working days of the receipt of such an application, the authority must send to the applicant notice of their decision not to proceed with the application, and include within such notice their reasons for that decision.

(4) Where, following notice under paragraph (3), an applicant provides further information or supporting material relevant to the application and in consequence the authority decide to accept the application, then paragraph (1) applies as if the authority had received the application on the first working day after the day on which the further information or supporting material was received.

### **Panel of independent adjudicators**

5.—(1) For the purpose of assisting with the resolution of disputes between any education authority and any person mentioned in section 16(1)(a), (b) or (c) of the Act, the Scottish Ministers must appoint and maintain a panel of individuals having such knowledge and experience of children or young persons with additional support needs and the functions of education authorities under the Act as the Scottish Ministers think fit (who may include a member of the staff of the Scottish Administration) to act as independent adjudicators for the purpose of considering applications.

(2) On receiving a request from an authority the Scottish Ministers must nominate a person from that panel for appointment by the education authority to consider an application, which person must not be or have been a member or an officer of an education authority with an interest in the specified matter during the period of 5 years prior to being so appointed.

### **Appointment and payment of independent adjudicator**

6. The education authority must—

- (a) appoint the person nominated by the Scottish Ministers in accordance with regulation 5(2) as the independent adjudicator to consider the application; and
- (b) pay, on submission of a report with recommendations in accordance with regulation 9(2), such person for their consideration of the application such fee, expenses or charge as may from time to time be directed<sup>(4)</sup> by the Scottish Ministers and, if not so directed, such fee, expenses or charge as the authority considers appropriate.

### **Education authority's response**

7. Within the period of 10 working days beginning with the first working day after the sending of confirmation of acceptance of an application to the applicant in accordance with regulation 4, the education authority must provide the applicant, and where the authority consider it appropriate the child or young person the subject of the application, with a copy of—

- (a) a written summary of the authority's views on the circumstances giving rise to the application;
- (b) the authority's views on the application and supporting material submitted in accordance with these Regulations;

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(4) Section 27(9) of the Act empowers the Scottish Ministers to give education authorities directions (whether general or specific) as to the exercise of their functions under the Act.

- (c) any other relevant advice and information, request or decision not included with the application which the authority wishes taken into account by the applicant and the independent adjudicator in considering the application; and
- (d) the authority's views of the means by which, or the manner in which, the specified matter could be resolved.

### **Copying of application and response**

8. Within the period of 25 working days beginning with the first working day after the sending of confirmation of acceptance of an application to the applicant in accordance with regulation 4, the education authority must provide the independent adjudicator with a copy of—

- (a) the application and supporting material;
- (b) the authority's response made under regulation 7; and
- (c) such further observations on the application or the response as have been received by the applicant from the authority or by the authority from the applicant within the period of 10 working days beginning with the first working day after the day on which the authority sent the applicant a copy of their response under regulation 7.

### **Review by independent adjudicator**

9.—(1) The independent adjudicator in reviewing the education authority's discharge of their functions under the Act relative to the application must have regard to—

- (a) the application;
- (b) the education authority's response;
- (c) any further observations provided by the applicant or the authority within the time limit set out in regulation 8; and
- (d) where paragraph (2) applies, such further information or advice relevant to the application received within the time limit set by the adjudicator.

(2) Where necessary to carry out the review, the adjudicator may invite the applicant, authority or such other person, including any relevant appropriate agency within the meaning of the Act, to provide further observations, information or advice on any matter relating to the application within such time and in such manner, whether in writing, or exceptionally in person, as the adjudicator may specify in the invitation.

(3) Within the period of 15 working days beginning with the first working day following the receipt by the adjudicator of the application, the authority's response and any further observations provided in accordance with regulation 8, the independent adjudicator must complete the review under paragraph (1) and report in writing to the authority with recommendations as to how the specified matter should be resolved.

(4) At the same time as reporting to the authority under paragraph (3) the adjudicator must send to the applicant, and such other persons as the adjudicator considers appropriate, notice of the date of such report and the date by which, in accordance with regulation 10, the authority is required to give their decision.

(5) On becoming aware that the time limit in paragraph (3) cannot be complied with because it is impractical to do so, the adjudicator must—

- (a) establish a date by which the report will be made to the authority; and
- (b) inform the authority and the persons mentioned in paragraph (4) of the reason why that time limit cannot be complied with, and of the date established under sub-paragraph (a).

### **Outcome of review**

**10.**—(1) The education authority must, within the period of 10 working days beginning with the first working day following the receipt of report and recommendations, give notice of their decision under this regulation in writing to the applicant, and such other persons, including any relevant appropriate agency as the authority consider appropriate, and must set out—

- (a) the facts on which their decision is based;
- (b) the reasons for their decision;
- (c) where applicable, their reasons for not following, whether in whole or in part, the recommendations of the independent adjudicator; and
- (d) their view of the effect of their decision on the child or young person the subject of the application.

(2) At the same time as notifying the applicant of their decision the education authority must provide to the applicant, and such other persons as the authority consider appropriate, without charge, a copy of the independent adjudicator's report and recommendations.

(3) On becoming aware that the time limit in paragraph (1) cannot be complied with because it is impractical to do so, the education authority must—

- (a) establish a date by which notice of their decision will be given to the persons mentioned in that paragraph; and
- (b) inform those persons of the reason why the time limit in that paragraph cannot be complied with and of the date established under sub-paragraph (a).

(4) The date established under paragraph (3)(a) 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 from the day the authority sent the applicant confirmation of acceptance of the application under paragraph (1) or (4) of regulation 4.

### **Finality of review and costs**

**11.**—(1) Following a decision on the application under regulation 10, there shall be no further procedure under these Regulations in respect of the application considered by the independent adjudicator.

(2) Subject to regulation 6, the applicant and the education authority are responsible for meeting their own costs in connection with the application.

### **Repeat applications**

**12.** Where an application for a specified matter has been referred to an independent adjudicator, a further application in respect of the same specified matter is not competent during the period of 12 months beginning with the day on which the education authority sent notice of their decision on the last such application in accordance with regulation 4(3), or regulation 10.

St Andrew's House, Edinburgh  
6th October 2005

*ROBERT E BROWN*  
Authorised to sign by the Scottish Ministers

## SCHEDULE

Regulations 2 and 3

### Specified Matters

1. A decision of the education authority—
    - (a) that a child or young person has, or does not have, additional support needs,
    - (b) that a child or young person has additional support needs of a type that the applicant considers are not an accurate reflection of the child or young person's additional support needs,
    - (c) to refuse a request as referred to in section 6(2)(a) of the Act,
    - (d) to refuse an assessment request as referred to in section 8 of the Act, or
    - (e) as to the person, or to the means used, or to be used, to carry out the process of assessment or examination referred to in that section.
  2. A failure by the education authority—
    - (a) to provide, or make arrangements for the provision of, the additional support (whether relating to education or not) required by the child or young person, or
    - (b) to make a request of an appropriate agency as referred to in section 23 of the Act.
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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make provision under section 16 of the [Education \(Additional Support for Learning \(Scotland\) Act 2004 \(asp 4\)](#) for the resolution of certain disputes as specified in the Schedule to the Regulations between an education authority and a person belonging to the authority's area specified in subsection (1) of that section (a parent of a child or a young person or, where the young person lacks capacity, their parent).

Regulation 3 prescribes the requirements for an application to have a dispute between the authority and the applicant referred to an independent adjudicator.

Regulation 4 makes provision about the preliminary arrangements to be made by the authority on receipt of an application.

Regulation 5 provides for the establishment by the Scottish Ministers of a panel of individuals to act as independent adjudicators.

Regulation 6 requires the education authority to appoint the individuals nominated by the Scottish Ministers from the panel established under regulation 5 and to pay such fee, expenses or charge as may be directed by the Scottish Ministers or, where there is no such direction, as the authority considers appropriate.

Regulation 7 makes provision for the authority to provide the applicant with their response.

Regulation 8 makes provision for the authority to provide the adjudicator with copies of the papers within 25 working days of sending the applicant confirmation of acceptance in accordance with regulation 4.

Regulation 9 makes provision for the review by, and report with recommendations from, the adjudicator.

Regulation 10 makes provision for the authority's decision on the outcome of the review.

Regulation 11 makes provision for finality of the review and for the applicant and the authority to meet their own costs, subject to regulation 6.

Regulation 12 deals with repeat applications.