

Executive Note

The Education (Additional Support for Learning) (Scotland) Act 2004 (Transitional and Savings Provisions) Order 2005 SSI/2005/516

The above instrument was made in exercise of the powers conferred by section 32 and 34 (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

Provision is made in section 30 of the 2004 Act to address the transition from the current system to the new one introduced by the 2004 Act, in respect of children and young people who have a Record of Needs immediately prior to the commencement of the 2004 Act.

The policy objective is to enable unresolved appeals, relating to children or young people with Records of Needs, that have not been concluded at the commencement of the 2004 Act, to progress to the point of conclusion. In all cases, determinations will be taken to have been made immediately before the commencement of the Act.

The Order therefore provides that sections 60 to 65G of the Education (Scotland) Act 1980 (“the 1980 Act”), which deal with recorded children, shall continue to have effect for the purposes specified in the Order, and that the Education (Record of Needs) (Scotland) Regulations 1982 (“the 1982 Regulations”) will also continue to have effect for specified purposes.

The transitional provisions will apply where an appeal has been lodged, under section 63 of the 1980 Act, with the local authority’s appeal committee, prior to commencement of the 2004 Act. The Order also makes provision in respect of decisions made before commencement of the 2004 Act and for appeals lodged within specified periods in terms of section 63(5) of the 1980 Act.

Any court proceedings under the 1980 Act which are ongoing with respect to the current system at commencement will be allowed to conclude under the terms of the 1980 Act. This will include court proceedings with respect to any applications under section 65 or appeals which have been submitted to the court before commencement including those where a hearing has not yet been held.

Records of Needs are saved for reference purposes under the Order, with regulation 8 and 9 of the 1982 Regulations both continuing to apply to any Record opened prior to commencement.

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 or business.

Scottish Executive Education Department
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