

## **EXECUTIVE NOTE**

### **THE ADDITIONAL SUPPORT FOR LEARNING DISPUTE RESOLUTION (SCOTLAND) AMENDMENT REGULATIONS 2010**

**SSI/2010/144**

The above instrument was made in exercise of the powers conferred by section 16 of the Education (Additional Support for Learning) (Scotland) Act 2004 (“the 2004 Act”) and all other powers enabling them to do so. The instrument is subject to negative resolution procedure. It amends the Additional Support for Learning Dispute Resolution (Scotland) Regulations 2005 (S.S.I. 2005/501).

#### **Policy Objectives**

Section 16 of the 2004 Act enables the Scottish Ministers, by regulations, to require education authorities to put in place arrangements to resolve disputes between the authority and any parents or young people in the local authority area concerning the exercise by the authority of any of their functions under the 2004 Act. These arrangements must be free of charge. Regulations may prescribe which disputes relating to particular functions of the authority under the Act may be referred to dispute resolution. Parents and young persons will not be compelled to use any dispute resolution procedure put in place, nor will their entitlement to make a referral to a Tribunal be affected.

The Additional Support for Learning Dispute Resolution (Scotland) Regulations 2005 (“the 2005 Regulations”) set out the list of specified matters referred to in section 16 of the 2004 Act which are subject to dispute resolution procedures. The 2005 Regulations also detail the dispute resolution process and time limits.

#### **Sending Applications to Scottish Ministers**

These Regulations provide that written applications for dispute resolution must be sent to the Scottish Ministers. The Scottish Ministers must, within 5 working days of receipt of the referral, refer the application to the appropriate education authority for consideration under Regulation 4 of the 2005 Regulations which makes provision about the preliminary arrangements to be made by the authority on receipt of an application.

#### **Changes to Specified Matters Schedule**

The Specified Matters Schedule to the 2005 Regulations prescribes the disputes that can be referred to dispute resolution. These Regulations amend the Specified Matters Schedule to enable parents and young people to refer to dispute resolution an authority’s refusal of a request for a specific assessment or examination under section 8A of the 2004 Act, as amended, such as an educational, psychological or medical assessment, at any time. Parents and young persons will also be able to refer to dispute resolution the person, or the means, to be used to carry out such an assessment.

Broadly parents and young persons can ask the education authority to refer to dispute resolution a matter outwith the jurisdiction of the Additional Support Needs Tribunals for Scotland set up under section 17 of the 2004 Act. Therefore, the Regulations exclude disputes about delivering the additional support contained in a co-ordinated support plan or failure to plan for post school transitions from being referred to dispute resolution as such cases can now be referred to the Additional Support Needs Tribunals for Scotland under the 2004 Act, as amended.

### **Consultation**

A formal consultation process began on 5 October 2009 with the publication and distribution of 'The Education (Additional Support for Learning) (Scotland) Acts 2004 & 2009: Consultation on Changes to the Secondary Legislation and Supporting Children's Learning Code of Practice'.

Letters inviting on-line or written responses were issued to a wide range of stakeholders (4451 in all) including all local authority education and social work departments, health boards, all Scottish schools, colleges and universities, community councils and relevant voluntary organisations.

The consultation document set out the reasons for reviewing the current Additional Support for Learning Dispute Resolution (Scotland) Regulations 2005, outlined the proposed legislative changes and sought stakeholder's views on the proposed changes. Additionally, Children in Scotland, supported by the Scottish Government, hosted a series of five consultation and information events throughout Scotland during November and December 2009.

The consultation exercise ended on 8 January 2010 and 48 responses were received in relation to changes to the Additional Support for Learning Dispute Resolution (Scotland) Regulations 2005.

Furthermore, the proposals and consultation findings were discussed by the Additional Support for Learning Implementation Group which provides a reference group of expert professionals and stakeholders.

### **Financial Effects**

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

Support for Learning Division  
Learning Directorate