

EXECUTIVE NOTE

THE ADDITIONAL SUPPORT FOR LEARNING (CO-ORDINATED SUPPORT PLAN) (SCOTLAND) AMENDMENT REGULATIONS 2010 SSI/2010/149

The above instrument was made in exercise of the powers conferred by section 11(8) 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 (Co-ordinated Support Plan) (Scotland) Amendment Regulations 2005 (S.S.I. 2005/518) (“the 2005 regulations”).

Policy Objectives

Section 2 of the 2004 Act provides that children and young persons with additional support needs arising from enduring complex or multiple factors, for whom the education authority are responsible for providing school education, and who require significant additional support from local authorities beyond their education functions or from another appropriate agency such as a health board, will receive a co-ordinated support plan.

The co-ordinated support plan is a statutory strategic planning document which is subject to regular monitoring and review for those children and young people who meet the criteria.

Section 11(8) of the 2004 Act allows Ministers to make further provision in regulations about co-ordinated support plans, including timescales, transfer and review.

Time limit for response to request to establish whether a child or young person requires a plan

Regulation 3 of these regulations inserts a new regulation, regulation 4A, into the 2005 regulations. It provides that where a parent or a young person has requested that the education authority establish whether the child or young person requires a co-ordinated support plan, the authority will have 8 weeks to respond to the request. Failure to respond is treated as if it were a decision by the authority that no co-ordinated support plan is required in terms of section 18(5A) of the 2004 Act, as amended.

The only exception to this timescale is where an education authority has sought information from the school the child or young person attends within a week of the school closing for a continuous period of 4 weeks or more (regulation 7(1)(a) of the 2005 regulations). Where this exception occurs and an authority become aware that the 8 week timescale cannot be met, they must establish a date by which it must inform the parents of the child or the young person (unless the young person him/herself lacks capacity), of its decision whether or not to comply and inform the parent or young person of that date. The Regulations state that the new date should not exceed the original 8 weeks by longer than is necessary in the circumstances and must not exceed 16 weeks from the date of receipt of the request.

Time limit for early review of the plan

Regulation 4 of these regulations inserts a new regulation 5A into the 2005 regulations. Section 10(4) of the 2004 Act enables a parent or young person to request the education authority to review a co-ordinated support plan at an earlier interval than 12 months. The new regulation 5A(1) provides that where a parent or a young person has requested that the authority review a plan early, an authority will have 4 weeks starting from the date on which the authority receive the review request from the parent or young person to issue their proposal under section 11(2)(a) or their refusal to comply with the request under section 28(2). Failure by the authority to issue their proposal or decision will be treated as if it were a decision by the education authority to refuse a request for an early review and may be referred to the Tribunal under section 18(3)(d)(iv) of the 2004 Act.

The only exception to this timescale is where an education authority has sought information from the school the child or young person attends within a week of the school closing for a continuous period of 4 weeks or more. Where this exception occurs and an authority become aware that the 4 week timescale is unlikely to be met, they must establish a date by which it must issue its proposal or its decision that a plan is not required and inform the child's parents or the young person of that date. Regulation 5A(3) states that the new date should not exceed the original 4 weeks by longer than is necessary in the circumstances and must not exceed 12 weeks from the date of receipt of the request. Failure by the authority to meet the 12 week timescale will be treated as if it were a decision by the education authority to refuse a request for an early review and may be referred to the Tribunal under section 18(3)(d)(iv) of the 2004 Act.

Information flow arrangements

Regulation 5 of these regulations inserts a new regulation 6A into the 2005 regulations. It provides that if a parent or young person has an outstanding placing request or placing request appeal with a potential 'host' authority (an authority that is different to the authority in which the child or young person lives) and the 'home' authority (the authority in which the child or young person lives) is going to prepare or review a co-ordinated support plan, or have refused to consider a request to establish whether a co-ordinated support plan is required and that refusal has subsequently been referred to the Tribunal, the parent or young person should let the potential 'host' authority know what the home authority propose in relation to a co-ordinated support plan.

Where a potential 'host' authority has been notified of the co-ordinated support plan action, they should ensure that any placing request decision letter issued by them contains the correct route of appeal i.e. to the Tribunal or that any outstanding placing request appeal with the education appeal committee or sheriff is transferred to the Tribunal for consideration.

Additionally, when the home authority is going to prepare or review a co-ordinated support plan, or have refused to consider a request to establish whether a co-ordinated support plan is required and that refusal has subsequently been referred to the Tribunal, they should let the parent or young person know that if the parent or young person submits a subsequent placing request to a potential 'host' authority they should let the potential 'host' authority know about the co-ordinated support plan action taken by the 'home' authority.

Transfer and review of a plan following a successful placing request

Regulation 6 of these regulations inserts a new regulation 9A into the 2005 regulations. It states that when a child or young person with a co-ordinated support plan moves from a school under the management of an education authority (the “home authority”), or indeed from another place in which the authority was responsible for providing school education, to a school under the management of another authority as a result of a placing request, the education authority which prepared the co-ordinated support plan must transfer it to the new education authority. This transfer must take place within 4 weeks from either the date the child or young person first attended the new school or where the child or young person has already started at the new school, 4 weeks from the date the original education authority become aware of the fact.

As soon as the plan is received the new education authority must treat the plan as if they had prepared it and use it as the basis to provide for the child’s or young person’s additional support needs under the 2004 Act.

The Regulation provide that the new ‘host’ education authority are under a duty to review the plan as soon as possible but certainly no later than the time limits laid down in Regulations 5 and 7 i.e. 12 weeks or 20 weeks if a time limit exception applies.

The new authority are responsible for notifying as soon as reasonably practicable the parents, young person and any person named in the plan as providing additional support, of the transfer and for informing them that responsibility for the co-ordinated support plan and providing for the additional support needs of the child or young person rests with the new authority.

Destruction of the plan

Regulation 7 amends regulation 11 of the 2005 regulations. The effect of the amendments is that at the end of the 5 year retention period for which regulation 11 provides, the co-ordinated support plan should be destroyed. This Regulation removes the statutory duty on authorities to notify the child’s parent or the young person that this has happened and introduces a discretionary power to do so.

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 (Co-ordinated Support Plan) (Scotland) Amendment 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 (Co-ordinated Support Plan) (Scotland) Amendment 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

Any relevant financial effects were set out in the Financial Memorandum accompanying the Education (Additional Support for Learning) (Scotland) Bill (SP Bill 16A).

**Support for Learning Division
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