

2017 No. 353

EDUCATION

The Section 70 (Procedure) (Scotland) Regulations 2017

Made - - - - - *24th October 2017*

Laid before the Scottish Parliament *26th October 2017*

Coming into force - - - *10th January 2018*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 70(5) of the Education (Scotland) Act 1980(a) and all other powers enabling them to do so.

In accordance with paragraph 70(7) of that Act, the Scottish Ministers have consulted with such persons as they considered appropriate.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Section 70 (Procedure) (Scotland) Regulations 2017 and come into force on 10th January 2018.

(2) In these Regulations—

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

“relevant complaint” means a complaint which the Scottish Ministers consider involves the potential failure by an education authority, the managers of a school or educational establishment, or other persons to discharge a duty imposed on them by or for the purposes of the 1980 Act or of any other enactment relating to education;

“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(b).

Procedure

2.—(1) The procedure to be followed in relation to investigations and determinations under section 70 of the 1980 Act is as follows.

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- (a) 1980 c.44. Section 70 was relevantly amended by section 24 of the Education (Scotland) Act 2016 (asp 8), to insert subsections (3) to (7).
 - (b) 1971 c.80. Paragraph 2 of schedule 1 was relevantly amended by section 1 of the St Andrew’s Day Bank Holiday (Scotland) Act 2007 (asp 2).

(2) The Scottish Ministers must establish if a complaint received under section 70 is a relevant complaint within 15 working days beginning with the date of receipt of the complaint.

(3) If the Scottish Ministers establish that it is a relevant complaint, they must investigate the complaint and reach a determination as to whether to make an order under section 70(1) within 105 working days beginning with the date of receipt of the complaint.

(4) If the Scottish Ministers, otherwise than as a result of a complaint, establish that there may have been a failure to discharge a duty as referred to in section 70(1), they may investigate and if they investigate they must reach a determination as to whether to make an order under section 70(1) within 105 working days beginning with the date the Scottish Ministers decide that there may have been a failure.

JOHN SWINNEY

A member of the Scottish Government

St Andrew's House,
Edinburgh
24th October 2017

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations specify the procedure which applies to investigations and determinations carried out by the Scottish Ministers under section 70 of the Education (Scotland) Act 1980.

Regulation 1(2) provides definitions of “relevant complaint” and “working day”.

Regulation 2(2) to (4) sets time limits for investigations and determinations under section 70 as follows:

- the Scottish Ministers must decide whether a complaint is a relevant complaint within 15 working days beginning with the date of receipt of the complaint;
- the Scottish Ministers then have 105 working days to investigate section 70 matters brought to their attention by complaint or otherwise, and to determine whether to make an order under section 70(1).

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£4.25

S201710251012 10/2017 19585

<http://www.legislation.gov.uk/id/ssi/2017/353>

ISBN 978-0-11-103699-0



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