

## POLICY NOTE

### THE SECTION 70 (PROCEDURE) (SCOTLAND) REGULATIONS 2017

#### SSI 2017/353

The above instrument was made in exercise of the powers conferred by section 70(5) of the Education (Scotland) Act 1980. The instrument is subject to negative procedure.

#### Policy Objectives

These regulations are part of a package of instruments implementing, or making further provision associated with, the changes to the legal framework for Additional Support for Learning made by the Education (Scotland) Act 2016. This package of instruments is due to come into force on 10 January 2018.

The other instruments included in the package are:

- The Additional Support for Learning (Collection of Data) (Scotland) Regulations 2017
- The Additional Support for Learning Dispute Resolution (Scotland) Amendment Regulations 2017
- The Education (Scotland) Act 2016 (Commencement No. 4) Regulations 2017

Section 24 of The Education (Scotland) Act 2016 amended section 70 of the Education (Scotland) Act 1980 (the “1980 Act”) to give the Scottish Ministers a regulation making power, among other things. Section 24 of the 2016 Act was commenced for the purpose of consulting on and making regulations under section 70(5) and (6) on 1 January 2017<sup>1</sup>, and is being commenced for all other purposes on 10 January 2018 by The Education (Scotland) Act 2016 (Commencement No. 3) Regulations 2017<sup>2</sup>.

The Section 70 (Procedure) (Scotland) Regulations 2017 specify the timescale for the consideration of a section 70 complaint to Ministers, and are intended to reduce the time taken by all parties in completing a complaint whilst also maintaining robust consideration of complaints. The Regulations establish a maximum timescale within which complaints will be concluded. Wherever possible, complaints will be concluded well within this timescale, it is not intended that all complaints will reach the maximum timescale.

The Regulations provide that Scottish Ministers must establish if a complaint received under section 70(1) of the 1980 Act is a “relevant complaint” within 15 working days beginning with the date of receipt of the complaint. If it is established that it is a relevant complaint, Scottish Ministers must reach a determination as to whether to make an order under section 70(1) of the 1980 Act within 105 working days beginning with the date of receipt of the complaint.

#### Consultation

The development of these Regulations has been informed by The Advisory Group for Additional Support for Learning throughout .

---

<sup>1</sup> S.S.I. 2016/386, regulation 2 and the schedule.

<sup>2</sup> S.S.I. 2017/164, as amended by regulation 2 of the Education (Scotland) Act 2016 (Commencement No. 3) Amendment Regulations 2017 (S.S.I. 2017/352).

There was a public consultation on Section 70 (Procedure) (Scotland) Regulations 2017 for 12 weeks (19 June – 12 September 2017). The public consultation has confirmed that the section 70 Regulations are appropriate and consequently no amendments have been made to the Regulations. Public consultations were further carried out on children’s rights under the 2004 Act and on section 70, prior to introduction of the bill for the 2016 Act.

### **Impact Assessments**

These regulations are associated with the changes to the Education (Additional Support for Learning) (Scotland) Act 2004 which are made by the Education (Scotland) Act 2016 (the “2016 Act”).

Impact assessments were undertaken prior to the 2016 Act being passed. These impact assessments included a Business and Regulatory Impact Assessment (BRIA), Equality Impact Assessment (EQIA) and a Child Rights and Wellbeing Impact Assessment (CRWIA). The assessments did not highlight any negative impacts as a result of the provisions in the bill which relate to additional support needs.

Scoping exercises were undertaken for both privacy impact and environmental impact assessments with the results that neither assessment was required with regards to the then Education Bill.

### **Financial Effects**

It is expected that there may be additional costs on the Additional Support Needs Tribunals for Scotland<sup>3</sup> as a result of restricting the issues on which a section 70 complaint can be made. However, due to the very low number of complaints which are expected to be made as a result of these changes - it is expected that the costs will be negligible.

It is not expected that the amendments to section 70 of the 1980 Act will result in any additional costs to local authorities.

As a result of the changes by the Education (Scotland) Act 2016 there is a need to make these regulations and issue guidance<sup>4</sup>. There will be a cost for the Scottish Government in preparing and publishing the guidance and regulations, including preparation, consultation, analysis, review and printing costs.

Scottish Government  
Directorate for Learning

---

<sup>3</sup> The Additional Support Needs Tribunals for Scotland is expected to transfer into the Scottish Tribunals in January 2018.

<sup>4</sup> The guidance is currently being consulted on: <https://consult.scotland.gov.uk/supporting-learners/users-of-the-section-70-complaints-process/>