

2017 No. 356

EDUCATION

**The Additional Support for Learning Dispute Resolution
(Scotland) Amendment 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 16(1) of the Education (Additional Support for Learning) (Scotland) Act 2004^(a) and all other powers enabling them to do so.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Additional Support for Learning Dispute Resolution (Scotland) Amendment Regulations 2017 and come into force on 10th January 2018.

(2) In these Regulations, “the 2005 Regulations” means the Additional Support for Learning Dispute Resolution (Scotland) Regulations 2005^(b).

Amendment of the 2005 Regulations

2.—(1) The 2005 Regulations are amended in accordance with this regulation.

(2) Regulation 2 (interpretation) is amended as follows—

(a) in regulation 2(1), in the definition of “application”, after “section 16(1)(a),” insert “(aa),”;

(b) in regulation 2(2), after “parent”, insert “, child”.

(3) For regulation 3(1) (application for referral to dispute resolution), substitute—

“(1) Where any person mentioned in section 16(1)(a), (aa), (b) or (c) of the Act submits an application in writing to the Scottish Ministers in relation to any specified matter, the Scottish Ministers must, within 5 working days of receipt of the application, refer the application to the appropriate education authority and the education authority must consider the application further in accordance with these regulations.”.

^(a) 2004 asp 4. Section 16 was relevantly amended by paragraph 15 of the schedule of the Education (Scotland) Act 2016 (asp 8) which inserted paragraph (aa) into section 16(1).

^(b) S.S.I. 2005/501, amended by S.S.I. 2010/144.

(4) After regulation 3 (application for referral to dispute resolution), insert—

“3A. Assessment of capacity

(1) Where the applicant is a child who has attained the age of 12 years, the education authority must—

- (a) in accordance with section 3A of the Act, assess the child’s capacity as respects views or decisions relating to the purpose of resolving disputes; and
- (b) notify the applicant and the applicant’s parent of the outcome of that assessment (“the determination”) as soon as possible after it has been completed.

(2) Where the education authority is satisfied that the child has capacity, regulation 4 applies.”.

(5) For regulation 4 (preliminary arrangements), substitute—

“4. Preliminary arrangements

(1) Where the education authority consider an application submitted under regulation 3 relates to a specified matter and that all of the supporting material required under regulation 3(2) has been provided then the education authority must send to the applicant confirmation of acceptance of the application.

(2) At the same time as sending such confirmation the education authority must send a request to the Scottish Ministers for a nomination by them of an individual to act as an independent adjudicator and include with such request a copy of the application and such of the supporting material as the education authority consider appropriate to assist the Scottish Ministers in making their nomination.

(3) Where an education authority consider an application submitted under regulation 3 does not relate to a specified matter or is not accompanied by all of the supporting material required under regulation 3(2), or is otherwise unreasonable then the education authority must send to the applicant notice of their decision not to proceed with the application, and include within such notice their reasons for that decision.

(4) Where, following notice under paragraph (3), an applicant provides further information or supporting material relevant to the application and in consequence the education authority decide to accept the application, then paragraph (1) applies as if the education authority had received the application on the first working day after the day on which the further information or supporting material was received.

(5) Where the applicant is a child who has attained the age of 12 years, the education authority must send to the applicant—

- (a) confirmation of acceptance of the application under regulation 4(1), or
- (b) notice of their decision not to proceed with the application under regulation 4(3)

within the period of 10 working days of the determination under regulation 3A.

(6) In all other cases, the education authority must send to the applicant—

- (a) confirmation of acceptance of the application under regulation 4(1), or
- (b) notice of their decision not to proceed with the application under regulation 4(3)

within the period of 10 working days of the receipt of such an application.”.

(6) In regulation 5(1) (panel of independent adjudicators), after “section 16(1)(a),”, insert “(aa),”.

(7) After regulation 10(2) (outcome of review), insert—

“(2A) Where the applicant is a child, the education authority must, without charge, give a copy of the notice of their decision and of the independent adjudicator’s report and recommendations to the child’s parent at the time of giving notice to the child under paragraph (1).”

St Andrew’s House,
Edinburgh
24th October 2017

JOHN SWINNEY
A member of the Scottish Government

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Additional Support for Learning Dispute Resolution (Scotland) Regulations 2005 (“the 2005 Regulations”).

The Regulations are required following the amendment to section 16(1) of the Education (Additional Support for Learning) (Scotland) Act 2004 (asp 4) (“the 2004 Act”) by paragraph 15 of the schedule of the Education (Scotland) Act 2016 (asp 8) (“the 2016 Act”). A new paragraph (aa) was inserted into section 16(1) of the 2004 Act to allow the Scottish Ministers to make provision about the resolution of disputes (concerning the exercise by an education authority of any of their functions under the 2004 Act in relation to a child), between any education authority and any child who has attained the age of 12 years and who the education authority is satisfied has capacity to express a view or make a decision for the purposes of resolving such disputes.

Regulations 2(2) and 2(3) make minor amendments to regulations 2 (interpretation) and 3 (application for referral to dispute resolution) of the 2005 Regulations in consequence of section 16(1)(aa) of the 2004 Act.

Regulation 2(4) inserts a new regulation 3A (assessment of capacity) into the 2005 Regulations, which applies where a child who has attained the age of 12 years makes an application for dispute resolution under regulation 3. In such cases the education authority must make an assessment in accordance with section 3A of the 2004 Act as to whether the child has capacity as respects the resolution of such disputes. This includes consideration of whether involvement in the dispute resolution process would adversely affect the child’s wellbeing (see section 3A(3)(b) and section 3B of the 2004 Act). The education authority must notify the child and the child’s parent of the outcome of their assessment. Regulation 4 of the 2005 Regulations applies only if the education authority are satisfied that the child has capacity.

Regulation 2(5) amends regulation 4 of the 2005 Regulations (Preliminary arrangements) in relation to the timescales within which the education authority must send applicants for dispute resolution either confirmation of acceptance or notice of the education authority’s decision not to proceed. Where the applicant is a child, the education authority must inform the child within 10 working days beginning with the date of the determination made under regulation 3A. In any other case, they must do so within 10 working days from the receipt of the application.

Regulation 2(6) makes a minor amendment to regulation 5(1) of the 2005 Regulations (panel of independent adjudicators) in consequence of section 16(1)(aa) of the 2004 Act.

Regulation 2(7) inserts a new paragraph (2A) into regulation 10 (outcome of review). Under new regulation 10(2A), where the applicant is a child, the education authority must, at the time at which they give notice of their decision and provide the independent adjudicator’s report and recommendation to the child, also give a copy of those documents (without charge) to the child’s parent.

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