

POLICY NOTE

THE ADDITIONAL SUPPORT FOR LEARNING DISPUTE RESOLUTION (SCOTLAND) AMENDMENT REGULATIONS 2017

SSI 2017/356

The above instrument was made in exercise of the powers conferred by sections 16(1) of the Education (Additional Support for Learning) (Scotland) Act 2004. The instrument is subject to negative procedure.

Policy Objectives

The Education (Additional Support for Learning) (Scotland) Act 2004 (the “2004 Act”) provides the legal framework for identifying and addressing the additional support needs of children and young people who face a barrier, or barriers, to learning.

The 2004 Act aims to ensure that all children and young people are provided with the necessary support to help them work towards achieving their full potential. It also promotes collaborative working among all those supporting children and young people and sets out the rights of children, young people and parents within the system.

The 2004 Act has been amended by the Education (Scotland) Act 2016. These amendments include provisions that eligible children¹ will have largely the same rights as young people and parents under the Additional Support for Learning legislation, except in relation to placing requests and the use of mediation services. These amendments to the Act will commence in January 2018.

In preparation for this, there is a need to update associated Regulations and statutory guidance. These regulations are part of a package of instruments designed to do so, which also includes the following:

- The Additional Support for Learning (Collection of Data) (Scotland) Regulations 2017
- The Section 70 (Procedure) (Scotland) Regulations 2017
- The Education (Scotland) Act 2016 (Commencement No. 4) Regulations 2017

The instruments in this package of regulations are mainly technical in nature and function to give effect to the extension of eligible children’s rights in the context of dispute resolution, rather than to introduce new policy.

These Regulations amend the Additional Support for Learning Dispute Resolution (Scotland) Regulations 2005 (“the 2005 Regulations”) to enable any eligible child to make a request for independent adjudication in relation to any matter specified in the schedule of the 2005

¹ The term “eligible child” is used in the Code of Practice* issued under the 2004 Act to refer to a child in school education who has attained the age of 12 but not 16 and who has been assessed as having capacity (sufficient maturity and understanding) to exercise their rights under the 2004 Act (as amended), and that the Education Authority (or Tribunal) considers the wellbeing of the child would not be adversely affected by the child exercising their rights.

*The third edition of the Supporting Children’s Learning Code of Practice is expected to be published by the end of 2017 and reflects the changes on the 2004 Act by the 2016 Act.

Regulations and to require those acting as independent adjudicators to consider such complaints from these children.

Consultation

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

There was a public consultation on The Additional Support for Learning Dispute Resolution (Scotland) Amendment Regulations 2017 for 12 weeks (19 June – 12 September 2017). The public consultation has confirmed that these Regulations are appropriate and consequently no amendments, as a result of the consultation, have been made to the Regulations.

Technical amendments have been made to the draft Regulations to ensure that all parts of regulations 7 and 10 of the 2005 Regulations will operate as intended. In addition, drafting improvements were made to clarify the provisions relating to the assessment of children's capacity and wellbeing by education authorities.

Public consultations were further carried out on children's rights under the 2004 Act 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

As a result of the changes made by the Education (Scotland) Act 2016 there is a need to amend the principal regulations and statutory guidance. 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. This includes the below:

The statutory Code of Practice to the 2004 Act, the Supporting Children's Learning Code of Practice has been updated and has been publically consulted on for 12 weeks. This guidance is being laid in the Scottish Parliament alongside the regulations associated with the changes to the 2004 Act. This guidance is expected to be published by the end of 2017. This consultation² also consulted on the:

2 Links to consultations:

<https://consult.scotland.gov.uk/supporting-learners/code-of-practice/> - Consultation on the Statutory Guidance, the Supporting Children's Learning Code of Practice

- The Additional Support for Learning Dispute Resolution (Scotland) Amendment Regulations 2017
- The Additional Support for Learning (Collection of Data) (Scotland) Regulations 2017
- The Section 70 (Procedure) (Scotland) Regulations 2017

Non-Statutory guidance for education authorities and schools on the new rights of eligible children and advice on assessing capacity of children, aged 12 to 15 to exercise their rights in respect of additional support for learning in school education, is being consulted on. This is also being consulted on for 12 weeks, the consultation ends on 17 November 2017 and the guidance will be published before the changes to the 2004 Act come into force.

Eligible children may access the children's support service which is being provided to assist children in accessing their rights under the 2004 Act, and some additional cost may arise from that. However, it should be noted that a broadly comparable extension of children's rights in respect of appeals to the Special Educational Needs Tribunal for Wales in 2009, saw a pilot of the new rights undertaken during 2012- 2013, showing that it did not result in significant additional costs.

With regards to extending rights to children under additional support for learning legislation there is no anticipated additional cost on other bodies.

Scottish Government
Directorate for Learning