

1982 No. 1733 (S. 185)

EDUCATION, SCOTLAND

**The Education (Placing in Schools Etc—Deemed Decisions)
(Scotland) Regulations 1982**

<i>Made - - - -</i>	26th November 1982
<i>Laid before Parliament</i>	9th December 1982
<i>Coming into Operation</i>	1st January 1983

In exercise of the powers conferred on me by sections 28A(5), 28A(6), 28D(3)(b), 28H(5) and 63(6)(b) of the Education (Scotland) Act 1980(a) and of all other powers enabling me in that behalf, I hereby make the following regulations:—

Citation and commencement

1. These regulations may be cited as the Education (Placing in Schools Etc—Deemed Decisions) (Scotland) Regulations 1982 and shall come into operation on 1st January 1983.

Interpretation

2.—(1) In these regulations, unless the context otherwise requires—

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

“the Act of 1981” means the Education (Scotland) Act 1981(b) ;

“appeal committee” means an appeal committee set up and maintained under section 28D(1)(a) of the Act (c) ;

“school year” means a period of 12 months commencing on 1st August of any year.

(2) Any reference in these regulations to a young person in relation to any requirement for intimation or notification to him shall, in the case of a young person in respect of whom an education authority have been satisfied that he is not capable of expressing his views for the purposes of section 61(7) of the Act(d) , be construed as a reference to his parent.

(3) In these regulations, any reference to a regulation is a reference to a regulation of these regulations and any reference in a regulation to a paragraph is a reference to a paragraph of that regulation.

(a) 1980 c.44; sections 28A(5), 28D(3)(b) and 28H(5) are inserted by section 1 of the Education (Scotland) Act 1981 (c.58); sections 28A(5) and 28D(3)(b) are applied by section 28G of the Act of 1980 as inserted by section 1 of the Act of 1981; section 28D(3)(b) is applied by Schedule A2 paragraphs 1 and 4 of the Act of 1980 (Schedule A2 thereof being inserted by section 4(3) of and Schedule 3 to the Act of 1981); section 28A(6) is substituted by paragraph 3 of Schedule A2 to the Act of 1980 and applied by paragraph 4 of the Schedule; and section 63(6)(b) is inserted by section 4(1) of the Act of 1981.

(b) 1981 c.58.

(c) Section 28D(1)(a) of the Act of 1980 was inserted by section 1(1) of the Act of 1981.

(d) Section 61(7) of the Act of 1980 was inserted by section 4(1) of the Act of 1981.

Revocation of regulations

3. The Education (Placing in Schools—Deemed Decisions) (Scotland) Regulations 1981 (a) are hereby revoked.

Deemed decision of an education authority

4.—(1) Subject to the provisions of paragraphs (2) and (5), an education authority shall be deemed to have refused a placing request made in accordance with the provisions of section 28A(1) of the Act (b) or in accordance with those provisions as applied by section 28G of the Act (b)—

- (a) in the case of such placing request received by them on or before 15th March in any year with respect to a child or as the case may be young person being placed in the school specified in the placing request at the commencement of the first term of the school year next following the date of making of the request, on 30th April of the first mentioned year;
- (b) in the case of any other such placing request, on the expiry of the period of 2 months, immediately following receipt by the authority of the placing request;

in the event mentioned in subsection (5) of section 28A of the Act or as the case may be that subsection as applied by section 28G of the Act namely if the authority have not before that date of 30th April or as the case may be within that period of 2 months, informed the parent or as the case may be young person making the placing request, in writing, of their decision on it in accordance with section 28A(4) of the Act or as the case may be that provision as applied by section 28G of the Act.

(2) Subject to the provisions of paragraph (5), an education authority shall be deemed to have refused such a placing request made in respect of a child or as the case may be young person who at that time is undergoing a process of assessment for the purpose mentioned in section 61 of the Act (c), or who, before a decision thereon is made, undergoes such a process if—

- (a) in relation to such a request, made with respect to a child or young person whom in the event they decide to record under section 60(2) of the Act (c), they have not informed the parent or as the case may be young person making the placing request, in writing of their decision on it either before or at the same time as they notify under section 62(2) of the Act (c) their decision as to the terms in which they have recorded the child or young person and shall be so deemed on the date of such notification;
- (b) in relation to such a request made with respect to such a child or young person whom in the event they decide not to record, they have not informed the parent or as the case may be the young person making the placing request, in writing of their decision on it before the expiry of the period of 1 month immediately following intimation made under section 62(2) of the Act of their decision not to record the child or young person and shall be so deemed on the expiry of that period.

(a) S.I. 1981/1561.

(b) Sections 28A and 28G of the Act of 1980 were inserted by section 1(1) of the Act of 1981.

(c) Sections 61, 60(2) and 62(2) of the Act of 1980 were inserted by section 4(1) of the Act of 1981.

(3) Subject to the provisions of paragraphs (4) and (5), an education authority shall be deemed to have refused a placing request made in accordance with section 28A(1) of the Act as substituted by Schedule A2 to the Act (a) or that section as applied by paragraph 4 of that Schedule in respect of a recorded child or a recorded young person, if they have not informed the parent or as the case may be the young person making the placing request of their decision thereon in writing before the expiry of the period of 2 months immediately following receipt by them of the placing request and shall be so deemed on the expiry of that period.

(4) Subject to the provisions of paragraph (5), an education authority shall be deemed to have refused such a placing request as is mentioned in paragraph (3) made in respect of a recorded child or a recorded young person, in any case where the recording of that child or young person is, at the time of the request being made or before a decision thereon is intimated, the subject of a review under section 65A of the Act (b), if

- (a) where in the event the decision in relation to the review is a decision to continue to record the child or young person, they have not informed the parent or as the case may be the young person making the request of their decision thereon before or at the same time as they notify him of their decision on the terms of the Record as required in terms of section 62(2) of the Act as modified by any regulations for the time being in force made under section 65A(3) of the Act and shall be so deemed on the date of notification of those terms; and
- (b) where in the event the decision in relation to the review is a decision not to continue to record the child or young person, they have not informed the parent or as the case may be the young person making the request of their decision thereon within 1 month immediately following upon the date of intimation of that decision in terms of section 62(2) of the Act as so modified and shall be so deemed on the expiry of that month.

(5) This regulation does not apply in relation to a placing request made in respect of a child ascertained as requiring special education in accordance with section 60 of the Act as originally enacted.

Deemed decision of an appeal committee

5.—(1) Subject to paragraph (2), where with respect to any reference, being a reference made under section 28C, that section as applied by section 28G of the Act, section 63(1) (c) or (d) or (2)(b) or (c) of the Act (c) or section 28H of the Act (d), an appeal committee have—

- (a) failed to hold a hearing within the period of one month, in the case of a reference made under section 28H of the Act, and 2 months, in the case of any other reference mentioned above, immediately following receipt by them of the reference; or
- (b) failed within the period of 14 days immediately following an adjournment of a hearing, to fix a date for a resumed hearing of the reference; or

(a) Schedule A2 to the Act of 1980 was inserted by section 4(3) of and Schedule 3 to the Act of 1981.

(b) Section 65A of the Act of 1980 was inserted by section 4(1) of the Act of 1981.

(c) Section 63 of the Act of 1980 was inserted by section 4(1) of the Act of 1981.

(d) Section 28H of the Act of 1980 was inserted by section 1(1) of the Act of 1981.

- (c) failed to comply with such of the following provisions of the Act as are relevant to the reference in question, namely subsection (3) of section 28E, that subsection as applied by section 28G, section 64(10) or as the case may be section 28H(3), within the period of 14 days immediately following the conclusion of the hearing or, as the case may be, resumed hearing of that reference;

the committee shall be deemed for the purposes of the Act to have confirmed the decision of the education authority in relation to the subject matter of the reference, on the expiry of such period of 1 month, 2 months or, as the case may be, 14 days.

(2) Where with respect to any reference to which this paragraph applies, an appeal committee have—

- (a) failed to hold a hearing within the period of 60 days immediately following receipt of the reference (such period being computed in accordance with paragraph (4)); or
- (b) failed to fix a date for a hearing or, as the case may be, a resumed hearing within a period of 7 days immediately following receipt by the committee of notification under section 64(8) of the Act (a) of the decision of the Secretary of State on any reference or part of a reference or question referred to him under section 64(1) of the Act relating also to the child or young person to whom the reference in question (to which this paragraph applies) relates; or
- (c) failed to fix a date for a resumed hearing following any adjournment of a hearing held at any time after receipt of such notification as is mentioned in subparagraph (b) above, within the period of 14 days immediately following that adjournment; or
- (d) failed to comply with section 64(10) of the Act in relation to the reference in question within the period of 14 days of the conclusion of the hearing or, as the case may be, resumed hearing of that reference;

the committee shall be deemed for the purposes of the Act to have confirmed the decision of the education authority in relation to the subject matter of the reference on the expiry of the period of 60 days, 7 days or as the case may be 14 days as mentioned respectively in subparagraphs (a) to (d) of this paragraph.

(3) Paragraph (2) applies to—

- (a) a reference to an appeal committee under section 63(1)(c) or (d) or (2)(b) or (c) of the Act concerning a child or young person in relation to whom—
- (i) a reference has been made under section 63(1)(a) or (b) or (2)(a) of the Act which has in turn been referred by the appeal committee to the Secretary of State under section 64(1)(a) of the Act; or
- (ii) the appeal committee have referred to the Secretary of State the question or the matters mentioned in section 64(1)(b) of the Act

and the decision of the Secretary of State as respects such reference or as the case may be such question or such matters referred to him has not been notified to the appeal committee, in accordance with section 64(8) of the Act, prior to the reference in question under section 63(1) (c) or (d) or (2)(b) or (c) of the Act being made to the appeal committee; and

(a) Section 64 of the Act of 1980 was inserted by section 4(1) of the Act of 1981.

(b) a reference to an appeal committee under section 63(1)(c) or (2)(b) of the Act where the committee have in relation to that reference referred under subsection (1) of section 64 of the Act to the Secretary of State the question or the matters mentioned in that subsection.

(4) The period of 60 days referred to in paragraph (2)(a) shall be computed so as to commence on the day after receipt by the appeal committee of the reference in question and to end on the expiry of the 60th day thereafter, disregarding any days during which the decision of the Secretary of State in relation to any reference made by the appeal committee under section 64(1) relating to the child or young person to whom the reference in question relates, has not been notified to the appeal committee under section 64(8) of the Act.

George Younger,
One of Her Majesty's Principal
Secretaries of State.

New St Andrew's House,
Edinburgh.
26th November 1982.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These regulations revoke the Education (Placing in Schools—Deemed Decisions) (Scotland) Regulations 1981 which related to placing requests made under section 28A(1) of the Education (Scotland) Act 1980. The revoked regulations are replaced by these regulations which make provision in relation to those placing requests and also to other placing requests and references to an appeal committee provided for by that Act. These regulations make provision for deeming decisions to have been taken by education authorities or as the case may be appeal committees where those bodies have not reached a decision in relation to a placing request or as the case may be a reference by the dates or within the periods prescribed in these regulations. A decision so deemed puts the person making the placing request or as the case may be a reference in a position to proceed to the next step in the appeal procedure.

Regulation 3 revokes the regulations of 1981.

Regulation 4 prescribes dates by which or the period on the expiry of which an education authority will be deemed to have made a decision refusing a placing request in respect of a child, young person, recorded child or recorded young person.

Regulation 5 makes comparable provision with respect to references made by a parent or young person to an appeal committee of an education authority's decision in relation to a placing request or exclusion from school. The provisions of paragraph (1) in so far as they relate to references as respects recorded children or young persons cover cases where there is no question of related references to the Secretary of State under section 64(1) of the Act in the background of the reference under appeal while the provisions of paragraph (2) cover such cases where there is such a related reference to the Secretary of State.

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