
STATUTORY INSTRUMENTS

1982 No. 1734 (S. 187)

EDUCATION, SCOTLAND

**The Education (Modification of Enactments) (Scotland)
Regulations 1982**

Made - - - - - 26th November 1982

Laid before Parliament 9th December 1982

Coming into Operation 1st January 1983

In exercise of the powers conferred on me by sections 65A(3) and 65B(3) of the Education (Scotland) Act 1980(a) and section 21(2) of, and paragraph 4(c) of Schedule 8 to, the Education (Scotland) Act 1981(b) and of all other powers enabling me in that behalf, I hereby make the following regulations:—

GENERAL

Citation and commencement

1. These regulations may be cited as the Education (Modification of Enactments) (Scotland) Regulations 1982 and shall come into operation on 1st January 1983.

Interpretation

2. In these regulations, unless the context otherwise requires:—

- (a) “the Act” means the Education (Scotland) Act 1980; and
- (b) any reference to a Regulation or Schedule is a reference to a Regulation of or a Schedule to these regulations and any reference in a Regulation or Schedule to a paragraph is a reference to a paragraph of that Regulation or Schedule as the case may be.

MODIFICATION OF SECTIONS OF THE ACT IN THEIR
APPLICATION TO A REVIEW UNDER SECTION 65A(1)
OF THE ACT

Modification of section 61

3. The modifications subject to which section 61 of the Act(c) shall apply in accordance with section 65A(3) of the Act to a review under section 65A(1) of the Act shall be the modifications specified in Schedule 1.

Modification of section 62

4. The modifications subject to which section 62 of the Act(c) shall apply in accordance with section 65A(3) of the Act to a review under section 65A(1) of the Act shall be the modifications specified in Schedule 2.

(a) 1980 c. 44; sections 65A and 65B are inserted by section 4(1) of the Education (Scotland) Act 1981 (c. 58).

(b) 1981 c. 58.

(c) As substituted by section 4 of the Education (Scotland) Act 1981.

MODIFICATION OF SECTIONS OF THE ACT IN THEIR
APPLICATION TO A PROCESS OF CONSIDERATION
UNDER SECTION 65B OF THE ACT

Modification of section 61

5. The modifications subject to which section 61 of the Act(a) shall apply in accordance with section 65B(3) of the Act to a process of consideration under section 65B of the Act shall be the modifications specified in Schedule 3.

Modification of section 62

6. The modifications subject to which section 62 of the Act(a) shall apply in accordance with section 65B(3) of the Act to a process of consideration under section 65B of the Act shall be the modifications specified in Schedule 4.

MODIFICATION OF SECTIONS OF THE ACT AS ORIGINALLY
ENACTED IN THEIR APPLICATION DURING THE TRANSITIONAL
PERIOD OF 3 YEARS COMMENCING 1ST JANUARY 1983

Modification of section 63 of the Act as originally enacted

7. The modifications subject to which section 63 of the Act as originally enacted shall have effect in accordance with section 21 of, and paragraph 4 of Schedule 8 to, the Education (Scotland) Act 1981 during the period of 3 years beginning with 1st January 1983 (being the date of coming into force of section 4 of that Act(b)) shall be the modifications specified in Schedule 5.

Modification of section 64 of the Act as originally enacted

8. The modifications subject to which section 64 of the Act as originally enacted shall have effect in accordance with section 21 of, and paragraph 4 of Schedule 8 to, the Education (Scotland) Act 1981 during the period of 3 years beginning with 1st January 1983 (being the date of coming into force of section 4 of that Act(b)) shall be the modifications specified in Schedule 6.

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

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

SCHEDULE 1

Regulation 3

The modifications of section 61 of the Act in its application to a review under section 65A(1) of the Act are specified as follows:—

1. For subsection (1) there shall be substituted the following subsections:—

“(1) It shall not be lawful for an education authority to complete a review under section 65A(1) of this Act, of their decision to record a child or a young person or the information entered in his Record unless the provisions of subsections (1A) to (1E) of this section shall have been complied with in relation thereto.

(a) As substituted by section 4 of the Education (Scotland) Act 1981.

(b) S.I. 1982/951.

(1A) Subject to subsection (9), an education authority shall give previous written notification in accordance with the provisions of subsection (1B) of the commencement of the review to the parent of the child or to the young person to whom the review relates.

(1B) Such notification shall state the proposals of the education authority with respect to what extent if any of a process of assessment of the child or young person is in their opinion required for the purposes of the review and shall request the parent or young person to state his views on those proposals, including his views with regard to any additional extent of such process as in his opinion is required for that purpose, and the special educational needs of the child or young person and the measures required to meet those needs within 21 days of the date of the notification or such longer period as may be specified in the notification.

(1C) For the purpose of formulating the proposals mentioned in subsection (1B), an education authority shall take into account any component parts of a process of assessment undergone by or completed in respect of the child or young person within the period of 6 months immediately preceding the notification referred to in subsection (1B).

(1D) An education authority shall take account of any views stated by a parent or young person under subsection (1B) and where a parent or young person in effect states a view that arrangements should be made for additional component parts of a process of assessment to be undergone or completed for the purpose of the review, the authority shall comply with such view unless such additional component parts have been undergone by or completed in respect of the child or young person within the period of 6 months referred to in subsection (1C) and thereafter an education authority shall require the child or young person to undergo a process of assessment of such extent as shall have been mentioned in their proposals mentioned in subsection (1B) as adjusted in pursuance of this subsection.

(1E) Before a child undergoes any medical examination or psychological examination for the purposes of the review consequent upon such notification, the education authority shall, subject to subsection (3) below:—

(a) by notice in writing invite the parent of that child to submit him for such examination; and

(b) in the case of a child of school age, if the parent fails without reasonable excuse to so submit the child, by notice in writing served upon the parent require him to submit the child for such examination.”.

2. In subsection (2), for the words “subsection (1) above or subsection (6) below” there shall be inserted the words “subsection (1E) above”.

3. In subsection (3):—

(a) for the words “subsection (1)” there shall be substituted the words “subsection (1E)”;

(b) in paragraph (a) of that subsection for the words “whether or not they ought to record the child” there shall be substituted the words “whether or not they ought to continue to record the child or to modify the information entered in his Record”; and

(c) paragraphs (d) and (e) of the subsection shall not apply.

4. In subsection (4), for the words “subsection (1)” there shall be substituted the words “subsection (1E)”.

5. Subsection (5) shall not have effect.

6. Subsection (6) shall not have effect.

7. Subsection (7) shall not have effect.

8. After subsection (7) there shall be inserted the following subsections:—

“(8) In this section and in section 62 of this Act as modified by virtue of regulations for the time being in force made under section 65A(3) or 65B(3) of this Act (as substituted by section 4 of the Education (Scotland) Act 1981) any reference to a process of assessment in relation to a child or a young person is a reference to a process of assessment the component parts of which include a medical examination, a psychological examination and a report of a teacher as mentioned in subsection (1) of this section as substituted by section 4 of the Education (Scotland) Act 1981.

(9) In this section and in section 62 of this Act as modified by virtue of regulations as mentioned in subsection (8) above, any reference to a notification or notice to or views of a young person shall, in relation to a young person who an education authority are satisfied is not capable of expressing his views for the purposes of this section as substituted by section 4 of the Education (Scotland) Act 1981, be construed as a reference to a notification or notice to or views of his parent.”.

SCHEDULE 2

Regulation 4

The modifications of section 62 of the Act in its application to a review under section 65A(1) of the Act are specified as follows:—

1. In subsection (1), for the words:—

(a) “In deciding whether or not to record a child or young person” there shall be substituted the words “In deciding whether or not to continue to record a child or young person or to modify the information entered in his Record”;

(b) “section 61(1) or (6)” there shall be substituted the words “subsections (1) to (1E) of section 61”;

(c) “section 61(7)” there shall be substituted the words “subsections (1) to (1D) of section 61”.

2. At the end of subsection (1) there shall be inserted the following subsection:—

“(1A) Notwithstanding the provisions of subsections (1B), (1C) and (1D) of section 61 of this Act as modified by regulations for the time being in force made under section 65A(3) of this Act it shall not be lawful for an education authority following upon a review of their decision to record a child, to decide not to continue to record him unless he shall have undergone a process of assessment and that wholly within the period of the review or the period of 6 months immediately preceding notification of the review made in accordance with section 61 of this Act as so modified.”.

3. For subsection (2) there shall be substituted the following subsection:—

“(2) Following upon the completion of review:—

(a) the decision of an education authority whether or not to continue to record a child or young person and the reasons therefor;

(b) the modifications if any proposed to be made on the information entered in the Record of the child or young person where the decision of the authority is a decision to continue to record him and the reasons for such modifications so proposed; and

- (c) the proposed terms of the Record modified to give effect to such proposed modifications

shall be intimated forthwith by notice in writing to the parent of the child or as the case may be to the young person and the education authority shall have regard to any views expressed upon those proposed terms by the parent or the young person within 14 days of the date of the notice and shall thereafter notify him of

- (a) their decision as to the terms of the Record;
- (b) the right of appeal under section 63 of the Act; and
- (c) the name and address of the person to whom application may be made for advice and information about the child's or young person's special educational needs.”.

SCHEDULE 3

Regulation 5

The modifications of section 61 of the Act in its application to a process of consideration under section 65B of the Act are specified as follows:—

1. For subsections (1) to (3) there shall be substituted the following subsection:—

“(1) It shall not be lawful for an education authority to make a report under section 65B(1) of this Act in respect of a recorded child unless they shall have:—

- (a) required the child to undergo a process of assessment of such extent as they may think fit, or of such extent as the parent of the child may otherwise require in the event of him making representations to the authority as to the content of the process; and
- (b) given notice to the parent of the child stating:—
 - (i) that the purpose of any such process of assessment is that of affording them advice and information to enable them to consider what provision would benefit the child after he ceases to be of school age;
 - (ii) that if in the course of undergoing such a process the child is to be submitted for medical examination, the parent shall be entitled to be present at that examination;
 - (iii) that the parent and the child himself, if he so wishes, should express in writing to the authority within 21 days from the date of the notice or such longer period as may be specified therein, their views with respect to the matters, if any, which they consider the authority should take into account in the process of consideration under section 65B(1) of this Act.”.

2. Subsections (4) to (7) shall not have effect.

SCHEDULE 4

Regulation 6

The modifications of section 62 of the Act in its application to a process of consideration under section 65B of the Act are specified as follows:—

1. In subsection (1):—

- (a) for the words “In deciding” to the word “person” (where it first occurs) there shall be substituted the words:—

“In making a report under section 65B of this Act in respect of a recorded child”;

- (b) in paragraph (a) the words “in the case of a child” and “or (6)” shall not have effect;

- (c) paragraph (b) shall not have effect;

(d) in paragraph (c), for the words “or by the young person” to the words “his parent”, there shall be substituted the words “or by the child himself”;

(e) in paragraph (e) for the words “educational needs” there shall be substituted the words “future needs”.

2. Subsections (2) and (3) shall not have effect.

SCHEDULE 5

Regulation 7

The modifications subject to which section 63 of the Act as originally enacted shall have effect in accordance with section 21 of, and paragraph 4 of Schedule 8 to, the Education (Scotland) Act 1981 during the period of 3 years beginning with 1st January 1983 (being the date when section 4 of that Act comes into force) are specified as follows:—

1. For subsection (1), other than the proviso, there shall be substituted the following subsection:—

“(1) Notwithstanding the provisions of section 21(2) of, and paragraph 4 of Schedule 8 to, the Education (Scotland) Act 1981, it shall be the duty of an education authority to keep generally under consideration the cases of all children in their area who, prior to 1st January 1983, the authority have decided require special education and

(a) when in the discharge of that duty in relation to such a child the authority think it expedient, the authority shall review their decision that the said child requires special education; and

(b) subject to the proviso to this subsection, if the authority are at any time requested to review their decision by notice in writing given to them by the parent of a child, the authority shall either

(i) comply with that notice as if it were a request, which in their opinion is reasonable, under section 61(6) of this Act as substituted by section 4 of the Education (Scotland) Act 1981; or

(ii) review the decision in accordance with the provisions of this section.”.

2. After the proviso to subsection (1), there shall be inserted the following subsection:—

“(1A) Where an education authority decide to comply with a notice as mentioned in subsection (1)(b)(i) above they shall forthwith notify the parent in writing of their decision.”.

3. In subsection (3), for the words “purposes of this section” there shall be substituted the words:—

“purposes of this section, other than subsection (1)(b)(i)”.

SCHEDULE 6

Regulation 8

The modifications subject to which section 64 of the Act as originally enacted shall have effect in accordance with section 21 of, and paragraph 4 of Schedule 8 to, the Education (Scotland) Act 1981 during the period of 3 years beginning with 1st January 1983 (being the date of coming into force of section 4 of that Act) are specified as follows:—

1. In subsection (1), paragraph (a) shall not have effect.

2. In subsection (2), at the end there shall be inserted the following words:—
“or shall require the education authority to decide whether or not to record him in accordance with the provisions of sections 60 to 62 of this Act as substituted by section 4 of the Education (Scotland) Act 1981.”.
3. In subsection (3), after the word “child” (where it first occurs) there shall be inserted the following words:—
“and has not required the authority as mentioned in that subsection”.
4. After subsection (3) there shall be inserted the following subsection:—
“(4) Where under subsection (2) above the Secretary of State requires an education authority as mentioned in that subsection as respects a child, he shall be deemed to have confirmed the determination of the authority under section 63 of this Act not to revoke the decision made by them that the child requires special education and that decision shall remain in force until such time as the education authority shall have notified their decision under section 62(2) of this Act as substituted by section 4 of the Education (Scotland) Act 1981.”.

EXPLANATORY NOTE

(This Note is not part of the regulations.)

These regulations modify provisions of sections 61 and 62 of the Education (Scotland) Act 1980 (“the 1980 Act”) as inserted by section 4 of the Education (Scotland) Act 1981 (“the 1981 Act”) and, in respect of a transitional period of 3 years following upon the coming into operation of section 4 of the 1981 Act, provisions of sections 63 and 64 of the 1980 Act as originally enacted.

The modifications made by Regulations 3 and 4 and Schedules 1 and 2 are made for the purpose of applying procedures and requirements, enacted in sections 61 and 62 of the 1980 Act (as so inserted by the 1981 Act) in relation to decisions by education authorities to record a child or young person and in relation to information entered into their Record of Needs, to review of such decisions and information.

The modifications made by Regulations 5 and 6 and Schedules 3 and 4 are made for the purpose of applying such procedures and requirements, so enacted in relation to decisions to record a child or young person, to the process of consideration of future provision required for recorded children after ceasing to be of school age.

The modifications made by Regulations 7 and 8 and Schedules 5 and 6 are made for the purpose of the effect to be given to sections 63 and 64 of the 1980 Act as originally enacted (which relate to review of cases of children requiring special education and reference to the Secretary of State in relation to such cases) during the transitional period of 3 years after the coming into operation of section 4 of the 1981 Act on 1st January 1983.

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