

POLICY NOTE

THE EDUCATION (MISCELLANEOUS AMENDMENTS) (CORONAVIRUS) (SCOTLAND) REGULATIONS 2020

SSI 2020/128

The above instrument was made in exercise of the powers conferred by section sections 28A(5) and 28D(3) of the Education (Scotland) Act 1980⁽¹⁾ and section 22, and paragraphs 4(3) and 6(6) of schedule 2 of the Education (Additional Support for Learning) (Scotland) Act 2004⁽²⁾. The instrument is subject to *negative procedure*.

Purpose of the instrument. This instrument amends 3 sets of regulations that support the process for determining requests from parents in relation to the allocation of school places outside of the normal catchment area. This will provide education authorities and education appeal committees greater flexibility in how they carry out their statutory responsibilities in relation to such placing requests. Similarly for school exclusion appeals, this instrument provides education authorities and education appeal committees greater flexibility in how they carry out their statutory responsibilities in determining such decisions and appeals against those decisions by parents.

Policy Objectives

Education authorities have expressed significant concerns that they will not have the capacity to meet the statutory timescales in relation to school admissions placing requests and the consequent appeals process this year due to the Coronavirus outbreak.

The instrument extends the deadlines for education authority consideration of placing requests and any subsequent appeals heard by education appeal committees, including those regarding children and young people with additional support needs. These changes:

- provide a one month extension to the 30 April deadline after which initial decisions on placing requests received before 15 March are deemed to be refusals, to 31 May;
- extend the deadline after which failure to make decisions in relation to all other placing requests are deemed to be refusals to three months;
- extend and relax the prescribed timescales for the EAC acknowledging appeals and arranging appeal hearings;
- extend the deadline for holding a hearing from 28 days to 3 months, unless there are exceptional circumstances but provide that hearings must be held as soon as reasonably practicable within that period;
- extend the deadline after which a failure to make a decision on the appeal becomes a deemed confirmation of the education authority's refusal from 2 months to 4 months; and
- extend the deadline for education appeal committees to communicate their decision from 14 days to 28 days.

⁽¹⁾ 1980 c.44. Section 28A and 28D of the Education (Scotland) Act 1980 were inserted by section 1(1) of the Education (Scotland) Act 1981 (c.58).

⁽²⁾ 2004 asp 4.

In a period where administrative resources are stretched, these changes will ensure that education authorities and education appeal committees have sufficient time to complete the procedural elements of the process. The increased flexibility in how appeal hearings are conducted will also enable education appeal committees to hold appeal hearings virtually, either by video or telephone conference or, if all parties agree, entirely in writing, where holding face-to-face appeal hearings are impossible due to social distancing requirements.

These measures are not expressly time limited but are intended to be temporary. The Scottish Government intends to revoke the instrument once the current outbreak is over and this would be effected by 28 February 2021. However, if there was to be a further Coronavirus wave either prior to or subsequent to revocation of these changes, and social distancing measures were reintroduced, consideration would have to be given to retaining the changed timescales or introducing similar measures again, depending on the circumstances.

Consultation

The Scottish Government has engaged with local government bodies, including COSLA, ADES and SOLAR and parent representation groups in relation to the development of these regulations. Due to the urgency of addressing the current Coronavirus outbreak it has not been possible to conduct the consultation and engagement activity that would normally take place.

Impact Assessments

An Equality Impact Assessment and a Children's Rights and Well-being Impact Assessment have been completed on the draft SSI and will be published. There are no data or business regulation impacts of these regulations.

Financial Effects

The *Cabinet Secretary for Education and Skills* confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Learning Directorate

22 April 2020