

Consideration of subordinate legislation by the Education, Children and Young People Committee

1. This note provides information about the [Education \(Miscellaneous Amendments\) \(Coronavirus\) \(Scotland\) \(No. 2\) Regulations 2021](#).
2. These regulations may also be referred to by their Scottish Statutory Instrument number which is SSI 2021/462.
3. These regulations are being considered under the negative procedure.

Timeline for considering these regulations

4. These regulations were laid before the Scottish Parliament on **10 December 2021**
5. They were considered by the Delegated Powers and Law Reform Committee (DPLRC) at its meeting on **21 December 2021**. The Committee had no comments and the report produced by the Committee is [available here](#).
6. They will be considered by the Education, Children and Young People Committee at its meeting on **19 January 2022**.
7. If the committee wishes to produce a report on these regulations, it must do so by **31 January 2022**.

Is there a requirement to hear evidence from the Cabinet Secretary on these regulations?

8. No.

Purpose of the regulations

9. 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 and also the determination of exclusion appeals. This instrument reverts back to the pre-Coronavirus procedural timescales, as these timescales were extended by amendments made in 2020 and 2021 and are no longer considered to be necessary.
10. The instrument does not remove the ability for appeal hearings to be held remotely or by way of written representations, which is being retained for the time being to provide some flexibility in how hearings can be carried out.

11. A copy of the Scottish Government's Policy Note is included in [Annexe A](#).
12. A letter from the Cabinet Secretary for Education and Skills regarding the regulations is provided in [Annexe B](#).

Consultation

13. The policy note states that the Scottish Government has consulted with local government bodies and Children in Scotland, the Children and Young People's Commissioner's Office and the National Parent Forum for Scotland in relation to the development of these regulations.

Impact Assessment

14. The policy note states that an Islands Community Impact Assessment, Equality Impact Assessment and Child Rights and Wellbeing Impact Assessment have been completed and will be published.
15. The policy there are note also states that there are no data protection or business regulation impacts from these regulations.

Financial Impact

16. The policy note states that 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.

Procedure

17. These regulations are being considered by Education, Children and Young People Committee under the negative procedure.
18. This means that the regulations become law immediately, i.e. as soon as they have been laid before the Scottish Parliament. These regulations can, however, be annulled up to 40 days after this has happened.
19. Rule 10.4 of the Scottish Parliament's standing orders states that any Member of the Scottish Parliament can lodge a Parliamentary motion within the 40-day time period seeking an annulment of regulations.
20. All regulations considered under the negative procedure are scrutinised by both the Delegated Powers and Law Reform Committee (on various technical grounds) and by a lead committee (on policy grounds).
21. If a motion to annul is tabled, the lead committee will consider this and then hold a vote. If the motion is disagreed to (i.e. MSPs believe the regulations are OK as they are), then the regulations will remain in their current form.

22. If, however, the majority of MSPs on the lead committee agrees the regulations should be annulled, then a further motion is lodged by the Parliamentary Bureau. This is then voted on by the whole Parliament.
23. If that is also agreed to (i.e. the majority of MSPs agree with it), then Scottish Ministers must revoke (withdraw) the instrument. It will no longer be law and the Scottish Government must lay a new set of regulations before the Scottish Parliament.
24. Each negative instrument appears on a committee agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow correspondence to be entered into or a Minister or officials invited to give evidence.
25. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendation on it.
26. The Committee is invited to consider the instrument.

Jane Davidson
Committee Assistant
Education, Children and Young People Committee
12 January 2022

Annexe A

POLICY NOTE

THE EDUCATION (MISCELLANEOUS AMENDMENTS) (CORONAVIRUS) (SCOTLAND) (No. 2) REGULATIONS 2021

SSI 2021/462

The above instrument was made in exercise of the powers conferred by sections 28A(5), 28D(3) and 28H(5) of the Education (Scotland) Act 1980¹ and section 22 and paragraphs 4(3) and 6(6) of schedule 2 of the Education (Additional Support for Learning) (Scotland) Act 2004². 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 and also the determination of exclusion appeals. This instrument reverts back to the pre-Coronavirus procedural timescales, as these timescales were extended by amendments made in 2020 and 2021 and are no longer considered to be necessary. The instrument does not remove the ability for appeal hearings to be held remotely or by way of written representations, which is being retained for the time being to provide some flexibility in how hearings can be carried out.

Policy Objectives

Background

The 2022 school admissions round will be the third to have been affected by the Coronavirus pandemic. Given the changing impact of the Coronavirus pandemic and the use that is being made of remote hearings, a return to the pre-pandemic timescales is considered to be appropriate. To enable education authorities and appeal committees to meet those deadlines while disruption due to the pandemic continues, the ability to hold appeal hearings remotely or to determine appeals by way of written representations with the agreement of all parties will remain in place for the time being. This will ensure that, as far as possible, the appeal process will be completed in good time for the start of the new academic year, providing certainty and reassurance to pupils and parents.

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

² 2004 asp 4.

³The Education (Appeal Committee Procedures) (Scotland) Regulations 1982 (S.S.I. 1982/1736), the Education (Placing in schools Etc—Deemed Decisions) (Scotland) Regulations 1982 (S.S.I. 1982/1733) and the Additional Support for Learning (Placing Requests and Deemed Decisions)(Scotland) Regulations 2005 (S.S.I. 2005/515).

Changes made by this instrument

The changes made by this SSI means that all procedural deadlines in the 3 sets of regulations revert to the original timescales pre-Covid. These timescales relate to an education authority's consideration of placing requests and any subsequent appeals heard by an appeal committee, including those regarding children and young people with additional support needs. The timescales relating to appeal committees also apply to exclusion appeals. The changes are as follows:

- The deadline for responding to placing requests received by education authorities by 15 March has reverted to the original deadline of 30 April. Under the regulations as amended in 2021, education authorities had to respond to such requests by 15 May.
- An appeal committee must hold a hearing on a placing request or exclusion appeal within 28 days of receiving an appeal, which reflects the pre-2020 position. By virtue of the amendments made in 2020 a hearing had to be held within 3 months and that was reduced to 2 months by the 2021 amendments.
- The period of time after which the failure of an appeal committee to hold a hearing is deemed to be a decision upholding the refusal by an education authority of a placing request or exclusion appeal is reduced from 3 months to 2 months. By virtue of the amendments made in 2020, appeal committees had a 4-month window to hold a hearing and this was reduced to 3 months in 2021.

Consultation

The Scottish Government has engaged with local government bodies, including the Convention of Scottish Local Authorities, Association of Directors of Education in Scotland and Society of Local Authority Lawyers and Administrators in Scotland, as well as Children in Scotland, the Children and Young People's Commissioner's Office and the National Parent Forum for Scotland in relation to the development of these regulations. The amendments made in this instrument seek to reflect the concerns raised and to minimise any impacts on children, young people and parents.

Impact Assessments

An Equality Impact Assessment, an Island Communities Impact Assessment and a Children's Rights and Wellbeing Impact Assessment have been completed on the instrument and will be published. There are no data protection 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
December 2021

Annexe B

Cabinet Secretary for Education and Skills

Shirley-Anne Somerville MSP

Stephen Kerr MSP

Convener

Education, Children and Young People Committee

Scottish Parliament

10 December 2021

Dear Stephen

**THE EDUCATION (MISCELLANEOUS AMENDMENTS) (CORONAVIRUS)
(SCOTLAND) (No.2) REGULATIONS 2021**

I am writing in relation to The Education (Miscellaneous Amendments) (Coronavirus) (Scotland) (No.2) Regulations 2021 (“the Regulations”), which are being laid in Parliament today. These Regulations amend the process and deadlines that apply to placing requests and exclusion appeals which are set out in regulations made under the Education (Scotland) Act 1980 and the Education (Additional Support for Learning) (Scotland) Act 2004.

The Regulations remove some of the amendments made by the Education (Miscellaneous Amendments) (Coronavirus) (Scotland) Regulations 2021. The 2021 Regulations included some extensions to the timeframes education authorities have to process placing requests and appeals, including exclusions appeals, and enabled appeal hearings to be held remotely.

At the time that the 2021 Regulations were introduced, the Deputy First Minister placed on the record that these measures were not expressly time limited and that a review of the changes made would take place to consider whether the progress of the pandemic would warrant further changes to the regulations governing this process.

Consequently, the measures introduced by the 2021 Regulations have now been reviewed, to consider whether these measures can be reversed. Since the impacts that have arisen from the coronavirus pandemic have eased, I have concluded that it is necessary to remove the increased time periods that were put in place by the 2021 Regulations. However, the ability to hold appeal hearings by remote means and to determine appeals by way of written representations where all parties agree, remains in place in light of the current situation and potential for further disruption.

The intention is that these new timescales will apply from 28 February 2022. These amendments, and the retention of the remote hearings provisions, seek to balance the rights of parents and children alongside the potentially restricted capacity of

education authorities and the requirement to operate remote hearings, given the continuing and potential pressures arising from the coronavirus pandemic.

I will review the position on remote hearings again in the autumn of 2022, to consider whether the current or anticipated severity of the virus warrants any further changes at that point. Although the timescales have now been brought back in line with those that were in place before the pandemic to reflect the current situation, I am also mindful that any significant deterioration in the future may require these to be considered again.

I hope this is helpful and would be happy to provide any further information to the Committee.

SHIRLEY-ANNE SOMERVILLE