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The Education (Miscellaneous Amendments) (Coronavirus) (Scotland) Regulations 2021

Children's Rights and Well-being Impact Assessment

January 2021



Scottish Government
Riaghaltas na h-Alba
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CRWIA Stage 1

Screening - key questions

(Hyperlink will only work within SG)

1. Name the policy, and describe its overall aims.

Implementation of The Education (Miscellaneous Amendments) (Coronavirus) (Scotland) Regulations 2021

We are amending the Education (Appeal Committee Procedures) (Scotland) Regulations 1982 (“the 1982 Regulations”), the Education (Placing in schools etc. - Deemed Decisions) (Scotland) Regulations 1982 (the “Deemed Decisions Regulations”) and the Additional Support for Learning (Placing Requests and Deemed Decisions) (Scotland) Regulations 2005. The purpose is to amend the timescales introduced by the Education (Miscellaneous Amendments) (Coronavirus) (Scotland) Regulations 2020 (“the 2020 Regulations”) and the Education (Deemed Decisions) (Coronavirus) (Scotland) Amendment Regulations 2020, but retain the ability of education authorities to hold appeal hearings remotely which the 2020 Regulations introduced. This will take effect for the 2021 school admissions round and we have undertaken to make a further review in advance of the 2022 admissions round.

The 2020 Regulations, introduced in response to the coronavirus pandemic, made changes to the deadlines for local authority consideration of placing requests and placing request and exclusion appeals and to provide increased flexibility in how appeal hearings are conducted. This was to ensure that local authorities were able to support the delivery of the placing request and subsequent appeal hearing process during the current coronavirus outbreak while maintaining parents’ right of appeal in relation to placing requests and exclusions.

The 2021 Regulations maintain the provisions that allow remote appeal hearings but either reduce or remove the extended timescales permitted in 2020.

2. What aspects of the policy/measure will affect children and young people up to the age of 18?

The Articles of the UNCRC and the child wellbeing indicators under the Children and Young People (Scotland) Act 2014 apply to all children and young people up to the age of 18, including non-citizen and undocumented children and young people.

The placing requests process is used by a significant minority of parents who apply to their local authority for a place for their child at a school that is not their catchment area school. For parents who are unsuccessful in their placing request, they can appeal the decision and, if necessary, attend a hearing of an Education Appeal Committee (EAC) who will review the authority’s decision and decide whether to overturn it or not.

The changes going forward for 2021 retain the ability to hold hearings remotely and some of the flexibility for local authorities in how long they have to process placing requests and to convene appeal hearings, which were introduced in 2020. Under the proposed changes to the regulations for 2021 an EAC has to organise

an appeal hearing within 2 months after being notified that the parent wishes to appeal.

We expect most placing requests and appeals will take place as quickly as possible but there are likely to be some children whose appeal against a refusal of a request for a place either at primary or secondary school is not resolved until after the new school year begins in August. This may affect a small number of children's entry to primary school or transition between primary and secondary school.

In order to properly evaluate how the school admissions process operated in 2020, we requested data from all 32 local authorities via COSLA, ADES and SOLAR. This would provide a clearer picture around the number of placing requests and appeal hearings. We have received data for the 2020 admissions round from 25 local authorities which showed that by October 2020 when the data was received from local authorities, 5 appeal cases had not been resolved and a Sheriff appeal was expected. It demonstrates that the extended timeframes enabled placing requests to be processed effectively despite the impacts of the pandemic. Some local authorities reported that they processed placing requests along the original timescales where possible.

The amendments to the regulations which were made by the 2020 Regulations also provided extensions to the time periods for education authorities to hold exclusion appeals raised by parents or young people. Data received from local authorities showed that all exclusion appeal hearings undertaken in 2020 were completed within the new timescales that applied. The 2021 Regulations do not affect parents or young people's ability to appeal against an exclusion decision.

3. What likely impact – direct or indirect – will the policy/measure have on children and young people?

'Direct' impact refers to policies/measures where children and young people are directly affected by the proposed changes, e.g. in early years, education, child protection or looked after children (children in care). 'Indirect' impact refers to policies/measures that are not directly aimed at children but will have an impact on them. Examples include: welfare reforms, parental leave, housing supply, or local transport schemes.

We expect most placing requests and appeals will take place as close as possible to the original timeframes but it is possible that there will be a small number of children whose appeal against a refusal of a request for a place either at primary or secondary school is not resolved until after the new school year begins in August. This may affect a small number of children's entry to primary school or transition between primary and secondary school. This will be an indirect impact on children and young people as the provisions in the regulations relate to how a parent exercises their right of appeal if they disagree with the Council's response to a placing request.

Underpinning these changes is the need to abide by social distancing measures that are in place currently, and the likelihood that some form of these restrictions may continue to apply in parts of Scotland during spring and summer 2021. Face-

to-face appeal hearings are restricted at the moment and by providing greater flexibility in how hearings are conducted, including using video or audio conference technology, we are ensuring hearings can go ahead without contravening the current social distancing restrictions which are in place to protect everyone's health. Coronavirus restrictions also impact local authority staff and may continue to limit their capacity. We also recognise that local authorities still face exceptional burdens in dealing with the impact of the coronavirus emergency, hence these efforts to retain some of the increased flexibility.

As noted above, these were intended to be temporary measures but we have had to maintain them, albeit to a lesser extent, for the 2021 admissions round, due to the continuing pandemic. We plan to conduct a further review to the changes made by these Regulations before the 2022 admissions round, to again consider whether the passage of the virus means that it is possible to revert to the provisions that applied prior to the 2020 Regulations. It will also be appropriate to give consideration to retaining the flexibility to conduct placing request appeals remotely, as this appears to have been welcomed by both local authorities and parents.

In respect of exclusion appeals, the 2021 Regulations provide flexibility in how those hearings can be conducted, in order to meet the needs of the young person or parent/carer. The 2021 Regulations will also provide local authorities with the flexibility to hold the exclusion appeal hearings in light of the continuing impact of the COVID pandemic.

Therefore, the impact of the new provisions and amendments will be limited to those families making a placing request during the 2021 school admissions round, other in year placing requests and exclusion appeals up until February 2022.

4. Which groups of children and young people will be affected?

Under the UNCRC, 'children' can refer to: individual children, groups of children, or children in general. Some groups of children will relate to the groups with protected characteristics under the Equality Act 2010: disability, race, religion or belief, sex, sexual orientation. 'Groups' can also refer to children by age band or setting, or those who are eligible for special protection or assistance: e.g. preschool children, children in hospital, children in rural areas, looked after children, young people who offend, victims of abuse or exploitation, child migrants, or children living in poverty.

We do not have any data that shows the characteristics of parents who make placing requests or make appeals. Therefore it is not possible to say with any certainty whether any particular group of parents will be affected more than others. The purpose of the changes is to ensure that all parents who make an appeal can continue to do so, albeit to a longer timeframe than was provided for before the 2020 Regulations came into effect. We would not expect there to be any differential effects of these measures.

In relation to pupils with additional support needs, while we do not have any data to indicate that this group of children and young people will be more affected by these changes, anecdotal evidence would suggest that these changes may have a

greater impact on children and young people with certain additional support needs.

Similarly for exclusions, no data is collected on the characteristics of parents or pupils who may appeal any exclusion from school. Numerically, exclusions have fallen year on year, with the rate of exclusions now less than half that of 2006/07. It is anticipated that the number of exclusion appeals in this period will be low.

5. Will this require a CRWIA?

Explain your reasons.

A CRWIA is required since this policy development and legislation will have an impact upon on a significant number of children and young people (we estimate 2,000 to 3,000 children), therefore a CRWIA is necessary.

CRWIA Declaration

Tick relevant section, and complete the form.

CRWIA required

CRWIA not required

X – CRWIA required

Authorisation

Policy lead

Jerry O'Connell
School Policy Team Leader
Workforce, Infrastructure and Reform
Division (WIR)

Date

22 January 2020

Deputy Director or equivalent

Clare Morley (on behalf of Andy
Drought, Deputy Director, WIR Division)
Unit Head
School Funding, Infrastructure and
Organisation, WIR

Date

22 January 2020

Stage 3

CRWIA title: Implementation of The Education (Miscellaneous Amendments) (Coronavirus) (Scotland) Regulations 2021.

Date of publication: 22 January 2021

Executive summary

We are amending The Education (Appeal Committee Procedures) (Scotland) Regulations 1982, The Education (Placing in schools etc. - Deemed Decisions) (Scotland) Regulations 1982 and The Additional Support for Learning (Placing Requests and Deemed Decisions) (Scotland) Regulations 2005 in order to reduce the timescales introduced in April 2020, whilst retaining the flexibilities for holding remote appeal hearings.

To mitigate the potential impacts on children and young people during the 2021 admissions round, whilst the provision for remote hearings has been retained, the extended timescales permitted in 2020 have been reduced.

This is to ensure that local authorities are able to support the delivery of the placing request and subsequent appeal hearing process during the current coronavirus outbreak.

It is intended that these regulations will be in place temporarily for the 2021 school admissions process and for exclusion appeals. We have undertaken to review the changes made by the Regulations before the 2022 admissions round, to again consider whether the passage of the virus means that it is possible to revert to the provisions that applied prior to the 2020 Regulations.

Background

Most parents will opt to send their children to their local catchment school. Parents have the right to submit a placing request to apply for a place in a school other than their catchment school. Local authorities have to follow statutory criteria when assessing placing requests and making decisions about whether to grant a placing request or not. If a parent disagrees with an local authority's decision to refuse a placing request they can appeal to the local authority convened Education Appeal Committee (EAC). Statutory timescales apply to the stages of this process with most appeals taking place in May and June, so that the bulk of the decisions are made before the end of the summer term and parents have certainty about which school their child will attend in August. If parents are unhappy with the panel's decision they have a right of appeal to the Sheriff Court though only relatively few will opt to do this. For placing requests to a special school, including a support base or unit,

	<p>and/ or where the child has a co-ordinated support plan, the appeal would go to the Additional Support Needs Jurisdiction of the Health and Education Chamber of the First-tier Tribunal for Scotland.</p> <p>Local authorities were concerned about their ability to deliver an effective placing request and consequent appeals process and exclusion appeals process during the current coronavirus outbreak. This is due to resource pressures and availability of local authority staff and EAC members. The social distancing requirements currently in place also made it necessary to find new ways of holding appeal hearings which were normally held face to face.</p> <p>Whilst many of these factors are continuing we have concluded that the same extension of timeframes from the 2020 admissions round will not be necessary in 2021. This approach will still give education authorities and education appeal committees enough flexibility to complete the processes successfully. The retention of the flexibilities in how appeal hearings can be conducted also gives education appeal committees greater scope to complete the appeal hearings within a more limited timeframe, though still longer than in previous years.</p> <p>The revised timescales for the 2021 admission round will limit the potential impacts upon children as the vast majority of placing request appeals will be heard before the beginning of the school year. This will provide parents, as well as children and young people, with greater certainty about the outcome of their placing requests ahead of the new school year.</p> <p>Exclusion appeals are following the same timescales as the placing request appeals process, this will continue to ensure that the needs of children and young people and parents/carers are met, whilst providing the flexibility for local authorities to undertake the exclusion appeal hearings.</p>
<p>Scope of the CRWIA, identifying the children and young people affected by the policy, and summarising the evidence base</p>	<p>Due to the limited availability of research evidence the evidence base for this CRWIA is limited.</p> <p>We have gathered information and feedback from local authorities to better understand the impact of the new timeframes during the 2020 school admissions round. In total, 25 local authorities responded, reporting that 21,587 placing requests had been received. Following decisions on these placing requests and appeals by parents, 627 appeal hearings were conducted across the 25 local authority areas.</p> <p>Whilst not all local authorities responded, it shows that substantial numbers of placing requests were successfully</p>

	<p>processed during spring/summer 2020. Very few appeal hearings, 0.7%, were not held by the relevant extended deadline.</p> <p>The information provided for the additional support for learning placing requests follow a similar pattern to the above, showing that the majority of local authorities have dealt with these swiftly and without particular issues in terms of timescales.</p> <p>We also sought information from local authorities on the impact of the changes to the regulations on exclusion appeals. Twenty local authorities responded as follows: 12 exclusion appeal hearings took place, of these eight were by video conference, three by audio conference and one in writing. Seven exclusion appeals were not heard within the four month deadline due to staff working from home due to COVID restrictions. All of the exclusion appeals reported have been resolved. Few comments were provided by authorities, however those that did welcomed the extended timeline for exclusion appeals. No concerns have been raised by parental groups.</p>
<p>Children and young people's views and experiences</p>	<p>We have engaged extensively with local authorities and parents' representatives.</p>
<p>Key Findings, including an assessment of the impact on children's rights, and how the measure will contribute to children's wellbeing</p>	<p>Overall, the new regulations will have a neutral effect on the rights of the vast majority of children who will be unaffected by these temporary measures for 2021.</p> <p>We have put in place mitigations to reduce the likelihood of delayed outcomes by giving education appeal committees greater flexibility in how they conduct appeal hearings so that virtual or paper-based methods can be used. The regulations will also require, despite the continued relaxation of certain deadlines, that appeals are expedited as soon as practicable. Given the unprecedented nature of the current situation we believe this is a balanced and equitable solution for all involved. The evidence from the 2020 admissions round highlights that local authorities abided by the requirement to take them forward "as soon as reasonably practicable" and did not use the 2020 extensions to their limit. The shortening of these extensions for the 2021 admissions round substantially increases the likelihood of both mainstream and ASL placing request processes being completed prior to the beginning of the new academic year, minimising the impact of potential delays on children and young people affected.</p>

Monitoring and review	The impact of the new regulations will be monitored closely while they are in place. We have established a working group with key local government bodies COSLA, ADES and SOLAR to support implementation of the new regulations and to monitor progress.
CRWIA Declaration	
Authorisation	
Policy lead Jerry O'Connell School Policy Team Leader Workforce, Infrastructure and Reform Division (WIR)	Date 22 January 2020
Deputy Director or equivalent Clare Morley (on behalf of Andy Drought, Deputy Director, WIR Division) Unit Head School Funding, Infrastructure and Organisation, WIR	Date 22 January 2020



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