
SCOTTISH STATUTORY INSTRUMENTS

2017 No.

EDUCATION

**The Additional Support for Learning Dispute Resolution
(Scotland) Amendment Regulations 2017**

Made - - - -

Laid before the Scottish Parliament

Coming into force - - - *27th November 2017*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 16(1) and 34(2)(b) of the Education (Additional Support for Learning) (Scotland) Act 2004(a) and all other powers enabling them to do so.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Additional Support for Learning Dispute Resolution (Scotland) Amendment Regulations 2017 and come into force on 27th November 2017.

(2) In these Regulations, “the 2005 Regulations” means the Additional Support for Learning Dispute Resolution (Scotland) Regulations 2005(b).

Amendment of the 2005 Regulations

2.—(1) The 2005 Regulations are amended in accordance with this regulation.

(2) Regulation 2 (interpretation) is amended as follows-

(a) in regulation 2(1), in the definition of “application”, after “section 16(1)(a)”, insert- “(aa),”;

(b) in regulation 2(2), after “parent”, insert- “child,”.

(3) In regulation 3(1) (application for referral to dispute resolution) after “section 16(1)(a),”, insert- “(aa),”.

(4) After regulation 4(1) (preliminary arrangements) insert—

“(1A) Where an application is from a child who has attained the age of 12 years,

(a) the education authority may only send the applicant confirmation of acceptance of the application if satisfied that-

(i) the applicant has capacity as respects views or decisions relating to the purposes of resolving disputes; and

(a) 2004 asp 4 (“the 2004 Act”). Section 16 of the 2004 Act was relevantly amended by paragraph 15 of the schedule to the Education (Scotland) Act 2016 asp 8.

(b) S.S.I. 2005/501, the instrument was amended by the Additional Support for Learning Dispute Resolution (Scotland) Amendment Regulations 2010/144.

(ii) it would not adversely affect the wellbeing of the child to express a view or make a decision for the purpose of resolving a dispute with the education authority.

(b) the education authority must either send to the applicant confirmation of acceptance of the application under regulation 4(1) or notice of their decision not to proceed with the application under regulation 4(3), within 10 working days of the education authority making the decision referred to in sub-paragraph (a).”

(5) In regulation 5(1) (panel of independent adjudicators), after “section 16(1)(a)”, insert “(aa),”.

(6) For regulation 7 (education authority’s response), substitute—

“(1) Within the period of 10 working days beginning with the first working day after the sending of confirmation of acceptance of an application to the applicant in accordance with regulation 4, the education authority must provide the information referred to in paragraph(2) to —

- (a) the applicant;
- (b) where the applicant is a child, the child’s parent, and
- (c) where the authority consider it appropriate, the child or young person the subject of the application.

(2) The information to be provided in accordance with paragraph (1) is

- (a) a written summary of the authority’s views on the circumstances giving rise to the application;
- (b) the authority’s views on the application and supporting material submitted in accordance with these Regulations;
- (c) any other relevant advice and information, request or decision not included with the application which the authority wishes taken into account by the applicant and the independent adjudicator in considering the application; and
- (d) the authority’s views of the means by which, or the manner in which, the specified matter could be resolved.”.

(7) For regulation 10 (outcome of review), substitute—

“(1) The education authority must, within the period of 10 working days following the receipt of the report and recommendations, give notice of their decision under this regulation in writing to—

- (a) the applicant;
- (b) where the applicant is a child, the child’s parent, and
- (c) such other persons, including any relevant appropriate agency as the authority consider appropriate.

(2) The notice of the education authority’s decision under this regulation must set out—

- (a) the facts on which their decision is based;
- (b) the reasons for their decision;
- (c) where applicable, their reasons for not following, whether in whole or in part, the recommendations of the independent adjudicator; and
- (d) their view of the effect of their decision on the child or young person the subject of the application.”.

Name

A member of the Scottish Government

St Andrew’s House,
Edinburgh
Date

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Additional Support for Learning Dispute Resolution (Scotland) Regulations 2005 (“the 2005 Regulations”).

The Regulations are required following the amendment to section 16(1) of the Education (Additional Support for Learning) (Scotland) Act 2004 (asp 4) (“the 2004 Act”) by paragraph 15 of the schedule of the Education (Scotland) Act 2016 (asp 8) (“the 2016 Act”).

A new sub-paragraph (aa) was inserted into section 16(1) of the 2004 Act to allow the Scottish Ministers to make provision about the resolution of disputes (concerning the exercise by an education authority of any of their functions under the 2004 Act in relation to a child), between any education authority and any child who has attained the age of 12 years and who the authority is satisfied has capacity to express a view or make a decision for the purposes of resolving such disputes.

Regulation 2(2) amends regulation 2 of the 2005 Regulations (interpretation). Regulation 2(2)(a) amends the definition of “application” in regulation 2(1) to include a request from a person mentioned in section 16(1)(aa) of the 2004 Act, for a decision or failure of an education authority as specified in the Schedule of the 2005 Regulations (specified matters) to be referred to an independent adjudicator for consideration. Regulation 2(2)(b) amends regulation 2(2) to include a reference to a “child” as a person who might require a particular form of communication, which is capable of being used for subsequent reference.

Regulation 2(3) amends regulation 3(1) of the 2005 Regulations (application for referral to dispute resolution) to provide that where any person mentioned in new section 16(1)(aa) of the 2004 Act submits an application in writing to the Scottish Ministers in relation to a decision or failure of an education authority specified in the Schedule of the 2005 Regulations (specified matters), the Scottish Ministers must within 5 working days of receipt of the application, refer it to the appropriate education authority and the authority must, unless they consider regulation 4(3) applies, make the arrangements specified in regulation 4.

Regulation 2(4) amends regulation 4 of the 2005 Regulations (preliminary arrangements):-

(a) to provide that where an application is from a child who has attained the age of 12 years, the education authority may only send the applicant confirmation of acceptance of the application if satisfied that the applicant has capacity as respects views or decisions relating to the purposes of resolving disputes, and if it would not adversely affect the wellbeing of the child to express a view or make a decision for the purpose of resolving a dispute with the education authority, and

(b) to require the education authority either to send the applicant confirmation of acceptance of the application under regulation 4(1), or notice of their decision not to proceed with the application under regulation 4(3), within 10 working days of the authority making the decision in relation to the applicant’s capacity and wellbeing.

Regulation 2(5) amends regulation 5(1) of the 2005 Regulations (panel of independent adjudicators) to make it clear that the panel of individuals appointed by the Scottish Ministers to act as independent adjudicators to consider dispute resolution applications, will also consider dispute resolution applications from children who have attained the age of 12 years and who the authority is satisfied has capacity and it would not adversely affect the child’s wellbeing to express a view or make a decision for the purposes of resolving such disputes.

Regulation 2(6) substitutes a new regulation 7 into the 2005 Regulations (education authority’s response) to require education authorities to send a copy of the education authority’s response to a dispute resolution application to the applicant, where the application is from a child, to the child’s parent and where the education authority consider it appropriate, the child or young person that is the subject of the application.

Regulation 2(7) substitutes a new regulation 10 into the 2005 Regulations (outcome of review) to require education authorities to give notice of their decision following receipt of the independent adjudicator's report, to the applicant, where the application is from a child, to a child's parent and to such other persons, including any relevant appropriate agency as the authority consider appropriate.