

2005 No. 516

EDUCATION

**The Education (Additional Support for Learning) (Scotland)
Act 2004 (Transitional and Savings Provisions) Order 2005**

Made - - - - - *21st October 2005*

Laid before the Scottish Parliament *21st October 2005*

Coming into force - - - *14th November 2005*

The Scottish Ministers, in exercise of the powers conferred by sections 32 and 34(2) of the Education (Additional Support for Learning) (Scotland) Act 2004(a), and of all other powers enabling them in that behalf, hereby make the following Order:

Citation and commencement

1. This Order may be cited as the Education (Additional Support for Learning) (Scotland) Act 2004 (Transitional and Savings Provisions) Order 2005 and shall come into force on 14th November 2005.

Interpretation

2.—(1) In this Order—

“the 1980 Act” means the Education (Scotland) Act 1980(b);

“the 2004 Act” means the Education (Additional Support for Learning) (Scotland) Act 2004;

“the 1982 Regulations” means the Education (Record of Needs) (Scotland) Regulations 1982(c);

“appeal committee” means a committee set up under section 28D of the 1980 Act;

“appointed day” means the day appointed by the Scottish Ministers in terms of section 35 of the 2004 Act for the commencement of section 33 and schedule 3 of the said Act;

“placing request” has the same meaning assigned to it in section 28A(1) of the 1980 Act;

“Record” and “recorded” and other cognate expressions have the same respective meanings assigned to them in section 60 of the 1980 Act.

(2) Where the 60th day of the sixty days referred to in article 3 and article 7 falls on a Saturday, Sunday or on any day on which the principal office of the education authority which is referred to in those articles is closed the 60th day will be taken to be the next day upon which the said principal office is open.

(a) 2004 asp 4.

(b) 1980 c.44. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(c) S.I. 1982/1222.

Saving provision for sections 60 to 65G of the 1980 Act

3.—(1) Notwithstanding the repeal, by virtue of Section 33 and schedule 3 of the 2004 Act, of sections 60 to 65G of the 1980 Act(a) those sections shall continue to have effect for the purposes specified in this Order and subject to the terms of this Order, on and after the appointed day, as they had effect immediately before that date in any case to which this article applies.

(2) This article applies to any reference made under section 63(1) or (2) of the 1980 Act in relation to any decision by the education authority listed in the schedule to this Order, where notification of the decision referred to in the schedule was received by the parent of the child or young person or, as the case may be, by the young person, on or before the appointed day, and that where the reference is made in accordance with section 63(5) of the 1980 Act, and is made no later than 60 days after the appointed day.

(3) In the case of a decision referred to in paragraph 4 of the schedule to this Order this article applies only if a placing request has been made under reference to section 63(3) of the 1980 Act before the appointed day.

Transitional arrangements for placing requests

4.—(1) Where, before the appointed day, an education authority receives a placing request from the parent of a recorded child, sections 60 to 65G and section 28A of the 1980 Act apply as they apply to recorded children and young persons in accordance with Schedule A2 of the 1980 Act(b), and those sections shall continue to have effect in respect of that placing request.

(2) Where, in relation to a placing request made in terms of this article—

- (a) that placing request is granted by an education authority;
- (b) an appeal committee refuses to confirm the decision of the education authority in relation to that placing request, and requires the education authority to place the child in accordance with section 28E(1) of the 1980 Act; or
- (c) a sheriff refuses to confirm the decision of the education authority in relation to that placing request, and requires the education authority to give effect to that placing request in accordance with section 28F(5) of the 1980 Act,

attendance at the school referred to in said placing request will be taken to have been the provision or, as the case may be, part of the provision immediately before the commencement date for the purposes of section 30(4) of the 2004 Act.

Children and young persons taken to be recorded at commencement of the 2004 Act

5. Where, after the appointed day, the Scottish Ministers, in a case to which paragraph 1 of the schedule to this Order applies, refuse to confirm the education authority's decision, the child or young person shall be taken to have been a recorded child or, as the case may be, young person, immediately before the commencement date, for the purpose of section 30(1)(b) of the 2004 Act.

Transitional provision for references to Scottish Ministers regarding terms of Record of Needs

6.—(1) In the case of any reference to the Scottish Ministers of any decision to which paragraph 2 or 3 of the schedule to this Order applies, where the Scottish Ministers confirm with modifications the terms in which the matters specified in section 65D(2)(a) or (b) of the 1980 Act are recorded in the Record of the child or young person, the Scottish Ministers' direction shall be taken to have modified the terms of the Record accordingly.

(2) The education authority must retain a copy of the Scottish Ministers' direction together with the Record until the Record is destroyed in accordance with regulation 9 of the 1982 Regulations as modified by this Order.

(a) Sections 60 to 65F substituted for Sections 60 to 65 by Education (Scotland) Act 1981(c.58) Section 4 (1), Schedule 8. Section 65G inserted by Self-Governing Schools etc. (Scotland) Act 1989 (c.39), Section 71(2).
(b) Schedule A2 inserted by 1981 (c.58) section 4(3), Schedule 3, Schedule 8.

Transitional provision for appeal to an appeal committee against education authority's decision to record

7.—(1) Where, before the appointed day, an education authority makes a decision—

- (a) to record a child; or
- (b) following a review under section 65A of the 1980 Act, to continue to record the child,

and the parent of the recorded child refers said decision to an appeal committee by virtue of section 63(1)(a) of the 1980 Act, the appeal committee shall direct the education authority to discontinue the record of the child, and the education authority shall comply with such a direction.

(2) Where, before the appointed day, an education authority make a decision—

- (a) to record a young person; or
- (b) following a review under section 65A of the 1980 Act, to continue to record the young person,

and where the education authority were satisfied that the young person lacked capacity to express a view for the purposes of section 61(7) of the 1980 Act, the young person's parent, or in any other case the young person, refers said decision to an appeal committee by virtue of section 63(2)(a) of the 1980 Act, the said appeal committee shall direct the education authority to discontinue the record of the young person, and the authority shall comply with such direction.

(3) Where the appeal committee directs the education authority to discontinue a Record under this article the child, or as the case may be, young person, will be taken not to be a recorded child or recorded young person for the purpose of section 30(1)(b) of the 2004 Act.

(4) Section 63(5) of the 1980 Act will apply to a reference under this article but the appeal committee shall not have power to hear any such reference which was not lodged within 60 days of the appointed day.

Transitional and saving provisions for the 1982 Regulations

8. Notwithstanding the repeal of section 65D of the 1980 Act, the 1982 Regulations shall continue to have effect subject to the modifications in article 9 of this Order after the appointed day as they had effect immediately before that date in relation to any record opened before the appointed day and any decision or direction, referred to in article 5, 6 or 7, which is taken to be a Record or part of a Record as the case may be.

Modifications to the 1982 Regulations

9.—(1) In regulation 7(2) of the 1982 Regulations substitute for sub-paragraph (e) “any other person.”:

- “(e) a person providing mediation services for the purposes of section 15 of the 2004 Act;
- (f) an independent adjudicator for the purposes of The Additional Support for Learning Dispute Resolution (Scotland) Regulations 2005(a);
- (g) a Tribunal for the purposes of section 17 of the Education (Additional Support for Learning) (Scotland) Act 2004 (asp 4) (Additional Support Needs Tribunal for Scotland);
- (h) any other person.”.

(2) In sub-paragraph (bb) of regulation 7(2) for “(e)” substitute “(h)”.

(3) In regulation 9 (Discontinuance, preservation and destruction of a Record) add after paragraph (7)–

“(8) All Records shall be destroyed on 13th November 2010 or as soon as practicable thereafter unless earlier destroyed in accordance with this regulation.”.

(a) S.S.I. 2005/501.

Saving provision for deemed decisions

10. Notwithstanding the repeal of sections 60 to 65G of the 1980 Act, the Education (Placing in Schools Etc. – Deemed Decisions) (Scotland) Regulations 1982(**a**) shall continue to have effect on or after the appointed day in respect of any reference in terms of Article 3 or any placing request, to which article 4 applies, made before the appointed day.

Saving provision for appeal committee procedures

11. Notwithstanding the repeal of sections 60 to 65G of the 1980 Act, the Education (Appeal Committee Procedures) (Scotland) Regulations 1982(**b**) shall continue to have effect in respect of any reference in terms of article 3 or any placing request, to which article 4 applies, made before the appointed day.

ROBERT E BROWN

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
21st October 2005

(a) S.I. 1982/1733.
(b) S.I. 1982/1736.

SCHEDULE

<i>Provisions of 1980 Act</i>	<i>Decision of education authority</i>
1. Section 63(1)(aa) and 63(2)(aa)	Education authority decision not to record or following a review not to continue to record the child or young person.
2. Section 63(1)(b)	Education authority decision as to the terms in which the summary of the child's impairments specified in section 65D 2(a) are recorded or any such decision following a review under section 65A.
3. Section 63(1)(b)	Education authority decision as to the terms in which the child's statement of special educational needs specified in section 65D 2(b) are recorded, or any such decision following a review under section 65A.
4. Section 63(1)(c) and 63(2)(b)	Education authority decision as to the nomination of a school as specified in section 65D(2)(d) to be attended by the child or young person, or any such decision following a review under section 65A.
5. Section 63(1)(d) and 63(2)(c)	Education authority decision refusing a placing request in respect of the child or young person.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision for transitional arrangements and savings to allow specified references and placing requests made under the Education (Scotland) Act 1980 (“the 1980 Act”) to be determined under that Act notwithstanding the commencement of the Education (Additional Support for Learning) (Scotland) Act 2004 (“the 2004 Act”).

Article 3 saves the provisions of sections 60 to 65G of the 1980 Act for references to appeal committees and to the Scottish Ministers in respect of certain decisions notified before the commencement of the 2004 Act. Article 4 saves those provisions in respect of placing requests made before commencement.

Articles 5 and 6 make provision as to the effect of a decision of the Scottish Ministers under this Order.

Article 7 makes provision that where an education authority makes a decision to record or to continue to record, and a parent makes a reference against that decision, the appeal committee will direct the education authority to discontinue the record.

Articles 9 to 11 make transitional, arrangements, savings and modifications in relation to the Education (Record of Needs) (Scotland) Regulations 1982 (S.I. 1982 No. 1222), the Education (Placing in Schools Etc. – Deemed Decisions) (Scotland) Regulations 1982 (S.I. 1982 No. 1733) and the Education (Appeal Committee Procedures) (Scotland) Regulations 1982 (S.I. 1982 No. 1736).

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