

2010 No. 149

EDUCATION

The Additional Support for Learning (Co-ordinated Support Plan) (Scotland) Amendment Regulations 2010

<i>Made</i> - - - -	<i>13th April 2010</i>
<i>Laid before the Scottish Parliament</i>	<i>16th April 2010</i>
<i>Coming into force</i> - -	<i>16th August 2010</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 11(8) of the Education (Additional Support for Learning) (Scotland) Act 2004(a) and all other powers enabling them to do so.

Citation and commencement

1.—(1) These Regulations may be cited as the Additional Support for Learning (Co-ordinated Support Plan) (Scotland) Amendment Regulations 2010 and come into force on 16th August 2010.

Amendment of the Additional Support for Learning (Co-ordinated Support Plan) (Scotland) Amendment Regulations 2005

2. The Additional Support for Learning (Co-ordinated Support Plan) (Scotland) Amendment Regulations 2005(b) are amended in accordance with regulations 3 to 7.

Insertion of regulation 4A

3. After regulation 4 (time limit for preparation of the plan) insert—

“Time limit for response to request to establish whether a child or young person requires a plan

4A.—(1) Subject to paragraphs (2) and (3), where an education authority receives a request referred to in section 6(2)(b) of that Act, that authority must within a period of 8 weeks starting on the date of receipt by it of the request—

- (a) inform, under section 11(2)(a), the person who made the request, of its proposal; or
- (b) inform under section 28(2), that person of its decision not to comply with the request.

(a) 2004 asp 4, as amended by the Education (Additional Support for Learning) (Scotland) Act 2009 (asp 7).
(b) S.S.I. 2005/518.

(2) Where the circumstances provided for in sub-paragraph (1)(a) of regulation 7 apply, an education authority must on becoming aware that the period of 8 weeks cannot be complied with—

- (a) establish a date by which it must inform the person who made the request of its decision whether or not to comply with the request; and
- (b) inform that person of that date.

(3) The date established under paragraph (2) above must not exceed the period of 8 weeks by longer than is reasonably necessary in the circumstances and in any event must not be more than 16 weeks from the date of receipt of the request.”.

Insertion of regulation 5A

4. After regulation 5 (time limit for the review of the plan) insert—

“Time limit for the early review of the plan

5A.—(1) Subject to paragraphs (2) and (3), where an education authority receive a request in terms of section 10(4) of the Act, it must issue its proposal under section 11(2)(a) or its decision under section 28(2) within 4 weeks of the date of receipt of the request.

(2) Where the circumstances provided for in paragraph (1)(a) of regulation 7 apply, an education authority must on becoming aware that the period of 4 weeks cannot be complied with—

- (a) establish a date by which it must issue its proposal or its decision to the person who made the request; and
- (b) inform that person of that date.

(3) The date established under paragraph (2) above must not exceed the period of 4 weeks by longer than is reasonably necessary in the circumstances and in any event must not be more than 12 weeks from the date of receipt of the request.

(4) A failure by an education authority to meet either the timescale referred to in paragraph (1) or the date established under paragraph (2)(a) is to be treated for the purposes of section 18 of the Act as a decision of the authority to refuse a request referred to in section 10(4) of the Act.”.

Insertion of regulation 6A

5. After regulation 6 (date of providing information or copy of plan) insert—

“Information flow arrangements

6A.—(1) Where an education authority which is responsible for the school education of the child or young person informs a parent or young person—

- (a) of the outcome of a proposal under section 11(2)(b)(i) of the Act; or
- (b) under section 28(2) of the Act, of its decision,

it must also inform the parent or young person that, if the parent or young person has made a placing request to a potential host authority which—

- (c) has not been decided by that authority; or
- (d) has been refused by that authority and refusal has been referred to, and is under consideration by, an appeal committee; or
- (e) has been refused by that authority, refusal confirmed by an appeal committee, and that decision appealed to, and is under consideration by, a sheriff,

they are to notify the potential host authority—

- (f) if the outcome referred to in sub-paragraph (a) is that a co-ordinated support plan is to be prepared;
- (g) if the outcome referred to in sub-paragraph (a) is that a co-ordinated support plan is not to be prepared and the parent or young person exercises their right to refer that decision to a Tribunal under section 18(1) of the Act;
- (h) if the parent or young person has been informed under section 28(2) of the Act that an education authority has decided not to comply with any request made to it under the Act, and the parent or young person has referred that decision to a Tribunal.

(2) Where a potential host authority has been notified under paragraph (1)(f) - (h) it must inform the appeal committee or the sheriff, if appropriate, of that notification and advise the appeal committee or the sheriff that any reference or appeal made by the parent or young person must immediately be transferred to the Tribunal in terms of paragraphs 6(4) and (5) and 7(8) and (9) of schedule 2 to the Act.

(3) Where an education authority informs a parent or young person of any of the matters referred to in paragraph (1)(a) – (b), it must also inform that person in writing that if making a placing request to a potential host authority they are to advise the potential host authority when they make the placing request of that matter.

(4) Where an education authority which is responsible for the school education of a young person informs a parent or young person in accordance with paragraph (1)(a) – (b), it must also inform the parent or young person that, if the circumstances in paragraph (5) apply, and if the outcome is that any of the circumstances in paragraphs (1)(f) – (h) apply, it must also inform those persons in writing that they may appeal to the Tribunal and of any time limit for appeal.

(5) The circumstances are that the parent or young person has made a placing request to a potential host authority which has been refused by that authority, the refusal has been confirmed by an appeal committee, and the parent or young person has not appealed to the sheriff in accordance with paragraph 7 of schedule 2 to the Act.

(6) In this regulation, “potential host authority” means an education authority other than the education authority in whose area the child or young person lives.”.

Insertion of regulation 9A

6. After regulation 9 (transfer of the plan) insert—

“Transfer and review of the plan following a successful placing request

9A.—(1) This regulation applies where a child or young person to whom a plan relates moves from a school under the management of an education authority (“the original authority”), or from another place in which the original authority was responsible for providing school education to the child or young person, to a school under the management of another education authority (“the new authority”) as a result of an out of area placing request.

(2) The original authority must—

(a) no later than 4 weeks from the earlier of—

- (i) the date the child or young person first attends the new school; or
- (ii) the date it becomes aware that the child or young person has already started at the new school,

send the plan to the new authority;

- (b) at the same time provide the new authority with the name and contact details for the persons mentioned in paragraph (6)(c) below.

(3) On receipt of the plan, the new authority must treat it for the purposes of the new authority's duties and functions under the Act and these Regulations as if it had been prepared by the new authority.

(4) On receipt of the plan the new authority must—

- (a) as soon as reasonably practicable inform the persons referred to in section 11(3)(a) or (b) of the Act that it proposes to conduct a review of the plan; and
- (b) conduct a review of the plan within the time limits set down in regulations 5 and 7.

(5) As soon as reasonably practicable, the new authority must inform the persons mentioned in paragraph (6) below—

- (a) that the plan has been transferred; and
- (b) of its responsibility under the Act and these Regulations for the plan including the arrangements made by it for the purposes of regulation 8(1), the name and contact details of the Additional Support Co-ordinator for the plan within the new authority or appointed by that authority, and the name and contact details of the person nominated by that authority for the purposes of section 9(2)(d) of the Act (officer from whom advice and further information is available).

(6) The persons mentioned in paragraph (5) above are—

- (a) in the case of a child to whom the plan relates, the child's parent;
- (b) in the case of a young person to whom the plan relates—
 - (i) the young person, or
 - (ii) if the education authority are satisfied that the young person lacks the capacity to understand the information, the young person's parent; and
- (c) any person named in the plan as providing additional support.

(7) For the purposes of this regulation the date of transfer is the date on which the original authority send the plan to the new authority in accordance with paragraph (2) above.

(8) In this regulation, an "out of area placing request" means a placing request to an education authority which at the time of the request was not responsible for the school education of the child or young person."

Amendment of regulation 11

7.—(1) In paragraph (3) delete "must".

(2) In sub-paragraph ((3)(a) insert "must" before the word "retain".

(3) In sub-paragraph (3)(b) insert "must" before the word "on".

(4) In sub-paragraph (3)(c) insert "may" before the word "if".

ADAM INGRAM

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
13th April 2010

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Additional Support for Learning (Co-ordinated Support Plan) (Scotland) Amendment Regulations 2005 (“the principal Regulations”). The principal Regulations prescribe the form and content of a co-ordinated support plan for a child or young person with additional support needs for the purposes of the Education (Additional Support for Learning) (Scotland) Act 2004. They also prescribe time limits and exceptions to such limits for the preparation and review of a plan, arrangements for keeping the plan, arrangements regarding the transfer of a plan to another education authority, arrangements for the disclosure without explicit consent of the plan to specified persons or in specified circumstances and arrangements for the discontinuance, retention and destruction of a plan.

Regulation 3 inserts new regulation 4A into the principal Regulations to provide a time limit of 8 weeks for the education authority to respond to a request to establish whether a child or young person requires a plan unless it is impractical to do so for the reason given in regulation 4A(2).

Regulation 4 inserts new regulation 5A into the principal Regulations to provide a time limit of 4 weeks to respond to a request for an early review of a plan unless it is impractical to do so when a time limit of 12 weeks applies. Failure to meet those timescales is to be treated as a refusal to carry out an early review.

Regulation 5 inserts new regulation 6A into the principal Regulations. Regulation 6A provides for the circumstances in which, a parent or young person who has made a placing request to an education authority other than the one which is responsible for the education of the parent’s child or young person must tell that education authority of those matters. If notification is received before the placing appeal has been finally determined by the potential host authority, an appeal committee or a sheriff, or before a refusal by an appeal committee to confirm a reference to it has been appealed to the sheriff, the parent or young person must advise the potential host authority of the matter. When the potential host authority receives notification of the matter, it must advise the appeal committee or sheriff, if appropriate, of that matter and that the appeal must be forthwith transferred to the Tribunal. Regulation 6A(3) provides that the education authority must also inform the parent or young person that, if they make any future placing requests to a potential host authority, they should inform the potential host authority of that matter. Regulation 6A(4) and (5) provide for the circumstances in which an education authority which makes a relevant decision must inform a parent or young person about their right to appeal to the Tribunal.

Regulation 6 inserts new regulation 9A into the principal Regulations to provide for the transfer of the co-ordinated support plan following a successful placing request to the authority to which the request was made.

Regulation 7 amends regulation 11 to provide that an education authority may inform the parents of a child or a young person, as appropriate, that a plan which has been discontinued in accordance with regulation 11(1)(a) or (b) has been destroyed.

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