

Equality Impact Assessment Record

The Education (Miscellaneous Amendments) (Coronavirus) (Scotland) Regulations 2020

May 2020

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Title of policy/ practice/strategy/ legislation etc.	The Education (Miscellaneous Amendments) (Coronavirus) (Scotland) Regulations 2020
Minister	John Swinney MSP, Deputy First Minister and Cabinet Secretary for Education and Skills
Lead official	Clare Morley/Jen Staermose Johnson
Directorate: Division: Team	Learning Directorate: Workforce, Infrastructure and Reform Division: School Funding, Infrastructure and Organisation
Is this new policy or revision to an existing policy?	Revision

Screening

Policy Aim

Local authorities have expressed significant concerns about their capacity to support the school admissions placing request and consequent appeals process this year due to the Coronavirus outbreak.

We plan to amend The Education (Appeal Committee Procedures) (Scotland) Regulations 1982 (“the 1982 Regulations), The Education (Placing in schools etc. - Deemed Decisions) (Scotland) Regulations 1982/1733 (the “Deemed Decisions Regulations”) and The Additional Support for Learning (Placing Requests and Deemed Decisions) (Scotland) Regulations 2005 (“the 2005 Regulations”).

In order to change the deadlines for local authority consideration of placing requests and subsequent appeals (including where applicable, in relation to children with additional support needs) and exclusion appeals, and to provide increased flexibility in how appeal hearings are conducted.

Our intention is for this to be a temporary measure and that we would revoke these regulations at a suitable point once the Coronavirus crisis is over and relevant appeals are concluded. We have undertaken to revoke the regulations by 28 February 2021.

Who will it affect?

The policy primarily affects parents who have applied for a placing request and a smaller subset of those parents who appeal against the local authority's decision.

It will have a positive effect on local authorities and education appeal committees as it will relax the relevant statutory deadlines and give greater flexibility around how appeal hearings are conducted. Without such measures local authorities and education appeal committees may be unable to fulfil their statutory duties due to limited capacity and the requirement to operate differently arising from the current Coronavirus outbreak.

By providing greater flexibility for local authorities to manage the placing request and appeals process effectively, this will ensure that parents' right of appeal against a decision to refuse a placing request, or exclusion, will remain, albeit at a slower pace.

These measures are not time limited but are intended to be temporary and we have undertaken to revoke the regulations by 28 February 2021. Their impact will be limited to those parents who appeal placing requests decisions for entry to school in August 2020 and any ad hoc placing requests or exclusions appeals in the period to 28 February 2021.

What might prevent the desired outcomes being achieved?

It is possible that some parents' appeals will not be heard until after the new school term begins in August 2020, which, if the appeal is upheld, will have had the effect of delaying their child's entry to the school of their choice at the start of the next academic year. The extent of this effect is hard to quantify given the uncertainty as to when the Coronavirus outbreak will be over and schools will reopen. The regulations do make clear the expectation that local authorities and education appeal committees should complete the placing request and appeals processes as quickly as practicable. However, we believe that our approach of enabling hearings to be held remotely and across a longer timeframe is proportionate given the potential risk to public health of holding appeal hearings in person, even though in some cases this will mean children's school places will not be finalised until after the start of the new school year.

Stage 1: Framing

Results of framing exercise

Due to the unusual circumstances of the current Coronavirus outbreak it has not been possible to conduct the usual round of consultation that would normally take place. However, the framing exercise carried out consulted a wide range of policy officials and analytical colleagues who have been able to advise and provide evidence on these measures. In line with good practice they continue to be on hand to inform thinking on how this policy will affect different groups of people and communities and to ensure that we fulfil the need to assess the effect this policy has upon different groups of people.

Whilst, due to these current circumstances, our ability to consult has been limited, we have nevertheless engaged in extensive discussions with local authorities during late March and April to establish the scale of the resource issues they face and understand how the current outbreak will affect their ability to meet their statutory responsibilities, in relation to placing requests and exclusion appeals. We also engaged with a parent representative group to understand the likely impacts on parents.

Extent/Level of EQIA required

The Scottish Government's assessment of the impact of this policy on all areas of protected characteristics is that it will have no effect. However, the EQIA process has highlighted the need for the Scottish Government to continue to engage closely with stakeholders to ensure that equalities issues continue to be at the forefront of policy development processes and that any new issues can be dealt with as they arise.

Stage 2: Data and evidence gathering, involvement and consultation

Include here the results of your evidence gathering (including framing exercise), including qualitative and quantitative data and the source of that information, whether national statistics, surveys or consultations with relevant equality groups.

Discussions with local authorities identified the likely numbers of appeals that education appeal committees may need to consider this year but no further detail about any protected characteristics. There is also little recent research into Education Appeal Committees, though some of the evidence available shows that many parents find the appeals process stressful and challenging. We would expect local authorities to be cognisant of their responsibilities under the Public Sector Equality Duty, in how they carry out hearings so that the needs of parents with protected characteristics are catered for as far as possible.

Characteristic ¹	Evidence gathered and Strength/quality of evidence	Source	Data gaps identified and action taken
Age	No specific evidence available	N/A	None
Disability	Limited evidence from a 2006 report which provided anecdotal evidence of parents of children with disabilities feeling unable to participate in hearings	Scottish Executive commissioned report published in 2006 ²	We will make clear in supporting guidance to education authorities and education appeal committees their responsibilities under the Equality Act 2010.
Sex	No specific evidence available	N/A	None
Pregnancy And Maternity	No specific evidence available	N/A	None
Gender Reassignment	No specific evidence available	N/A	None

¹ Refer to Definitions of Protected Characteristics document for information on the characteristics

² https://dera.ioe.ac.uk/6357/7/0041389_Redacted.pdf - consultation proposals and research report published in 2006 (see p41)

Sexual Orientation	No specific evidence available	N/A	None
Race	Limited evidence from a 2006 report which provided anecdotal evidence of a lack of translation services for parents with English as a second language	Scottish Executive commissioned report published in 2006	We will make clear in supporting guidance to education authorities and education appeal committees their responsibilities under the Equality Act 2010, including that the use of written submissions do not disadvantage those with English as a second language.
Religion Or Belief	No specific evidence available	N/A	None
Marriage And Civil Partnership (the Scottish Government does not require assessment against this protected characteristic unless the policy or practice relates to work, for example HR policies and practices - refer to Definitions of Protected Characteristics document for details)	No specific evidence available	N/A	None

Stage 3: Assessing the impacts and identifying opportunities to promote equality

Having considered the data and evidence you have gathered, this section requires you to consider the potential impacts – negative and positive – that your policy might have on each of the protected characteristics. It is important to remember the duty is also a positive one – that we must explore whether the policy offers the opportunity to promote equality and/or foster good relations.

Do you think that the policy impacts on people because of their age?

Age	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination, harassment and victimisation			Yes	The greater flexibility in how appeal hearings can be conducted, the extended timeframes in which they can be convened and supporting guidance we intend to publish will we believe enable education appeal committees to ensure they are conducted in such a way that minimises the risk of such discrimination.
Advancing equality of opportunity			Yes	See above
Promoting good relations among and between different age groups			Yes	See above

Do you think that the policy impacts disabled people?

Disability	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination, harassment and victimisation			Yes	See above
Advancing equality of opportunity			Yes	See above
Promoting good relations among and between disabled and non-disabled people			Yes	See above

Do you think that the policy impacts on men and women in different ways?

Sex	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			Yes	See above
Advancing equality of opportunity			Yes	See above
Promoting good relations between men and women			Yes	See above

Do you think that the policy impacts on women because of pregnancy and maternity?

Pregnancy and Maternity	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			Yes	See above
Advancing equality of opportunity			Yes	See above
Promoting good relations			Yes	See above

Do you think your policy impacts on transsexual people?

Gender reassignment	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			Yes	See above
Advancing equality of opportunity			Yes	See above
Promoting good relations			Yes	See above

Do you think that the policy impacts on people because of their sexual orientation?

Sexual orientation	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			Yes	See above
Advancing equality of opportunity			Yes	See above
Promoting good relations			Yes	See above

Do you think the policy impacts on people on the grounds of their race?

Race	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			Yes	See above
Advancing equality of opportunity			Yes	See above
Promoting good race relations			Yes	See above

Do you think the policy impacts on people because of their religion or belief?

Religion or belief	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			Yes	See above
Advancing equality of opportunity			Yes	See above
Promoting good relations			Yes	See above

Do you think the policy impacts on people because of their marriage or civil partnership?

Marriage and Civil Partnership³	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			Yes	See above

³ In respect of this protected characteristic, a body subject to the Public Sector Equality Duty (which includes Scottish Government) only needs to comply with the first need of the duty (to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010) and only in relation to work. This is because the parts of the Act covering services and public functions, premises, education etc. do not apply to that protected characteristic. Equality impact assessment within the Scottish Government does not require assessment against the protected characteristic of Marriage and Civil Partnership unless the policy or practice relates to work, for example HR policies and practices.

Stage 4: Decision making and monitoring

Identifying and establishing any required mitigating action

Have positive or negative impacts been identified for any of the equality groups?	No
Is the policy directly or indirectly discriminatory under the Equality Act 2010 ⁴ ?	No
If the policy is indirectly discriminatory, how is it justified under the relevant legislation?	N/A
If not justified, what mitigating action will be undertaken?	N/A

Describing how Equality Impact analysis has shaped the policy making process

The emergency and unusual nature of the current situation has prevented a longer and more consultative process to explore in great depth the potential impacts of these proposals. However this will be kept in view and should this become possible further consultation will be undertaken.

Monitoring and Review

We will monitor the impact of these proposals over the summer to ensure that any negative effects are minimised.

⁴ See EQIA – Setting the Scene for further information on the legislation.

Stage 5 - Authorisation of EQIA

Please confirm that:

- ◆ This Equality Impact Assessment has informed the development of this policy:

Yes No

- ◆ Opportunities to promote equality in respect of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation have been considered, i.e.:

- Eliminating unlawful discrimination, harassment, victimisation;
- Removing or minimising any barriers and/or disadvantages;
- Taking steps which assist with promoting equality and meeting people's different needs;
- Encouraging participation (e.g. in public life)
- Fostering good relations, tackling prejudice and promoting understanding.

Yes No

- ◆ If the Marriage and Civil Partnership protected characteristic applies to this policy, the Equality Impact Assessment has also assessed against the duty to eliminate unlawful discrimination, harassment and victimisation in respect of this protected characteristic:

Yes No Not applicable

Declaration

I am satisfied with the equality impact assessment that has been undertaken for the introduction of The Education (Miscellaneous Amendments) (Coronavirus) (Scotland) Regulations 2020 and give my authorisation for the results of this assessment to be published on the Scottish Government's website.

Name: Andy Drought

Position: Deputy Director

Authorisation date: 13 May 2020



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