

The Education (Miscellaneous Amendments) (Coronavirus) (Scotland) Regulations 2020 - Children's Rights and Well-being Impact Assessment

CRWIA Stage 1 Screening - key questions

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

Implementation of The Education (Miscellaneous Amendments) (Coronavirus) (Scotland) Regulations 2020.

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 in order to change the deadlines for local authority consideration of placing requests and subsequent appeals, and to provide increased flexibility in how appeal hearings are conducted.

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 while maintaining parents' right of appeal in relation to placing requests and exclusions.

It is intended that these regulations will be in place temporarily for the 2020 school admissions process and will be revoked by 28 February 2021.

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 in front of an independent panel who will review the Council's decision and decide whether to overturn it or not.

These changes to the regulations maintain the right of appeal but give greater flexibility to local authorities in how long they have to process placing requests and to convene appeal hearings. Placing requests may therefore be assessed over a longer time frame than is usual (one month) and hearings may take place across a longer period (up to four months) rather than two currently.

We expect most placing requests and appeals will take place as close as possible to current timeframes 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.

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 current timeframes 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. This will be in the main an indirect impact as the provisions in the regulations relate to a parent's 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. Face-to-face appeal hearings are not possible at the moment and by providing greater flexibility in how hearings are conducted, i.e. via remote technology, we are ensuring hearings can go ahead without contravening the current social distancing restrictions which are in place to protect everyone's health.

As noted above, these are intended to be temporary measures and revoked by 28 February 2021. Therefore, their impact will be limited to those families making a placing request during the 2020 school admissions round, and other ad hoc requests until that date.

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 place appeals. Therefore it is not possible to say with any certainty whether any particular group 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. 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.

As this measure will affect in the region of 2,000-3,000 families (based on 2019 estimate) and involves legislation a CRWIA is necessary.

CRWIA Declaration

Tick relevant section, and complete the form.

CRWIA required

CRWIA not required

X – CRWIA required

Authorisation

Policy lead

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Workforce, Infrastructure and Reform Division
(WIR)

Date

23 April 2020

Deputy Director or equivalent

Clare Morley (on behalf of Andy Drought,
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Date

23 April 2020

Stage 3

CRWIA title: The Education (Miscellaneous Amendments) (Coronavirus) (Scotland) Regulations 2020 - Children's Rights and Well-being Impact Assessment

Date of publication: 23 April 2020

Executive summary

We are amending The Education (Appeal Committee Procedures) (Scotland) Regulations 1982 ("the 1982 Regulations), The Education (Placing in schools etc. - Deemed Decisions) (Scotland) Regulations 1982/1733 (the "Deemed Decisions Regulations") and The Additional Support for Learning (Placing Requests and Deemed Decisions) (Scotland) Regulations 2005 in order to change the deadlines for local authority consideration of placing requests and subsequent appeals, exclusion appeals and to provide increased flexibility in how appeal hearings are conducted. 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 while maintaining parents' right of appeal in relation to placing requests and exclusions.

It is intended that these regulations will be in place temporarily for the 2020 school admissions process and have undertaken that they will be revoked by 28 February 2021.

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. LAs 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 LA's decision to refuse a placing request they can appeal to the LA 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.

Local government has been concerned about their ability to deliver an effective placing request and consequent appeals process and exclusions appeals during the current Coronavirus outbreak. This is due to resource pressures and availability of local authority staff and appeal hearing panel members. The social distancing requirements currently in place also make it necessary to find new ways of holding appeal hearings which are normally held face to face.

Scope of the CRWIA, identifying the children and young people affected by the policy, and summarising the evidence base

Due to the emergency nature of the current situation and the limited availability of research evidence the evidence base for this CRWIA is limited.

Children and young people's views and experiences	Due to the emergency nature of the current situation it has not been possible to engage with children and young people about these proposals. We have engaged extensively with local authorities and parents' representatives.
Key Findings, including an assessment of the impact on children's rights, and how the measure will contribute to children's wellbeing	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 this year's admissions round. There is potentially a negative impact on those children whose school place is not finalised by the time the new school term begins. We have put in place mitigations to reduce the likelihood of this outcome 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 significant relaxation of the deadlines that appeals are expedited as soon as practicable. Given the unprecedented nature of current situation we believe this is a balanced and equitable solution for all involved.
Monitoring and review	The impact of the new regulations will be monitored closely while they are in place. We will be establishing 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 Team Leader Workforce, Infrastructure and Reform Division (WIR)	Date 23 April 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 23 April 2020