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# **The Education (Miscellaneous Amendments) (Coronavirus) (Scotland) Regulations 2021**

## **Island Communities Impact Assessment**

**January 2021**



**Scottish Government**  
Riaghaltas na h-Alba  
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## **Island Communities Impact Assessment**

### **Purpose and Intended Effect**

#### **Background**

This Island Communities Impact Assessment (ICIA) is focussed on The Education (Miscellaneous Amendments) (Coronavirus) (Scotland) Regulations 2021

The coronavirus outbreak placed significant pressure on all local authorities in 2020, including those with island communities, with staff being deployed to urgent response activities and less able to process placing requests and organise appeal hearings. Restrictions on social contact also meant that appeal hearings could not be held face to face. Therefore, changes to the regulations which govern the process for school placing requests, any subsequent appeals, and exclusion appeals were introduced for 2020. In a letter to the Convener of the Education and Skills Committee, the Scottish Government noted that these regulations would be temporary and a review would be undertaken by February 2021. We noted that such a decision would be subject to any further waves of the coronavirus virus and any continuing restrictions.

We have published new regulations to replace the 2020 regulations. As previously, our intention is for these regulations to be a temporary measure and a review will be undertaken in advance of the 2022 admissions round, to again consider whether the pressures and restrictions due to the coronavirus pandemic have lifted.

#### **Regulations**

These regulations amend The Education (Appeal Committee Procedures) (Scotland) Regulations 1982, The Education (Placing in schools etc. - Deemed Decisions) (Scotland) Regulations 1982 and The Additional Support for Learning (Placing Requests and Deemed Decisions) (Scotland) Regulations 2005.

#### **Objective**

The changes made to the above regulations in April 2020 gave local authorities greater flexibility in the timeframes and manner in which they conduct the placing request and appeals processes (including exclusion appeals). This was needed due to the severe pressure that local authorities were under due to the coronavirus outbreak and, in relation to appeal hearings specifically, the need to avoid the risk of infection to local authority officers and members of the public through face-to-face hearings.

Local authorities have expressed their continued significant concerns about their capacity to support the school admissions placing request and consequent appeals process in 2021 due to the coronavirus pandemic and so the continued need for

longer timeframes for making decisions. There is continuing uncertainty about the situation due to Covid-19 and restrictions remain in place which may affect staffing levels in local authorities and prevent face to face hearings, all of which may negatively affect local authorities' ability to manage the placing request/appeals process in 2021.

These new regulations put in place the following measures:

- The deadline for responding to placing requests received by local authorities by the main deadline of 15 March has been shortened to 15 May. Under the original regulations education authorities had to respond to such requests by 30 April, and this was extended to 31 May in 2020. The 15 May deadline provides education authorities with a cushion period to absorb any potential issues and reduce the risk of deadlines being missed leading to requests becoming deemed refusals.
- The period of time education authorities have to consider placing requests received at any other time during the year, i.e. after 15 March, is reduced from 3 months back to the original 2 month period.
- An appeal committee must hold a hearing on a placing request or exclusion appeal within 2 months of receiving an appeal. Under the original regulations a hearing had to be held within 28 days and that was extended to 3 months by the 2020 amendments. Importantly, it is a requirement that a hearing should be held as soon as practicable within this timescale.
- The timeframe for an appeal committee to notify appellants of the outcome of an appeal (including an exclusion appeal) has been reduced to 14 days, as per the original regulations, from the 28 days provided for by the 2020 amendments.
- The period of time after which an appeal committee is deemed to have upheld the refusal of the education authority on a placing request or exclusion appeal is reduced from 4 months to 3 months. Under the original regulations education authorities had a 2 month window and this was extended to 4 months in 2020. The 3 month deadline for the 2021 school admissions round provides education authorities with a cushion period to absorb any potential issues.
- The period of time an appeal committee has to acknowledge a placing request or exclusion appeal has reverted back to 5 days, rather than the 28 days provided for by the 2020 amendments.
- In relation to placing request appeals for children with additional support needs, the requirement for an education authority to provide the appeal committee and parents with all information relevant to their decision has reverted back to a requirement to do so "immediately", rather than "as soon as reasonably practicable".

These measures apply in the same way across all 32 local authorities and there are no specific provisions for Islands Communities.

## **Gathering Data and Identifying Stakeholders**

### **Data**

The Scottish Government engaged with local government bodies, including COSLA, ADES and SOLAR to gather information about how the 2020 admissions process was conducted and how the 2020 regulations impacted upon the experience of parents, children and young people during the autumn of 2020. To gather this information we asked local authorities, including those from the Island local authorities of Argyll and Bute, Comhairle nan Eilean Siar, Highland Council, North Ayrshire, Orkney Islands and Shetland Islands - to complete a questionnaire and provide information about the volume of placing requests, appeal hearings, exclusion appeal hearings and their views on the effect of the 2020 regulations. Out of 32 local authorities, 25 responded including all of the Island authorities.

We also engaged with the National Parent Forum of Scotland, the Children and Young People's Commissioner's Office and the Equality and Human Rights Commission to seek their views around how the 2020 regulations operated and their impact upon children. They provided useful feedback on the perspectives of parents, children and young people, including those with additional support needs.

This information and data described above was used to formulate the Scottish Government's approach for the 2021 school admissions round (see above).

### **Within Government**

The development of these regulations involved teams within Learning Directorate, including those leading on policy on school admissions, children and young people with additional support needs and exclusions.

### **Public Consultation**

There is no specific requirement to undertake a public consultation in respect of these regulations, and given the technical nature of the changes, we consulted directly with key stakeholder bodies, as noted above. Each of the six island authorities were approached for data and comment, as noted earlier, and each provided a response. Their responses showed that these local authorities in the main were able to conduct the process in line with the pre-2020 timescales.

## **Assessment**

### **Overview**

The changes made by these regulations apply equally across all local authorities and the relatively low levels of use of placing requests (and consequent appeal hearings) and exclusion appeals in Island Communities means that they will not have any differential effect. The extensions to the timeframes that will be used in 2021 also are unlikely to negatively affect families in Island Communities. The ability to use remote

hearings will also benefit families in Islands Communities though this benefit also applies to families across Scotland.

## **Analysis**

The data provided by the Island local authorities showed that those local authorities without large towns (i.e. except North Ayrshire and Highland) had low numbers of placing requests and subsequent appeals (<60). North Ayrshire and Highland had larger overall totals but they did not report how many were from their Islands (Arran and Skye respectively). We can assume that for these Islands that they too have low numbers of placing requests and appeals. It is likely that the low numbers of placing requests is due to these islands having fewer schools and parents choosing to send their children to their nearest school. None of the placing requests went to appeal in any of the Island local authorities.

Most of these local authorities reported that the placing request and appeals process had been conducted in line with the usual pre-2020 timeframes and had not reported any problems with the process.

## **Conclusion**

The following conclusions have been reached in the production of this ICIA:

- The amendments made by these regulations take a proportionate approach in relation to Scotland's island communities and allow these local authorities to take advantage of the available flexibilities if they wish to.
- The permissive approach has been welcomed by local authorities, including the island local authorities, as it allows them to progress with the relevant processes to the pre-2020 pace, but in retaining some slightly extended deadlines, will enable them to take account of potential staff absence due to the current coronavirus outbreak if that is necessary. Island communities could be particularly vulnerable if there was significant community transmission and the regulations provide sufficient flexibility if an outbreak was to occur.
- Given the ongoing uncertainty with the progress of the virus this flexibility will ensure that placing requests and appeals (including exclusion appeals) can be resourced effectively and conducted in a timely and safe manner. This will be particularly beneficial to small island authorities, such as Orkney, which do not have the same economies of scale and resources as larger authorities.
- By enabling appeal hearings to be held remotely it reduces the risk of spread of the virus protecting the health and well-being of parent, children, young people plus local authority and schools staff.
- For these reasons, the provisions in these Regulations are not deemed likely to have effects on island communities that are significantly different from their effects on other communities (including other island communities) in Scotland

and therefore a full Island Communities Impact Assessment is not necessary for these regulations. No further adjustments are necessary to the policy.

- We will however continue to engage with Island Communities via the representative bodies noted above and collect data on their experience of the 2021 admissions round and use that to assess whether any specific differential impacts emerge.

Clare Morley (on behalf of Andy Drought, Deputy Director, WIR Division) Unit Head  
School Funding, Infrastructure and Organisation)  
School Funding, Infrastructure & Organisation Unit  
Learning Directorate



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