

2005 No. 515

EDUCATION

The Additional Support for Learning (Placing Requests and Deemed Decisions) (Scotland) Regulations 2005

Made - - - - - *19th 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 22 and 34 of, and paragraphs 4(3) and 6(6) of schedule 2 to, the Education (Additional Support for Learning) (Scotland) Act 2004(a) and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Additional Support for Learning (Placing Requests and Deemed Decisions) (Scotland) Regulations 2005 and shall come into force on 14th November 2005.

Interpretation

2.—(1) In these Regulations—

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

“appeal committee” means an appeal committee set up and maintained under section 28D(1)(a) of the Education (Scotland) Act 1980(b);

“placing request” has the meaning given in paragraph 2(3) of schedule 2 to the Act;

“school year” means a period of 12 months commencing on 1st August of any year;

“specified school” has the meaning given in paragraphs 2(3) and 2(4) of schedule 2 to the Act;

“Tribunal” means an Additional Support Needs Tribunal for Scotland constituted under the Act;

“working day” means any day which is not—

- (a) a Saturday;
- (b) a Sunday;
- (c) a day from 27th December to 31st December inclusive;
- (d) a day in July; or

(a) 2004 asp 4.

(b) 1980 c.44 (“the 1980 Act”). Section 28D(1)(a) of the 1980 Act was inserted by section 1(1) of the Education (Scotland) Act 1981 c.58.

- (e) a day specified as a bank holiday in Scotland in or by virtue of the Banking and Financial Dealings Act 1971^(a).

(2) These Regulations apply to a young person having additional support needs as they apply to a child having such needs.

(3) For the purpose of the application of these Regulations to a placing request in respect of a young person having additional support needs, references in these Regulations to the parent of a child having additional support needs (as well as references to the child) are to be construed as references to the young person, except where the education authority or appeal committee is satisfied that the young person lacks capacity to do anything which the parent of a child may do under the regulation concerned in which circumstances such references are to be construed as references to the young person's parent.

(4) Any reference in these Regulations to the doing of anything in writing shall be construed in accordance with section 29(5) of the Act, except where a parent or young person reasonably requires a particular form of communication, in accordance with section 31(b) of the Act, in which circumstances any such reference to 'in writing' shall be construed in accordance with that provision.

(5) Any reference in these Regulations to the receipt of any thing, if posted, is to be presumed to be a reference to such a thing having been received (unless the contrary is proved)–

- (a) on the day after the date on which it was posted; or
- (b) if posted on a Friday, Saturday or Sunday, on the Monday next following.

Deemed decision of an education authority

3. An education authority shall be deemed to have refused a placing request made in accordance with the provisions of paragraphs 2(1) or (2) or 8 of schedule 2 to the Act–

- (a) in the case of such a placing request received by the education authority on or before 15th March in any year with respect to a child, or, as the case may be, young person, being placed in the school specified in the placing request at the commencement of the first term of the school year next following the date of making of the request, on 30th April of the first mentioned year; or
- (b) in the case of any other such placing request, on the expiry of the period of 2 months immediately following receipt by the authority of the placing request,

in the event mentioned in paragraph 4(3) of that schedule, namely if the authority have not before that date of 30th April or, as the case may be, within that period of 2 months, informed the parent or, as the case may be, the young person making the placing request, in writing, of their decision on it in accordance with paragraph 4(1) of that schedule.

Deemed decision of an appeal committee

4. Subject to regulation 5, where with respect to any reference under paragraph 5(1) of schedule 2 of the Act, or, to the extent to which regulation 5 is applicable, under section 19(5)(c) of the Act, an appeal committee have–

- (a) failed to hold a hearing within the period of 2 months immediately following receipt by the committee of the reference;
- (b) failed within the period of 14 days immediately following an adjournment of a hearing to fix a date for a resumed hearing of the reference; or
- (c) failed to comply with paragraph 6(3) of that schedule (notification of appeal committee's decision) within the period of 14 days immediately following the conclusion of the hearing, or as the case may be, resumed hearing of that reference,

(a) 1971 c.80.

the committee shall be deemed, for the purposes of paragraph 6(6)(b) of that schedule, to have confirmed the decision of the education authority on a placing request, on the expiry of such period of 2 months or, as the case may be, 14 days.

Deemed decision: placing requests referred to Tribunal

5.—(1) Where—

- (a) the decision of the education authority refusing the placing request is a decision under section 18(3)(e) of the Act to which section 18(4)(c) of the Act applies; and
- (b) following referral of that placing request to a Tribunal, the Tribunal has referred the decision to the appeal committee in terms of section 19(5)(c) of the Act,

there shall be disregarded for the purpose of computation of the periods referred to in regulation 4(a) to (c) any days during which such referral by the Tribunal has not been notified to the appeal committee.

(2) Notwithstanding regulation 4 and paragraph (1) of this regulation, in computing the periods referred to in regulation 4(a) to (c) that computation shall be subject to the appeal committee having always a period of not less than 10 working days following receipt by the committee of notification from the Tribunal in terms of paragraph (1) within which to take the action referred to in regulation 4(a) to (c).

Provision of information to an appeal committee

6. Where a parent, or, as the case may be, young person, has referred the decision of the education authority on a placing request to the appeal committee, the authority, on being notified in writing by the committee of receipt of the reference, shall immediately make available in writing to the appeal committee and to the parent, or as the case may be young person, all of the information relevant to their decision, including information concerning the views of the education authority as to the child's or young person's additional support needs and information concerning the additional support, if any, provided for the child or young person.

MALCOLM CHISHOLM
A member of the Scottish Executive

St Andrew's House,
Edinburgh
19th October 2005

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in relation to placing requests relating to children or young persons with additional support for learning needs provided for by the Education (Additional Support for Learning) (Scotland) Act 2004 (“the Act”). They make provision for deeming decisions to have been taken by education authorities or appeal committees established under the Education (Scotland) Act 1980 where those bodies have not reached a decision in relation to a placing request on reference by the dates or within the periods prescribed in these Regulations. Such a deemed decision puts the person making the placing request or reference in a position to proceed to the next step in the appeal process under the Act by making a reference to an appeal committee, or by an appeal to the sheriff.

Regulation 3 prescribes dates by which, or the period on the expiry of which, an education authority will be deemed to have made a decision refusing a placing request. Regulation 4 makes comparable provision with respect to references made by a parent or young person to an appeal committee of an education authority’s decision in relation to a placing request for such a child or young person.

Regulation 5 applies where the decision of an education authority refusing the placing request has been referred to an Additional Support Needs Tribunal established under the Act. It provides that for the purposes of deemed decisions of the appeal committee under regulation 4, any days during which a reference by the Tribunal has not been notified to the committee are, to the extent specified, to be disregarded. Further provision is also made to the effect that the committee shall always have a minimum of 10 working days within which to take further action following receipt by the committee of notification from the Tribunal.

Regulation 6 makes provision requiring an education authority to provide relevant information to an appeal committee on being notified that their decision on a placing request has been referred.

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