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

Equalities Impact Assessment

January 2021

Equality Impact Assessment Record

Title of policy/ practice/strategy/ legislation etc.	The Education (Miscellaneous Amendments) (Coronavirus) (Scotland) Regulations 2021
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

The coronavirus outbreak placed significant pressure on local authorities in 2020 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 Presiding Officer, 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.

The changes made to the 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) in order to preserve parents' right of appeal, albeit within extended timeframes. 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. 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. Additionally, we have 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.

Having consulted stakeholders and carefully weighed their views, we have decided to continue the provision for remote hearings and to adjust but retain extended timescales for the 2021 admissions round.

We plan to 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.

Our intention is for this 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.

Who will it affect?

The policy primarily affects parents and their children who have made 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' ability to successfully conduct the placing request and consequent appeals process, and exclusions appeals. Although some elements of the process revert back to the pre-2020 timeframes overall the changes continue to give sufficient flexibility particularly around how appeal hearings are conducted so the process can be conducted effectively for the benefit of parents, children and young people. Without such measures there is the potential for local authorities and education appeal committees being unable to fulfil their statutory duties due to limited capacity arising from the current coronavirus outbreak. Parents continue to have the right of appeal against a decision to refuse a placing request, or exclusion.

These measures are not time limited but are intended to be temporary and we have undertaken to review these regulations before the 2022 admissions round. Their impact will be limited to those parents who appeal placing request decisions for entry to school in August 2021 and any ad hoc placing requests or exclusion appeals in the period to 28 February 2022. The data

provided by 25 local authorities shows that in 2020, they received 21,587 placing requests. Following consideration of these placing requests, 627 appeals were conducted across the 25 local authority areas against the refusal of a placing request. In addition, there were 789 additional support for learning placing requests reported. Of these, 14 cases have gone to the Education Appeal Committee and 37 cases to the Additional Support Needs Jurisdiction of the Health and Education Chamber of the First-tier Tribunal.

With respect to exclusion appeals, the data provided by local authorities showed that twelve exclusion appeal hearings took place, all of which were resolved, with no onward appeals to the sheriff court.

What might prevent the desired outcomes being achieved?

The policy is intended to allow placing requests and appeals and exclusion appeals to be processed efficiently, reflecting the ongoing pressures and restrictions on local authorities and appeal committees, while minimising any detriment to families.

It is possible that, if the maximum time periods are required at each stage of the process, some parents' placing request appeals would not be resolved until after the new school term begins in August 2021. This would prolong uncertainty for the family, and, if the appeal is upheld, would delay their child from starting the academic year at the school of their choice

The data provided from 25 local authorities from the 2020 school admission round shows that by October 2020, when this data was received, only 5 appeal cases had not been resolved. Additionally, the data highlighted that authorities clearly tried to hold their appeals as quickly as they could, and close to their usual timetables, but this was not always possible.

The regulations will reduce the timescales for making decisions and holding appeal hearings but will continue to require authorities to ensure that appeal hearings are held as soon as reasonably practicable within these timescales. In order to comply with this duty, local authorities should aim to resolve appeals in good time to enable preparations for the new school year (e.g. allocating pupils to classes) and minimise the number of hearings held during the peak holiday period. The Scottish Government's guidance to local authorities will continue to emphasise their duty to act as quickly as possible to ensure appeals are resolved.

We believe that our approach of enabling hearings and exclusion appeals to be held remotely and reducing the length of the extensions offered in 2020 is proportionate, since there is still the potential risk to public health of holding appeal hearings in person and reflecting the severe competing priorities that local authorities may be under in responding to the coronavirus pandemic. Although this means there is a risk that not all children's school places will be finalised by the start of the new school year, the number of cases likely to be affected will be low, and only for a short period. Given the unprecedented

nature of current situation we believe this is a balanced and equitable solution for all involved.

Existing guidance, *Included, Engaged and Involved Part 2: Preventing and managing school exclusions*¹, highlights that exclusions should only be used as a last resort. Exclusion should be a proportionate response where there is no alternative and it is important that the views of the child or young person and those of their parents/carers are taken into account. The amendments in relation to exclusion appeals are intended to minimise the impact on all pupils and enable an exclusion appeal hearing to take place that meets the needs of the pupil, their parents/carers and the education authority.

Stage 1: Framing

Results of framing exercise

There has been extensive stakeholder engagement undertaken to ascertain the views of parents, children and local authorities. This was achieved by engaging with the National Parents Forum for Scotland, the Children and Young People's Commissioner's office, the Equality and Human Rights Commission, and local authorities through COSLA, SOLAR and ADES.

We approached the National Parent Forum for Scotland (NPFS) who canvassed their network and fed back that they would understand maintaining extended timescales of placing request process timeframes until the pandemic has eased. We have also engaged further with local authorities, through COSLA, ADES and SOLAR, to discuss the practicalities of these amended timeframes.

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. Support and Wellbeing colleagues engaged throughout this process to provide insight into the needs and requirements of children and young people with additional support needs. It was noted that the timeframe extensions may have a greater impact on this group of children and young people. However, the shortening of the extended timescales permitted in 2020 for the 2021 admissions round increases the probability of the placing request process being completed before the start of the new academic year addressing these concerns to a great extent. Similarly this engagement sought views on the exclusion appeals process, this engagement highlighted that all exclusion appeals were resolved without the need to engage the Sheriff court.

In line with good practice we will continue to engage with colleagues covering the wide range of policy areas, 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.

¹ [Included, engaged and involved part 2: preventing and managing school exclusions - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/included-engaged-and-involved-part-2-preventing-and-managing-school-exclusions-2019/pages/1-1-introduction-to-the-guidance.aspx)

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, and we have made this clear in our guidance to them.

Characteristic ²	Evidence gathered and Strength/quality of evidence	Source	Data gaps identified and action taken
AGE	No specific evidence available	N/A	None
DISABILITY	A) Limited evidence from a 2006 report which provided anecdotal evidence of parents of children with disabilities feeling unable to participate in hearings	A) Scottish Executive commissioned report published in 2006 ³	A) We will make clear in supporting guidance to education authorities and education appeal committees of their responsibilities under the Equality Act 2010.

² Refer to Definitions of Protected Characteristics document for information on the characteristics

³ https://dera.ioe.ac.uk/6357/7/0041389_Redacted.pdf - consultation proposals and research report published in 2006 (see p41)

	<p>B) Evidence received from local authorities in October 2020 provided information about the number of additional support for learning (ASL) placing requests and appeal hearings during the 2020 schools admissions round. The data provided does not report on individuals with disability separately, the data implies that the majority of placing requests have been dealt with swiftly and without particular issues in terms of timescales.</p>	<p>B) 25 local authorities responded to a Scottish Government questionnaire</p>	<p>B) The 2021 regulations maintain the provisions that allow remote appeal hearings but either reduce or remove the extended timescales permitted in 2020. Delays in the placing requests process may have a greater impact on children and young people with certain disabilities. To mitigate these the timescales introduced by the 2021 regulations substantially increase the probability of a decision being made prior to the beginning of the new academic year.</p> <p>In addition, the amendments in the 2020 Regulations which extended the deadline for an Education Appeal Committee to hold a hearing also inserted a duty for the Committee to hold the hearing as soon as</p>
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			reasonably practicable. This requirement is being retained for the 2021 admissions round and it is for the Education Appeal Committee to convene a hearing and determine the date of that hearing, taking into account the obligations of the local authority 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
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	Our supporting guidance to education authorities and education appeal committees makes clear their responsibilities under the Equality Act 2010, including that the use of written submissions should 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 measures put in place by these regulations apply equally across all age ranges so there are no specific age related impacts.
Advancing equality of opportunity			Yes	The measures put in place by these regulations apply equally across all age ranges so there are no specific age related impacts.
Promoting good relations among and between different age groups			Yes	The measures put in place by these regulations apply equally across all age ranges so there are no specific age related impacts.

Do you think that the policy impacts disabled people?

Disability	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination, harassment and victimisation			Yes	The 2021 regulations either reduce or remove the extended timescales permitted in 2020. This will mitigate any negative impact on children and young people with certain disabilities by substantially increasing the probability of a decision being made prior to the beginning of the new academic year.
Advancing equality of opportunity			Yes	The content of these regulations applies equally to disabled and non-disabled people and is not seen to impact on advancing equality of opportunity.
Promoting good relations among and between disabled and non-disabled people			Yes	This set of regulations affects all families that are going to be making a placing request. We do not expect the way hearings are conducted or the reduced timescales to have an impact on the relations between disabled and non-disabled people.

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	These regulations do not have any differential impacts on men and women and apply equally to all.

Advancing equality of opportunity			Yes	These regulations do not have any differential impacts on men and women and apply equally to all.
Promoting good relations between men and women			Yes	These regulations do not have any differential impacts on men and women and apply equally to all.

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	The regulations do not have any specific impacts on women because of pregnancy or maternity.
Advancing equality of opportunity			Yes	The regulations do not have any specific impacts on women because of pregnancy or maternity.
Promoting good relations			Yes	The regulations do not have any specific impacts on women because of pregnancy or maternity.

Do you think your policy impacts on transsexual people?

Gender reassignment	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			Yes	The regulations do not have any impacts on transsexual people.
Advancing equality of opportunity			Yes	The regulations do not have any impacts on transsexual people.

Promoting good relations			Yes	The regulations do not have any impacts on transsexual people.
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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	The regulations do not have any impacts on people because of their sexual orientation.
Advancing equality of opportunity			Yes	The regulations do not have any specific impacts on people because of their sexual orientation.
Promoting good relations			Yes	The regulations do not have any specific impacts on people because of their sexual orientation.

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	The regulations do not have any impacts on people because of their race.
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	The regulations do not have any specific impacts on people because of their religion.
Advancing equality of opportunity			Yes	The regulations do not have any specific impacts on people because of their religion.
Promoting good relations			Yes	The regulations do not have any specific impacts on people because of their religion.

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

Marriage and Civil Partnership⁴	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination				These regulations are non-applicable to this protected characteristic as they do not apply to work.

⁴ 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 ⁵ ?	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 impacts upon children and parents not receiving notification of their school place before the beginning of the school term has been factored in our decision making and the proposed changes to the regulations, and reduced as far as possible while achieving the main aim of recognising the pressures on capacity and providing achievable timescales to ensure an effective placing request and appeal process can operate.

The revised timescales introduced for the 2021 admissions round will increase the likelihood of appeals being completed before the end of the summer term, where possible, and in the great majority of cases, before the start of the new academic year. This will provide parents with greater certainty about the outcome of their placing request and appeal.

⁵ See EQIA – Setting the Scene for further information on the legislation.

Monitoring and Review

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

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 2021 and give my authorisation for the results of this assessment to be published on the Scottish Government's website.

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

Position: Unit Head

Authorisation date: 22 January 2021



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