

Consultation on the Supporting Children's Learning Code of Practice and associated regulations

Analysis of Responses

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Background

1. The Scottish Government opened a 12 week consultation on The Supporting Children's Learning Code of Practice, and associated regulations, on 19 June 2017; the consultation closed on 12 September 2017. The purpose of this consultation was to seek views from stakeholders involved in supporting children and young people with additional support needs. This includes parents and carers, those working in schools, education authorities, health boards, social work services, voluntary sector services, and those who are involved in providing dispute resolution services including: mediation, independent adjudication and Tribunals. The consultation would also have been of interest to those organisations and individuals who have an interest in the promotion of children's rights in Scotland.
2. The consultation sought views on The Supporting Children's Learning Code of Practice (third edition) 2017 , The Additional Support for Learning Dispute Resolution (Scotland) Amendment Regulations 2017, The Section 70 (Procedure) (Scotland) Regulations 2017 and The Additional Support for Learning (Collection of Data) (Scotland) Regulations 2017.
3. In preparation for the changes in January 2018 the Code of Practice, which is statutory guidance, was updated to take account of:
 - the extension to children's rights, with regards to additional support for learning in school education (eligible children), this is woven throughout the Code to ensure that all references to rights include the appropriate children's rights.
 - the new requirement on education authorities to assess capacity and whether or not there may be adverse impact on wellbeing, with regards to children aged 12+ using their extended rights.
 - the information that education authorities should use to reach conclusions on capacity and adverse impact on wellbeing, ideally using information that should already be known about the child.
 - the associated appeal processes where a decision is taken that a child does not have capacity or there is adverse impact on wellbeing and vice versa.
 - the requirements on Tribunals to assess capacity and whether or not there may be adverse impact on wellbeing.
 - the functions of the Children's Support Service to be established by Scottish Ministers.
 - Other relevant legislative and policy developments including: Children and Young People (Scotland) Act 2014 (as far as possible at this stage), Corporate Parenting Responsibilities, Looked After Children Strategy, National Improvement Framework etc.
4. This consultation also sought comments on regulations relating to the Education (Scotland) Act 2016 amendments to the Education (Additional Support for Learning) (Scotland) Act 2004:

- The Additional Support for Learning Dispute Resolution (Scotland) Amendment Regulations 2017 amends the 2005 regulation to enable eligible children to use independent adjudication in their own right.
 - The Additional Support for Learning (Collection of Data) (Scotland) Regulations 2017 are created to continue to require Scottish Ministers to collect and publish specified information. This regulation recreates the current requirements on Ministers, so there is in effect no change to these requirements at this time.
5. The consultation also sought comments on a regulation relating to the Education (Scotland) Act 2016 amendments to the Education (Scotland) Act 1980. The Section 70 (Procedure) (Scotland) Regulations 2017 sets out a broad timescale within which complaints to Ministers will be considered. The regulation sets a maximum timescale. This timescale will be drawn out further in guidance which has also been published for consultation¹.
 6. Further information on the regulations and consultation responses to them can be found on pages 21- 23.
 7. The consultation questionnaire contained 16 questions, 13 relating to the Supporting Children’s Learning Code of Practice and 3 relating to the associated regulations. All questions except question 13, which was open-ended, sought a yes or no answer with additional text fields allowing respondents to provide reasons explaining their selection.

Overview of Consultation responses

8. There were a total of 49 responses received for this consultation. 38 of those responses came from organisations, whilst the remaining 11 were submitted by individuals.

Only answers from respondents who gave permission for publication are published. 39 out of 49 respondents agreed to this. These responses have been published on the Scottish Government’s Consultation Hub and they can be viewed by accessing the following link: https://consult.gov.scot/supporting-learners/code-of-practice/consultation/published_select_respondent. All responses were taken account of and have been reported on within this report, but the percentages used in the report refer to those whose responses were able to be captured against the structure of the consultation questionnaire and completed a RIF.

9. All respondents were given the opportunity to submit their responses anonymously, or for their responses to be anonymised in reporting. Prior to publication, all responses were moderated to ensure no inappropriate

¹ Link to Consultation on draft guidance for users of the Section 70 process, <https://consult.gov.scot/supporting-learners/users-of-the-section-70-complaints-process/>

language or information which could potentially identify individuals by name.

Action as a result of consultation

10. Overall, the response to the consultation was positive. There were suggestions for amendments. In the main, these related to particular areas of the guidance rather than the guidance as a whole, and therefore are specific in nature. An overview of updates to the Supporting Children's Learning Code of Practice following the consultation is below:

- The link to early years services, including the Universal Health Visiting Pathway and the Family Nurse Partnership (FNP).
- The role of the children's support service.
- The definitions of eligible pre-school child, young person and looked after children.
- The respective responsibilities and roles of parents, young people and eligible children.
- The role of the Scottish Agricultural College (now SRUC).
- Clarified what is meant by social and emotional factors to ensure links made to prejudice based bullying.
- Emphasised the responsibilities in relation to establishing additional support needs and co-ordinated support planning for looked after children.
- Included information on Developing the Young Workforce.
- Clarified requirements for looked after children and those leaving care under the Children and Young People (Scotland) 2014 Act.
- Included those who are adopted in the list of examples of reasons why children and young people may require additional support.

11. In addition to the public consultation, the Scottish Government held 2 meetings with the representatives of the Advisory Group for Additional Support for Learning, Association of Directors of Education and the Association of Support for Learning Officers. These included a range of representatives including parents, third sector and statutory organisations. These discussions were very helpful and constructive. We would like to thank everyone who responded to the consultation and gave their time to make a contribution to this consultation.

Next Steps

12. The Code and associated regulations were laid in the Scottish Parliament on 26 October 2017, for a 40 day period. Subject to Parliamentary consideration, the Code is expected to be published by the end of 2017.

Analysis of responses

Supporting Children’s Learning Code of Practice

Introduction

1. The introduction provides information on what the guidance is about, how the guidance should be used, and the audience for the guidance. Q1 asked “Is the information provided in the introduction clearly set out? If you selected no, please provide details of additional information which should be included or removed and a brief reason for it.”

Results

Option	Total	Percentage
Yes	30	71.43%
No	5	11.90%
Don’t Know	0	0%
Did not answer	7	16.67%

2. Reflecting the overall responses to this question, comments were mainly positive such as, “Clear information for all key groups, easy to read for parents and carers.”
3. There were comments asking for further clarity on definitions, particularly the use of, eligible pre-school child and eligible child. Therefore, the definition of eligible pre-school child has been updated; this and the definition of eligible child are used appropriately and consistently throughout the Code. The definition of young person has been further clarified and additional headings have been added to make it easier to follow the definitions in the introduction.

Chapter 1 Summary of the Additional Support for Learning Act

1. Chapter 1 summarises the main provisions of the Act. Q2 asked “Is the information provided in Chapter 1 appropriate? If you selected no, please provide details of additional information which should be included or removed and a brief reason for it.”

Results

Option	Total	Percentage
Yes	24	57.14%
No	11	26.19%
Don't Know	1	2.38%
Did not answer	6	14.29%

2. Again, reflecting the overall percentage of consultation responses, comments were mainly positive, for example, “Information in this chapter was easily read and layout to ensure reader was given a clear information on ASN Definition and functions and duties of LAs.”
3. A number of suggestions for amendments were made. These included that the Autism toolbox should be referred to. This has now been included in Chapter 7.
4. Chapter 1 includes a list of examples of reasons why a child or young person may require additional support. The list is illustrative and as is stated, it is not intended to be exhaustive. A fundamental requirement of the Act include is that individuals needs should be considered by professionals. As part of the revision of the Code some amendments were made to this list. During consultation a number of requests for further additions to the list were made, although these were not agreed to, wherever possible alternative arrangements were made. These include:
 - Having a Parent (s) with a learning disability. A link to the *Scottish Good Practice Guidelines for Supporting Parents with Learning Disabilities*² has been added to chapter 7, Working with Children and Families.
 - Including trauma. Chapter 2, Additional Support Needs, mentions that Social and emotional factors may also give rise to a need for additional support. It is now mentioned within this section that a child who has had Adverse Childhood Experiences may also benefit from additional support to overcome barriers to their learning.
 - Including Autism. There are mentions throughout the Code of how Autism can be an example of an additional support need. For example in chapter 2, when explaining how additional support may be provided, it includes, “a particular approach to learning and teaching: for example, as used with children and

² <https://www.sclld.org.uk/publications/scottish-good-practice-guidelines-for-supporting-parents-with-learning-disabilities/>

young people with autism spectrum disorders.”

- Speech and Language. Speech and Language difficulties are noted as an example of an additional support need in the Code. For example in Chapter 2 an example of additional support includes: “a communication programme drawn up by a speech and language therapist and teacher for implementation in the classroom.”
5. One response stated that it should be included that there is an entitlement to additional support if a child or young person has a mental health problem. Mental health problems are cited as an example of a possible need for additional support, for example in Chapter 5, Co-ordinated Support Plans it states, “Mental health and wellbeing issues such as anxiety, eating disorders and depression can disrupt learning and may lead to additional support being required, for example from child and adolescent mental health services (CAMHS), or local counselling services to ensure benefit from school education.” In addition, information within the Code on Mental Health has been updated since the consultation. Details on the Scottish Government’s new Mental Health Strategy (2017) are now included.
 6. Further clarification around the assessment of capacity and consideration of wellbeing was required, following comments from approximately 8 respondents, in relation to this chapter. Subsequently, this has been expanded and also signposts to forthcoming non-statutory guidance on extended children’s rights.³

³ Non-statutory guidance: *Extending Children’s Rights- Guidance for education authorities and school staff on assessment of capacity and consideration of wellbeing of children who have attained 12 years of age in respect of additional support for learning in school education*. The consultation on the guidance ends on 17 November 2017. It is intended that this guidance will be published by the end of 2017. <https://consult.gov.scot/supporting-learners/extending-childrens-rights/>

Chapter 2 Additional Support Needs

1. Chapter 2 considers the meaning of the terms “additional support needs” and “additional support” and considers the factors that may give rise to the need for additional support. Q3 asked, “Is the information provided in Chapter 2 appropriate? If you selected no, please provide details of additional information which should be included or removed and a brief reason for it.”

Results

Option	Total	Percentage
Yes	25	59.52%
No	11	26.19%
Don't Know	1	2.38%
Did not answer	5	11.90%

2. Again, comments were mainly positive, for example, “Again clear information on the rights of parents/carers and children and young people in Act including clear reasoning and instructions around LAC [Looked After Children] pupils”
3. Some comments asked for further information around examples of additional support needs, or professional supporting children/young people to be added:
 - One comment suggested that there should be a case example in the Code of a child with a speech and language difficulty. The Code includes a case study (‘Phillipa’), where a speech and language therapist is involved. Therefore no further amendment has been made.
 - It was suggested that Educational Psychologist role in supporting schools and children should be referred to. Educational Psychologists are highlighted throughout the Code, as an example of one of the professionals that may be involved with working with a child/ young person with additional support needs. In addition, the Code has a case study (‘Mark’) which refers to an educational psychologist.
 - It was requested that information on exclusions and their prevention be added. A reference to Scottish Government guidance, *Included, Engaged and Involved Part 2: A Positive Approach to Preventing and Managing School Exclusions* <http://www.gov.scot/Publications/2017/06/8877>, has therefore been added.
 - further clarification was requested in some areas; including the specific requirements in relation to children and young people who may receive support before they start primary school (looked after children, pre-school children and children with disabilities.) Clarification has been added.

- The phrase 'personal support' has been removed as requested, due to its potential meaning in relation to intimate care which is not the intention in this context. Alternative references to support or additional support have been added where appropriate.
- A further amendment was made to recognise that support for those children and young people affected by mental health concerns may be provided by other services in addition to Child and Adolescent Mental Health Services, as this was raised by one response.

Chapter 3 Meeting Additional Support Needs

1. Chapter 3 sets out guidance on the Act's provisions for identifying and assessing additional support needs and making provision for them. Q4 asked, *"Is the information provided in Chapter 3 appropriate? If you selected no, please provide details of additional information which should be included or removed and a brief reason for it."*

Results

Option	Total	Percentage
Yes	18	42.86%
No	17	40.48%
Don't Know	1	2.38%
Did not answer	6	14.29%

2. The responses to the consultation were much more in the balance on this Chapter than the others. This Chapter provides the detail of meeting children's needs and is one of the most complex chapters within the document. It is also the Chapter which attracted the most requests for clarification on developing policies and legislation. Legislation which is currently the subject of Parliamentary consideration has not been referred to, respecting that this may be changed as part of the Parliamentary process. Legislation which has been enacted but not yet commenced and where there is established policy and implementation has been referred to as far as possible, but not in terms of describing duties and requirements as these are not yet in force. As a result, the Code of Practice will be updated again once these relevant legislative requirements are in place.
3. The question relating to this chapter received comments relating to information sharing. The Code of Practice will require to be updated following developments around Named Person and Information Sharing- Parts 4 and 5 of the Children and Young People (Scotland) Act 2014⁴. The Code reflects current policy around the Children and Young People's Act. A future update of the Code will capture any future updates around this policy, as well as other developments that this update has not been able to. For example it was requested that the updated Guidance to Healthcare Needs in Schools is referenced in this edition in the Code. This Guidance was consulted⁵ on earlier this year, and is expected to be published by the end of 2017. This will

⁴ Part 4 (Provision of Named Persons) and Part 5 (Child's Plan)

⁵ <https://consult.gov.scot/supporting-learners/guidance-on-healthcare-needs-in-schools/>

be referenced in the future update of the Code.

4. Some comments made were outside the direct scope of the consultation, for example comments concerning the presumption of mainstreaming. There is a current consultation (until 9 February 2018) on *Excellence and Equity for All: Guidance on the Presumption of Mainstreaming*⁶. This guidance has a specific focus on mainstreaming reflecting the statutory requirements of the 2000 Act. This will be referenced in the future update of the Code. The Code now signposts the legislative requirement.

5. As a result of comments within the consultation, the following clarifications have been provided:
 - that if a child meets the criteria to be considered for a co-ordinated support plan this should be done regardless of whether or not a child's plan is being considered or is in place.
 - Clarification on Care Plans terminology, was sought and has been provided throughout the document as appropriate.

6. There was clarification sought in some responses on why the age of 12 was chosen at which to extend rights to children within this Act, The Age of Legal Capacity Act sets the age of capacity in general and provides several exceptions where children have rights – these are all set at aged 12. The amendments to the Additional Support for Learning Act were set at this age to achieve consistency. For example, children aged 12 can consent to medical treatment, agree their adoption and instruct legal council (in each case it is the person who will deliver the right who considers capacity).

⁶ <https://consult.gov.scot/supporting-learners/presumption-of-mainstreaming/>

Chapter 4 School Attendance: Rights, Responsibilities and Placing Requests

1. Chapter 4 considers five circumstances under which a child or young person may not be receiving school education in their local school. Q5 asked, “Is the information provided in Chapter 4 appropriate? If you selected no, please provide details of additional information which should be included or removed and a brief reason for it.”

Results

Option	Total	Percentage
Yes	22	52.38%
No	13	30.95%
Don't Know	1	2.38%
Did not answer	6	14.29%

2. As reflected in the percentages above, feedback on this chapter was mainly positive. For example, “Lots of detailed information for the different settings pupils may be educated in.”
3. There were comments which queried why mediation had not been extended to children aged 12- 15. This was a decision taken prior to the introduction of the amendments to Parliament in 2015. As the mediation process used is face to face mediation where all parties are in the room together to resolve concerns, this could place a child under undue pressure and lead to them being back in school without having dealt with the discussion at the mediation process. This was felt to include the risk of undermining the child’s relationships in school which would be counterproductive. As a result, instead, the requirement to take account of the child’s view as part of the mediation process has been extended.
4. Consultation responses commented on the complexity of this chapter, such as “The sections on placing requests still lack clarity and require to be read a number of times”. The chapter, as has the whole Code, has been reviewed during and after the consultation. Improvements and clarification to the text has been made where possible.

Chapter 5 Co-ordinated Support Plans

1. Chapter 5 explains the circumstances under which children and young people may require a co-ordinated support plan. The contents of a co-ordinated support plan are also considered. Q6 asked, “Is the information provided in Chapter 5 appropriate? If you selected no, please provide details of additional information which should be included or removed and a brief reason for it.”

Results

Option	Total	Percentage
Yes	22	52.38%
No	11	26.19%
Don't Know	2	4.76%
Did not answer	7	16.67%

2. As reflected in the percentages above feedback on this chapter was mainly positive.
3. It was suggested that that the family circumstances section of this chapter should include children of parents in the Armed Forces. This is now incorporated as an example of a child or young person who may require additional support, in Chapter 1, page 11.
4. There was a comment that parents can have difficulty understanding co-ordinated support plans. This chapter has been reviewed and updated to provide further clarity. However, further information which is specifically designed for parents on a range of Additional Support for Learning issues can also be obtained via Enquire⁷, whose contact details, as well as details of their service are provided within the Code.
5. Clarification was requested in this chapter regarding:
 - who has access to the co-ordinated support plan. This chapter includes a section on disclosure of the CSP which provides clear advice.
 - on the relationship between a co-ordinated support plan and a Child's Plan was requested. This chapter also provides this and has been updated as a result of the consultation See pages 94-95 for details.

⁷ Enquire are the Scottish advice service for additional support for learning, funded by the Scottish Government. <http://enquire.org.uk/>

Chapter 6 Transitions

1. Chapter 6 considers the requirements on education authorities and others under the Act in relation to transitions. Q7 asked, "Is the information provided in Chapter 6 appropriate? If you selected no, please provide details of additional information which should be included or removed and a brief reason for it."

Results

Option	Total	Percentage
Yes	22	52.38%
No	12	28.57%
Don't Know	1	2.38%
Did not answer	7	16.67%

2. Comments received on Chapter 6 were mainly positive, such as, "Again detailed information for key transition points - again an effective descriptors for all." and "We welcome the focus on transitions and the strengthening in this chapter on planning, communication with parents and young people and supporting independence."
3. As a result of consultation comments, the following has been added to Chapter 6:
 - Reference to the Scottish Transitions Forum publication, *Principles of Good Transitions 3* to support improved practice in planning transitions.
 - Information on Developing the Young Workforce policy has been updated and signposts to relevant guidance materials have been included.
 - Particular attention has been drawn to the fact that for some looked after children and young people transition may be a particular time of difficulty, reflecting consultation comments on this issue.
4. In addition to the above, the section on looked after children and young people, within this chapter has also been updated.

Chapter 7 Working with Children and Families

1. Chapter 7 describes how children, young people and their parents can be successfully involved in education and learning and describes the Act's provisions regarding supporters and advocacy. Q8 asked, "Is the information provided in Chapter 7 appropriate? If you selected no, please provide details of additional information which should be included or removed and a brief reason for it."

Results

Option	Total	Percentage
Yes	25	59.52%
No	8	19.05%
Don't Know	3	7.14%
Did not answer	6	14.29%

2. In line with other chapters comments received on Chapter 7 were mainly positive, reflecting the percentages above, for example, "Para 16 provides helpful guidance on how to establish whether a child has the capacity to exercise their rights."
3. Based on some individual consultation comments the following actions have been taken:
 - Reference is made to the Dyslexia Toolkit and the Autism Toolbox.
 - The Children and Young People's Commissioner for Scotland's resource, *The 7 Golden Rules for Participation* has been moved within the chapter to the section on the views of children and young people.

Comments relating to the rights of children who have capacity

4. Some comments included concerns around the assessment of capacity and consideration of wellbeing, which included a child's level of achievement being cited as one of the possible factors to take into account when carrying out an assessment of a child's maturity and understanding. When carrying out an assessment of a child's maturity and understanding the education authority may wish to take this into account (as well as the other factors referenced in the Code), but it has also been added to the Code, following the consultation, that *those working and living with the child may use any evidence they consider appropriate to establish maturity and understanding.*
5. In addition, the Code signposts readers to the further (non-statutory) guidance in *Extending Children's Rights- Guidance for education authorities and school staff on assessment of capacity and consideration of wellbeing of children who have attained 12 years of age in respect of additional support for learning in school education.*

Chapter 8 Resolving Disagreements

1. This chapter considers provisions under the Act for resolving disputes. Q9 asked, “Is the information provided in Chapter 8 appropriate? If you selected no, please provide details of additional information which should be included or removed and a brief reason for it”

Results

Option	Total	Percentage
Yes	21	50.00%
No	9	21.43%
Don't Know	4	9.52%
Did not answer	8	19.05%

2. As indicated above responses on this chapter were mostly positive.
3. There was a comment that dispute resolution can be difficult to access for disadvantaged groups. The extension of children’s rights will benefit looked after children and young people and young carers particularly. Details of the Children’s Support Service, which will support Children in accessing their new rights has been added to the Code. The Children’s Support service will include advice, advocacy, legal representation and a service to independently seek children’s views.
4. Some consultation responses sought further clarification on the relationship between children’s and parent’s rights under the Act and the circumstances in which each can use their rights. Additional information on this has been added to Chapter 8.
5. There was also a comment regarding the need to include Section 70 timescales in this chapter. The details of the timescales will be clarified in non-statutory guidance on section 70 which has been published for consultation, and will be available in advance of the commencement of the new provisions.

Chapter 9 General Provisions

1. This chapter considers further provision relating to placing requests as well as a range of miscellaneous provisions in the Act not covered in earlier chapters of the Code. Q10 asked, “Is the information provided in Chapter 9 appropriate? If you selected no, please provide details of additional information which should be included or removed and a brief reason for it.”

Results

Option	Total	Percentage
Yes	24	57.14%
No	7	16.67%
Don't Know	3	7.14%
Did not answer	8	19.05%

2. Responses on this chapter were mostly positive
3. It was requested that provision of Communication Support for British Sign Language users was highlighted. In Annex A Links to Other Legislation, Policies and Guidance the British Sign Language (Scotland) Act 2015 is referenced. In addition to this Part 4 of the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016, is also referenced.
4. There were comments for further guidance on the collection of data on additional support for learning. Officials are working with the Advisory Group for Additional Support for Learning to develop a broader outcomes framework, and guidance in support of this. Therefore no further guidance has been provided as part of the Code.

Annexes and Glossary

1. Respondents were asked about the 6 Annexes to the guidance, a Glossary and Resources section :

- Annex A Links to Other Legislation, Policies and Guidance
- Annex B Co-ordinated Support Plan Template
- Annex C Decisions about whether the additional support required is significant
- Annex D Features of Mediation
- Annex E Practice Matrix *
- Annex F Planning, Reporting and Review of additional support for learning
- Glossary of Terms
- Resources*

* refers to annexes that have now been removed.

2. Q11 asked, if the information provided in the Annexes, Glossary and resources section were appropriate? If you selected no, please provide details of additional information which should be included or removed and a brief reason for it.

Results

Option	Total	Percentage
Yes	27	64.29%
No	8	19.05%
Don't Know	2	4.76%
Did not answer	5	11.90%

3. Again, reflecting the percentages above, the responses were mainly positive.

4. As part of the overall development of the Code the Scottish Government was concerned that the document was particularly long and reviewed whether any section could be reduced or removed. As a result of discussions with key stakeholders and because specific guidance on the role of allied health professionals was produced in 2010 and has been subsequently updated, the practice matrix at Annex E was removed. The resources section (which had become heavily outdated since 2010) has been removed. Instead, organisations and other services have been added to Enquire's service finder which is part of their online services. This will enable tailored and up to date information to be provided to anyone who searches the database. <http://enquire.org.uk/find-a-service> A link to the Enquire service finder has been added to the Code.

5. Consultation comments resulted in:

- All Annexes have been reviewed and updated as appropriate (see above for information about Annex E and resources section).
- Annex A Links to Other Legislation, Policies and Guidance, has been

updated extensively to take account of the wider policy developments since the Code's last edition in 2010. Information around the Young Carer Statement has been updated, clarifying that it will come into force 1 April 2018.

- *Ready to Act - A transformational plan for children and young people, their parents, carers and families who require support from allied health professionals (AHPs) in Scotland*, is now referenced in Annex A.

Format

1. Q12 asked respondents whether they were content with the document's format. If not they were asked to provide details of suggestions for improvement.

Results

Option	Total	Percentage
Yes	20	47.62%
No	15	35.71%
Don't Know	1	2.38%
Did not answer	6	14.29%

2. There was a comment for the Code to be reviewed as a whole. The whole document has been reviewed as a result of the consultation. Any future revision of the Code will consider again whether an alternative method of delivery of this guidance is appropriate.
3. There were concerns about the length of the document. Consequently, the Code has been reduced by more than 40 pages.

Regulations

1. Respondents were asked whether each of the draft regulations were appropriate. If they were not felt to be appropriate, suggestions for improvement were sought. In summary (further detail is set out below) no amendments to any of the regulations were sought as a result of the consultation.

The Section 70 (Procedure) (Scotland) Regulations 2017

2. These regulations⁸ specify the timescale for the consideration of a section 70 complaint to Ministers, and are intended to reduce the time taken by all parties in completing a complaint whilst also maintaining robust consideration of complaints. The Regulations establish a maximum timescale within which complaints will be concluded. Wherever possible, complaints will be concluded well within this timescale, it is not intended that all complaints will reach the maximum timescale.
3. At present, there are no statutory timescales in relation to the section 70 process. Currently officials are holding themselves to account within the proposed timescales (within the Section 70 Regulations, detailed below) voluntarily.
4. The Regulations provide that Scottish Ministers must establish if a complaint received under section 70(1) of the 1980 Act is a “relevant complaint” within 15 working days beginning with the date of receipt of the complaint. If it is established that it is a relevant complaint, Scottish Ministers must reach a determination as to whether to make an order under section 70(1) of the 1980 Act within 105 working days beginning with the date of receipt of the complaint.
5. The details of the timescale will be clarified in guidance which has been published for consultation⁹, and will be available in advance of the commencement of the new provisions. It will apply to all parties concerned in dealing with a complaint (parents, education authorities, SG officials, Education Scotland (if an investigation of the complaint is required), and legal advisers.
6. No amendments made as a result of the consultation, as responses were positive, with no edits being required. The public consultation has confirmed that the section 70 Regulation is appropriate and consequently no amendments have been made to the Regulations. One response commented that the guidance on section 70 should highlight the need to resolve any matters subject to a complaint as a matter of urgency. The section 70 guidance will seek to address this.

⁸ http://www.legislation.gov.uk/ssi/2017/353/pdfs/ssi_20170353_en.pdf

⁹ Link to Consultation on draft guidance for users of the Section 70 process, <https://consult.gov.scot/supporting-learners/users-of-the-section-70-complaints-process/>

7. Subject to Parliamentary consideration, it is intended that these Regulations will commence on 10 January 2018.

The Additional Support for Learning (Collection of Data) (Scotland) Regulations 2017

1. These Regulations¹⁰ specify the information about children and young persons with additional support needs for whose school education an education authority is responsible, that the Scottish Ministers must collect annually from each education authority. This is currently specified in section 27A of the 2004 Act, which will be replaced with a regulation-making power. The information collected will continue to be:
 - the number of children and young persons having additional support needs for whose school education the authority are responsible;
 - the principal factors giving rise to the additional support needs of those children and young persons;
 - The types of support provided to those children and young persons;
 - The cost of providing such support.
2. Taking these requirements into Regulations rather than on the face of the 2004 Act allows Ministers flexibility should the type of information to be collected and published require to be changed in future. These regulations recreate the current requirements on Ministers so there is in effect no change to these requirements at this time.
3. No amendments were made as a result of the consultation, as responses were positive, with no amendments being required. The public consultation confirmed that the Regulation is appropriate and therefore no changes have been made to the Regulation.
4. A number of responses to the consultation on this Regulation commented on the practical application and use of the data which will continue to be collected under this Regulation. For example, some responses indicated that a matching of data on additional support needs should be matched to other collections such as exclusions and looked after children statistics.
5. The Scottish Government has reported on implementation of additional support for learning, and will do so again early in 2018. These reports contain information about additional support for learning across a range of measures including attendance and absence, exclusion, qualifications and leaver destinations. Reports have also taken a thematic approach and have included information on looked after children, young carers, transition etc. This approach will also be used in future as appropriate.
6. Some responses also called for further guidance on the collection of data on

¹⁰ http://www.legislation.gov.uk/ssi/2017/355/pdfs/ssi_20170355_en.pdf

additional support for learning in support of this requirement. Officials are working with the Advisory Group for Additional Support for Learning to develop a broader outcomes framework, and guidance in support of this.

7. Subject to Parliamentary consideration, it is intended that these Regulations will commence on 10 January 2018.

The Additional Support for Learning Dispute Resolution (Scotland) Amendment Regulations 2017

1. These Regulations¹¹ amend the Additional Support for Learning Dispute Resolution (Scotland) Regulations 2005 (“the 2005 Regulations”) to enable any eligible child to make a request for independent adjudication in relation to any matter specified in the schedule of the 2005 Regulations and to require those acting as independent adjudicators to consider such complaints from these children.
2. No amendments were made as a result of the consultation, as responses were positive, with no amendments suggested.
3. Technical amendments have been made to the draft Regulations to ensure that regulation 10 of the 2005 Regulations will operate as intended. An earlier amendment to regulation 7 in the consultation draft was no longer required and so this amendment was removed before the regulations were finalised. In addition, drafting improvements were made to clarify the provisions relating to the assessment of children’s capacity and wellbeing by education authorities.
4. Subject to Parliamentary consideration, it is intended that these Regulations will commence on 10 January 2018.

¹¹ http://www.legislation.gov.uk/ssi/2017/356/pdfs/ssi_20170356_en.pdf



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