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<b>Report To:</b>	<b>Policy &amp; Resources Executive Sub-Committee</b>	<b>Date:</b>	<b>5 May 2020</b>
<b>Report By:</b>	<b>Corporate Director Education, Communities &amp; Organisational Development</b>	<b>Report No:</b>	<b>PR/14/20/RB</b>
<b>Contact Officer:</b>	<b>Ruth Binks</b>	<b>Contact No:</b>	<b>01475 712748</b>
<b>Subject:</b>	<b>Placing Requests and Appeal Hearings during COVID-19</b>		

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## 1.0 PURPOSE

- 1.1 The purpose of this report is to update the Sub-Committee on the amendments to regulations in respect of placing requests during COVID-19 and to advise the Sub-Committee of the position in Inverclyde.

## 2.0 SUMMARY

- 2.1 In a letter to Local Authorities on 27 April, the Deputy First Minister outlined amendments to the regulations in respect of placing requests for schools and the process for appeals. The full letter is attached as Appendix 1 to this report.
- 2.2 Inverclyde is in the position to have considered and granted the placing requests for academic year 2020/21 before the closure of schools.
- 2.3 Placing requests for schools can be made at any time of year and Education Services still have to consider placing requests on an ongoing basis. Whilst the numbers are expected to be low, any refusal of a placing request can be appealed, and an appeal process taking into account social distancing during COVID-19 needs to be set up. Paragraph 6.4 outlines the proposed process for holding appeal hearings in Inverclyde.

## 3.0 RECOMMENDATIONS

- 3.1 That the Sub-Committee:
- notes the amendments to regulations in regard to placing requests and appeals.
  - agrees to the process outlined in paragraph 6.4 for appeal hearings

**Ruth Binks**  
**Corporate Director**  
**Education, Communities & Organisational Development**

## **4.0 BACKGROUND**

- 4.1 The Policy on Admission and Pupil Placement in Mainstream Schools was agreed at the Education and Communities Committee in January 2017. Although it is currently out for consultation, the full current policy can be found at <https://www.inverclyde.gov.uk/education-and-learning/schools/placing-requests>.
- 4.2 If Inverclyde Council as Education Authority refuses a placing request application to one of its schools it must explain the reasons for the refusal to parents in writing. There are multiple legal grounds in the Education (Scotland) Act 1980 which, if satisfied, entitle the Education Authority to refuse a placing request submitted in relation to one of its schools.
- 4.3 Whilst a placing request can be made at any point during the year, the main applications are made for the start of the new session in August. In Inverclyde, for admission to schools at the start of the new session in August, parents are asked to make placing requests no earlier than 1 January and no later than 1 February. Prior to 23 April 2020 the Education (Placing in Schools Etc—Deemed Decisions) (Scotland) Regulations 1982 provided that (i) for placing requests received on or before 15 March each year, decisions should be communicated to parents no later than 30 April; and (ii) for placing requests received after 15 March, decisions require to be communicated to parents within two months of receipt of the placing request. As of 23 April 2020 the foregoing regulatory timescales have been amended to 31 May and three months respectively, all as detailed in the letter found at Appendix 1 of this report.

## **5.0 SCOTTISH GOVERNMENT – AMENDMENTS TO REGULATIONS FOR PLACING REQUESTS**

- 5.1 Due to the extraordinary events of COVID-19 and the resulting closure of schools, authorities have quite rightly prioritised the health and welfare of their pupils and staff and this has resulted in it becoming challenging to deliver other parts of the system. The Scottish Government, in partnership with ADES, COSLA and SOLAR, have worked jointly to amend the regulations surrounding placing requests. The full statement is attached as Appendix 1 to this paper.

## **6.0 IMPLICATIONS FOR INVERCLYDE**

- 6.1 This year, the Education Authority's placing request panel was able to meet and agree the placing requests prior to schools closing for COVID-19. At the meeting of the pupil placing panel on 25 February 2020, 197 placing requests were considered and all of these were successful. This means that this year, Inverclyde Council is in the fortunate but rather unusual position of not having any appeal hearings for the admission process for the 2020/21 academic year.
- 6.2 As well as the main placing request exercise, Education Services have also been able to grant 11 placing requests which were received after the 1 February deadline. There are 8 placing requests currently in the system still to be considered.
- 6.3 Whilst no placing requests have been refused to date, an appropriate appeal process must be in place to consider any appeals which may be received in relation to decisions to refuse in the future. This process is administered by the Head of Legal and Property Services. The guidance issue by the Scottish Government allowing flexibility for appeal committees or panels to meet remotely by telephone or video is very much welcomed.
- 6.4 Given that over the coming months Inverclyde will expect to administer very few appeal hearings, it is anticipated that nothing will change for the actual process of appeals other than the conduct of the hearing itself. The process needs to ensure that the appeal hearing respects the individual circumstances of appellants whilst maintaining integrity. To this end the following is proposed:
  - That appeals will be heard during the working day.

- That the chair of the panel and the legal advisor will conduct the hearing from an office in the Council buildings.
- That the panel members, the clerk to the appeals, appellants and the representative from Education Services attend the hearing remotely by either video or telephone conference.
- If the appellants are unable to access technology then a “safe office” is made available which will be cleaned prior to use.
- If appellants do not wish to attend and instead choose to submit a written representation, then this will be considered by the panel. If an appellant submits a written representation and chooses not to appear in person, then Education Officers may either submit a written response or an oral response at the hearing.
- Appellants can submit representations and any relevant material by post or by email and this will be collated by the relevant committee officer.
- Otherwise, the existing protocol for meeting procedures and order of business will apply.

## 7.0 IMPLICATIONS

### 7.1 Finance

#### Financial Implications:

One off Costs

Cost Centre	Budget Heading	Budget Years	Proposed Spend this Report	Virement From	Other Comments
N/A					

Annually Recurring Costs/ (Savings)

Cost Centre	Budget Heading	With Effect from	Annual Net Impact	Virement From (If Applicable)	Other Comments
N/A					

### 7.2 Legal

The legal issues are as set out in the report.

### 7.3 Human Resources

N/A.

### 7.4 Equalities

#### Equalities

(a) Has an Equality Impact Assessment been carried out?

<input type="checkbox"/>	YES
<input checked="" type="checkbox"/>	NO – This report does not introduce a new policy, function or strategy or recommend a substantive change to an existing policy, function or strategy. Therefore, no Equality Impact Assessment is required

(b) Fairer Scotland Duty

If this report affects or proposes any major strategic decision:-

Has there been active consideration of how this report's recommendations reduce inequalities of outcome?

	YES – A written statement showing how this report's recommendations reduce inequalities of outcome caused by socio-economic disadvantage has been completed.
✓	NO

(c) Data Protection

Has a Data Protection Impact Assessment been carried out?

	YES – This report involves data processing which may result in a high risk to the rights and freedoms of individuals.
✓	NO

**7.5 Repopulation**

N/A.

**8.0 CONSULTATIONS**

8.1 N/A.

**9.0 BACKGROUND PAPERS**

9.1 N/A.

Deputy First Minister and Cabinet Secretary for Education and Skills

John Swinney MSP



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Local Authority Chief Executives and Directors of Education

Copied to: COSLA  
ADES  
SOLAR  
SOLACE

27 April 2020

Dear Colleagues,

### **Placing requests – amendments to Regulations**

We know that Covid-19 has caused disruption to our education system and we are hugely appreciative for all the work that has been undertaken by local authorities, schools and other local partners to respond to the challenges of recent months. We also understand that this level of commitment to the immediate wellbeing and health of children in schools has needed to be the top priority, and that this has therefore had, and will continue to have, an inevitable knock-on impact on other parts of the system.

We have been grateful for the engagement with COSLA, ADES, SOLAR and some individual authorities to raise concerns about the placing requests process in this context, and help inform amendments to the current Regulations so that Education Authorities and Education Appeal Committees (EACs) have additional time and flexibility to respond to requests and appeals.

The following amendments have now come into force through the Education (Miscellaneous Amendments) (Coronavirus) (Scotland) Regulations 2020 (the '2020 Regulations')

- Firstly, timescales for the overall placing requests process have been extended as follows
- a month extension of the 30th April deadline for initial decisions on placing requests received before 15 March, to 31 May before they are deemed to be refusals. Parents will then still have 28 days after that to then request an appeal.
  - for any placing requests received later than the 15<sup>th</sup> March deadline, an extended deadline of 3 rather than 2 months before they become a deemed refusal.
  - extensions and relaxing of the intermittent timescales for acknowledgements etc. by the EAC, for example, removing the requirement to arrange appeal hearings within 14 days of an appeal request.
  - an extension of the deadline for the EAC holding a hearing from 28 days to 3 months, unless there are exceptional circumstances.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See [www.lobbying.scot](http://www.lobbying.scot)

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- Adjustment of the deadline where the EAC's failure to make a decision on an appeal becomes a deemed refusal from 2 months to 4 months.
- extension of the deadline for EACs to communicate their decision to 28 days.
- for placing requests for additional support needs - a month extension of the 30th April deadline for initial decisions on placing requests received before 15 March, to 31 May; adjustment of the deadline where a failure by the EAC to make a decision on the appeal becomes a deemed refusal from 2 months to 4 months; and extension of the deadline for EACs to communicate their decision to 28 days.
- for exclusion appeals – the deemed refusal deadline remains 1 month from an appeal being received by the Committee.

We appreciate that Education Authorities and EACs are in very different situations across Scotland in terms of both the numbers of requests and appeals and ability to resource these as the current situation progresses. Where possible, we would expect education authorities and EACs to stay as close to the previous timetable as possible in order that requests can be processed ahead of the start of the next academic year. The 2020 Regulations therefore introduce a duty to respond to placing requests/convene appeals as soon as reasonably practicable within the amended timescales. Education authorities and EACs should ensure that they communicate with affected parents locally to make clear what the expected timetable will be for their local area, with regard to this duty and within the extended timeframes set by the amended Regulations.

The Scottish Government's view is that procedures and timescales as amended by the 2020 Regulations apply to all cases, including these cases where an appeal has already been received. Authorities will want to seek their own legal advice if they are in doubt regarding the application of the 2020 Regulations to cases in their area.

While social distancing restrictions are in force we are also aware that EACs cannot meet in their usual format. The 2020 Regulations therefore also confirm flexibility for appeal committees to meet by video or audio conferencing. Education Authorities will need to determine how this is best done in their local areas, and the Scottish Government will support them with this on an ongoing basis. We intend to continue to work with COSLA, ADES and SOLAR to establish a working group that will look at the practical arrangements and also share best practice across areas. This can also look at existing requirements on membership of the EAC, which we think could be wider than is currently being interpreted. These flexibilities that the Regulations offer also apply to exclusion appeals.

Normally, following the decision to exclude a pupil, the school is required to write or notify a parent of the decision to exclude the same day, including the date beginning, and make arrangements to form a meeting to discuss the decision to exclude within seven days. This requirement remains in place, however, given that schools are closed to the vast majority of pupils it is presumed that any exclusion would be unlikely.

Building on the current ability for appellants to choose to provide written submissions, the 2020 Regulations provide that EACs may, with the agreement of all parties, determine a reference following consideration of written representations submitted by the parties, rather than by way of a hearing. We would expect in these circumstances that all steps would be taken to ensure that ability for appellants to fully put forward their case is not reduced, for example that both parties have the opportunity to see and comment on the other's submissions in advance.

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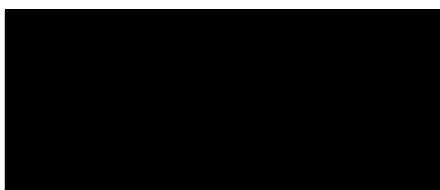
The 2020 Regulations are not expressly time limited, but it is our intention that these Regulations are in place only on a temporary basis, and the law as it is applied prior to the amendments will be restored in time for the next round of placing requests. We therefore currently intend to revoke the 2020 Regulations on or before 28 February 2021.

Education Authorities have also requested clarification on what the 2020 Regulations mean in terms of the current legislation on Primary 1 deferral and eligibility for early learning and childcare (ELC). There is no change to the legislation on primary school deferral and ELC eligibility. All children who are still 4 years old at the start of the school year can still be deferred and start Primary 1 the following year.

Children with a birthday in January or February, who defer school entry, are automatically entitled to another year of funded ELC. For children with a birthday between the school commencement date in August and December, parents continue to have an automatic right to school deferral for their child and local authorities continue to have the power to use their discretion to provide them with an additional year of funded ELC. As set out in the Early Learning and Childcare statutory guidance that accompanied the Children and Young People (Scotland) Act 2014, these decisions should be made on an assessment of the child's wellbeing.

As mentioned, we intend to establish a working group to continue to engage on these issues and support Education Authorities and EACs over the coming months, linking with the work of the wider Education Recovery Group. This working group will support the delivery of more detailed guidance to supplement the information contained in this letter, as necessary.

Yours sincerely,



**JOHN SWINNEY**

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