

Consideration of subordinate legislation by the Education, Children and Young People Committee

This note provides information about the Registration of Independent Schools (Scotland) Amendment Regulations 2021

1. Subordinate legislation can be used to make changes to an existing Act of the Scottish Parliament, to amend current regulations or to commence (start) powers in other legislation.
2. These regulations may also be referred to by their Scottish Statutory Instrument number which is SSI 2021/251
3. These regulations are being considered under the negative procedure.

Timeline for considering these regulations

4. These regulations were laid before the Scottish Parliament on **25 June 2021**
5. They were considered by the Delegated Powers and Law Reform Committee (DPLRC) at its meeting on **31 August 2021**. The Committee had no comments and the report produced by the Committee is [available here](#).
6. They will be considered by the Education, Children and Young People Committee at its meeting on **8 September 2021**.
7. If the committee wishes to produce a report on these regulations, it must do so by **4 October 2021**.

Is there a requirement to hear evidence from the Cabinet Secretary on these regulations?

8. No.

Purpose of the regulations

9. The purpose of the instrument is to update references in the Registration of Independent Schools (Scotland) Regulations 2006 to reflect current child protection legislation, and to specify additional information which independent schools and proposed independent schools must provide to the Registrar of Independent Schools.
10. The policy note states that this instrument amends the Registration of Independent Schools (Scotland) Regulations 2006 (“the 2006 Regulations”) which set out the information that is to be included in an application for registration of an independent school and the information that is to be

furnished to the Registrar by a registered school in terms of section 98 and 98A of the 1980 Act. The instrument amends regulation 2 and schedules 1 and 2 to the 2006 Regulations to replace references to the Police Act 1997 with references to the Protection of Vulnerable Groups (Scotland) Act 2007 ("the 2007 Act"), and update and add to the requirements for the information to be provided to the Registrar of Independent Schools by applicants to the register and by existing independent schools.

11. A copy of the Scottish Government's Policy Note is included in [Annexe A](#).

12. An extract from the DPLRC report on the regulations is provided in [Annexe B](#).

Impact Assessment

13. The Scottish Government concluded that no impact assessments are required for this instrument.

Financial Impact

14. The Scottish Government concluded that there will be no financial impact from the instrument.

Procedure

15. These regulations are being considered by Education, Children and Young People Committee under the negative procedure.

16. This means that the regulations become law immediately, i.e. as soon as they have been laid before the Scottish Parliament. These regulations can, however, be annulled up to 40 days after this has happened.

17. Rule 10.4 of the Scottish Parliament's standing orders states that any Member of the Scottish Parliament can lodge a Parliamentary motion within the 40 day time period seeking an annulment of regulations.

18. All regulations considered under the negative procedure are scrutinised by both the Delegated Powers and Law Reform Committee (on various technical grounds) and by a lead committee (on policy grounds).

19. If a motion to annul is tabled, the lead committee will consider this and then hold a vote. If the motion is disagreed to (i.e. MSPs believe the regulations are OK as they are), then the regulations will remain in their current form.

20. If, however, the majority of MSPs on the lead committee agrees the regulations should be annulled, then a further motion is lodged by the Parliamentary Bureau. This is then voted on by the whole Parliament.

21. If that is also agreed to (i.e. the majority of MSPs agree with it), then Scottish Ministers must revoke (withdraw) the instrument. It will no longer be law and

the Scottish Government must lay a new set of regulations before the Scottish Parliament.

22. Each negative instrument appears on a committee agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow correspondence to be entered into or a Minister or officials invited to give evidence.

23. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendation on it.

Jane Davidson

Committee Assistant

Education, Children and Young People Committee

POLICY NOTE

The Registration of Independent Schools (Scotland) Amendment Regulations 2021

SSI 2021/251

1. The above instrument was made in exercise of the powers conferred by sections 98(3) and 98A(2) of the Education (Scotland) Act 1980 (“the 1980 Act”).
2. These Regulations are subject to negative procedure.

Policy Objectives

3. This instrument amends the Registration of Independent Schools (Scotland) Regulations 2006 (“the 2006 Regulations”) which set out the information that is to be included in an application for registration of an independent school and the information that is to be furnished to the Registrar by a registered school in terms of section 98 and 98A of the 1980 Act. The instrument amends regulation 2 and schedules 1 and 2 to the 2006 Regulations to replace references to the Police Act 1997 with references to the Protection of Vulnerable Groups (Scotland) Act 2007 (“the 2007 Act”), and update and add to the requirements for the information to be provided to the Registrar of Independent Schools by applicants to the register and by existing independent schools.

Background

4. The 2006 Regulations make detailed provision in relation to the registration of independent schools in Scotland. If a proposed school does not meet these requirements, it would not be registered, and if an existing school failed to meet these requirements it could be found objectionable under section 99(1A) (j) of the 1980 Act.
5. The current legislative framework relating to the protection of vulnerable groups was introduced by the 2007 Act and the Registrar and independent schools have fully complied with those requirements. However, the 2006 Regulations require to be amended to reflect those requirements and current practice.
6. This instrument also makes a number of additions to the information to be provided to the Registrar, either in the case of a proposed school or a registered school. These include:
 - The intended number of teachers to be employed in the school;

- Adding to the requirements related to the school's Child Protection Policy and Procedure;
 - The school's First Aid Policy and Procedures;
 - The governance and leadership arrangements for the school;
 - The school's leadership structure;
 - Details of the school's child protection officer and deputy child protection officer;
 - Confirmation that all teachers are registered with the General Teaching Council for Scotland;
 - Confirmation that all persons employed by the school have undertaken child protection training in the last 12 months; and
 - The school's unique identifier code (usually known as its SEED code) used by the Scottish Government.
7. These amended provisions will help the Registrar effectively monitor independent schools.

Consultation

8. A formal consultation was undertaken in 2006 on all aspects of the proposed scheme for the protection of vulnerable groups before the passage of the 2007 Act, and further consultation took place on the secondary legislation which supported the Act. There is no requirement for statutory consultation on regulations made under sections 98 and 98A(2) of the 1980 Act.
9. The proposed amendments to the information requirements reflect information which the Registrar has found it helpful to require in their oversight of independent schools and are well accepted and understood by the sector. The Registrar will update their guidance to schools to support the amended requirements.
10. The policy behind this instrument was shared with the Scottish Council for Independent Schools in June 2021, and they were content with the proposals. The Scottish Government has also worked closely with the Registrar in preparing the instrument.

Impact Assessments

11. This instrument updates legal references in existing regulations and brings the regulations into line with the Registrar's practices, which have evolved over time. We have considered the need for each impact assessment and, after completing screening assessments, have concluded that these are not required for this instrument.

Financial Effects

12. There will be no financial impact to the Scottish Government.

13. There will be no financial implications for the independent schools sector as these requirements are already in practice.

Scottish Government Learning Directorate

June 2021

Annexe B

Extract from the Delegated Powers and Law Reform Committee's 2nd Report of 2021

Registration of Independent Schools (Scotland) Amendment Regulations 2021 (SSI 2021/251)

The Convener

No points have been raised on SSI 2021/251. Is the committee content with the regulations?

Members indicated agreement.