



Education (Additional Support for Learning) (Scotland) Act 2004

2004 asp 4

Exchange of information

12 Duties to seek and take account of views, advice and information

(1) In—

- (a) establishing in pursuance of any provision of this Act whether any child or young person—
 - (i) has additional support needs, or
 - (ii) requires, or would require, a co-ordinated support plan,
- (b) establishing in pursuance of a review carried out under section 10 whether any child or young person still requires a co-ordinated support plan,
- (c) preparing such a plan for any child or young person, or
- (d) determining in pursuance of section 4(1) what provision to make for such additional support as is required by any child or young person having additional support needs,

the education authority must comply with the duty described in subsection (2).

(2) That duty is a duty to—

- (a) seek and take account of relevant advice and information from such appropriate agencies and other persons as the education authority think appropriate,
- (b) subject to subsection (3), seek and take account of the views of—
 - (i) in the case of a child, the child (unless the authority are satisfied that the child lacks capacity [^{F1}in relation to] a view) and the child's parent, and
 - (ii) in the case of a young person, that young person or, if the authority are satisfied that the young person lacks capacity to express a view, the young person's parent,
- (c) take account of any relevant advice or information provided to the authority by or on behalf of the child or young person concerned, and

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- (d) take account of any relevant advice and information in the authority's possession or control by virtue of any of their functions other than their functions relating to education.
- (3) In the cases mentioned in subsection (1)(a)(i) and (d), the duty described in subsection (2)(b) applies only in relation to such children and young persons as the authority consider appropriate.
- [^{F2}(3A) Where any such co-ordinated support plan as is mentioned in section 10(1) is transferred to the education authority by virtue of regulations made in pursuance of section 11(8), the authority's duty under subsection (2)(a) includes a duty to seek and take account of information and advice (within such period as will enable the authority to comply with their duty under section 10(5A)) from the education authority from which the plan was transferred and any agencies or persons involved in providing support under the plan prior to its transfer.]
- (4) Advice or information is relevant for the purposes of subsection (2)(a), (c) or (d) if it is likely to assist the education authority in doing any of the things referred to in paragraphs (a) to (d) of subsection (1).
- (5) Every education authority must—
- (a) no later than 12 months before the date on which any child or young person—
 - (i) having additional support needs, and
 - (ii) for whose school education the authority are responsible, is expected to cease receiving school education, or
 - (b) where the education authority become aware that the child or young person is to cease receiving school education less than 12 months before that date, as soon as reasonably practicable after they become so aware,
- comply with the duty in subsection (6).
- (6) That duty is a duty to—
- (a) request from such appropriate agency or agencies as the authority think fit (if any) such information as the authority consider appropriate concerning any provision which the agency is or, as the case may be, the agencies are likely to make for the child or young person on ceasing to receive school education,
 - (b) where the authority make a request under paragraph (a), seek the views of—
 - (i) in the case of a child, that child (unless the authority are satisfied that the child lacks capacity [^{F3}in relation to] a view) and the child's parent, or
 - (ii) in the case of a young person, that young person or, if the authority are satisfied that the young person lacks capacity to express a view, the young person's parent, and
 - (c) take account of—
 - (i) any information provided by any appropriate agency or agencies pursuant to a request under paragraph (a),
 - (ii) any views expressed by the child or young person or the child's or young person's parent pursuant to paragraph (b), and
 - (iii) any provision which the education authority themselves are, in the exercise of any of their functions other than their functions relating to education, likely to make for the child or young person on ceasing to receive school education,

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in considering the adequacy of the additional support to be provided for the child or young person during the period before the child or young person ceases to receive school education.

(7) Subsections (5) and (6) are without prejudice to section 4(1)(b).

Textual Amendments

- F1** Words in s. 12(2)(b)(i) substituted (10.1.2018) by [Education \(Scotland\) Act 2016 \(asp 8\), s. 33\(2\), sch. para. 11\(a\)](#); [S.S.I. 2017/354, reg. 2\(a\)](#)
- F2** S. 12(3A) inserted (14.11.2010) by [Education \(Additional Support for Learning\) \(Scotland\) Act 2009 \(asp 7\), ss. 1\(6\), 26\(3\)](#); [S.S.I. 2010/277, art. 2](#)
- F3** Words in s. 12(6)(b)(i) substituted (10.1.2018) by [Education \(Scotland\) Act 2016 \(asp 8\), s. 33\(2\), sch. para. 11\(b\)](#); [S.S.I. 2017/354, reg. 2\(a\)](#)

Commencement Information

- I1** S. 12 in force at 14.11.2005 by [S.S.I. 2005/564, art. 2](#)

13 Provision of information etc. on occurrence of certain events

- (1) Every education authority must—
- (a) no later than 6 months before the date on which any child or young person—
 - (i) having additional support needs, and
 - (ii) for whose school education the authority are responsible,is expected to cease receiving school education, or
 - (b) where the education authority become aware that the child or young person is to cease receiving school education less than 6 months before that date, as soon as reasonably practicable after they become so aware,
- comply with the duty in subsection (2).
- (2) That duty is a duty—
- (a) to provide such appropriate agency or agencies as the authority think fit (if any) with the information specified in subsection (3), and
 - (b) to—
 - (i) consider what (if any) provision the authority are, in the exercise of any of their functions other than their functions relating to education, likely to make for the child or young person on ceasing to receive school education, and
 - (ii) for that purpose, take into account any information specified in subsection (3).
- (3) The information referred to in subsection (2) is—
- (a) information as to the date on which the child or young person is expected to cease receiving school education, and
 - (b) such other information as the authority consider appropriate concerning the child or young person and the additional support needs of the child or young person.
- (4) Every education authority must, when any such child or young person as is referred to in subsection (1) ceases to receive school education, inform such appropriate agency or agencies as the authority think fit of that fact as soon as reasonably practicable.

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- [^{F4}(4A) In relation to the provision of any information under subsection (2)(a) or (4) in the case of a child, the education authority must seek and take account of the views of the child (unless the authority are satisfied that the child lacks capacity [^{F5}in relation to such] a view).]
- (5) Information is to be provided under subsection (2)(a) or (4) only with the consent of—
- [^{F6}(za) in the case of a child who has attained the age of 12 years and who the authority is satisfied has capacity to give consent, the child,]
 - (a) in the case of [^{F7}any other] child, the child’s parent,
 - (b) in the case of a young person—
 - (i) the young person, or
 - (ii) where the education authority are satisfied that the young person lacks capacity to give consent, the young person’s parent.
- (6) The Scottish Ministers may by regulations make provision for the taking by education authorities of specified action in connection with the occurrence or likely occurrence of specified changes in the school education of children and young persons—
- (a) having additional support needs, and
 - (b) for whose school education the authorities are responsible.
- (7) Regulations under subsection (6) may, in particular, make provision—
- (a) for the disclosure by the authorities of specified information about such children or young persons—
 - (i) to specified persons or persons of specified descriptions,
 - (ii) subject to specified conditions,
 - (b) for such information to be disclosed, or any other action taken, by specified times.
- (8) In subsections (6) and (7), “specified” means specified in regulations under subsection (6).

Textual Amendments

- F4** S. 13(4A) inserted (14.11.2010) by [Education \(Additional Support for Learning\) \(Scotland\) Act 2009 \(asp 7\)](#), **ss. 17, 26(3)**; [S.S.I. 2010/277](#), **art. 2**
- F5** Words in s. 13(4A) substituted (10.1.2018) by [Education \(Scotland\) Act 2016 \(asp 8\)](#), s. 33(2), **sch. para. 12(a)**; [S.S.I. 2017/354](#), **reg. 2(a)**
- F6** S. 13(5)(za) inserted (10.1.2018) by [Education \(Scotland\) Act 2016 \(asp 8\)](#), s. 33(2), **sch. para. 12(b)(i)**; [S.S.I. 2017/354](#), **reg. 2(a)**
- F7** Words in s. 13(5)(a) substituted (10.1.2018) by [Education \(Scotland\) Act 2016 \(asp 8\)](#), s. 33(2), **sch. para. 12(b)(ii)**; [S.S.I. 2017/354](#), **reg. 2(a)**

Commencement Information

- I2** S. 13(1)-(5) (8) in force at 14.11.2005 by [S.S.I. 2005/564](#), **art. 2**
- I3** S. 13(6)(7) in force at 18.5.2005 for specified purposes by [S.S.I. 2005/263](#), **art. 2**, **Sch.**
- I4** S. 13(6)(7) in force at 14.11.2005 in so far as not already in force by [S.S.I. 2005/564](#), **art. 2**

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