



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

## 2004 asp 4

### *General*

#### **28 Requests under this Act: further provision S**

- (1) References in this Act to a “request” are to a request which—
- (a) is in—
    - (i) writing, or
    - (ii) another form which, by reason of its having some permanence, is capable of being used for subsequent reference (as, for example, an audio or video recording), and
  - (b) contains a statement of the reasons for making the request.
- (2) Where an education authority decide not to comply with any request made to them under this Act, the authority must—
- (a) inform the person who made the request of that decision,
  - (b) in so doing, give reasons for the decision,
  - (c) except where the request was of the type specified in section 7(2)(b), provide the person who made the request with information as to—
    - (i) the mediation services provided in pursuance of arrangements made by the authority under section 15(1), and
    - (ii) any procedures for the resolution of disputes established by the authority in pursuance of any regulations under section 16,
  - (d) where the request was made under section 6(2)(b) or 10(4), inform the person who made the request of the right under section 18(1) to refer the decision to [<sup>F1</sup>the First-tier Tribunal], and
  - (e) where the request was a placing request, inform the person who made the request of—
    - (i) the right under paragraph 5 of schedule 2 to refer the decision to an appeal committee, or
    - (ii) the right under section 18(1) to refer the decision to [<sup>F2</sup>the First-tier Tribunal],(as appropriate).

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*Changes to legislation:* There are currently no known outstanding effects for the Education (Additional Support for Learning) (Scotland) Act 2004, Cross Heading: General. (See end of Document for details)

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### Textual Amendments

- F1** Words in s. 28(2)(d) substituted (12.1.2018) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Additional Support Needs Tribunals for Scotland\) Regulations 2018 \(S.S.I. 2018/4\), reg. 1\(1\), sch. 2 para. 3\(12\)\(a\)](#)
- F2** Words in s. 28(2)(e)(ii) substituted (12.1.2018) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Additional Support Needs Tribunals for Scotland\) Regulations 2018 \(S.S.I. 2018/4\), reg. 1\(1\), sch. 2 para. 3\(12\)\(b\)](#)

### Commencement Information

- I1** S. 28 in force at 14.11.2005 by [S.S.I. 2005/564, art. 2](#)

## 29 Interpretation **S**

(1) In this Act—

“the 1980 Act” means the Education (Scotland) Act 1980 (c. 44),

“the 2000 Act” means the Standards in Scotland’s Schools etc. Act 2000 (asp 6),

“additional support” has the meaning given in section 1(3),

“additional support needs” is to be construed in accordance with section 1(1),

“appropriate agency” is to be construed in accordance with section 23(2),

“co-ordinated support plan” has the meaning given in section 2(1) and, in relation to any such plan which has been amended by virtue of any provision of this Act, references in this Act to a co-ordinated support plan are (except where the context otherwise requires) to the plan as amended,

[<sup>F3</sup>“eligible pre-school child” has the same meaning as in Part 6 of the Children and Young People (Scotland) Act 2014,]

[<sup>F4</sup>“First-tier Tribunal” means the First-tier Tribunal for Scotland Health and Education Chamber]

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39),

“placing request” has the meaning given in paragraph 2(3) of schedule 2,

<sup>F5</sup>  
...

<sup>F6</sup>  
...

“primary education” is to be construed in accordance with section 135(2) of the 1980 Act,

“special school” means—

(a) a school, or

(b) any class or other unit forming part of a public school which is not itself a special school,

the sole or main purpose of which is to provide education specially suited to the additional support needs of children or young persons selected for attendance at the school, class or (as the case may be) unit by reason of those needs,

<sup>F7</sup>  
...

[<sup>F8</sup>“young person” means a person who—

(a) is aged 16 years or over,

(b) is a pupil at a school, and

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- (c) has, since attaining the age of 16 years or over, remained a pupil at that or another school.]
- (2) In this Act, the following expressions have the meanings given in section 135(1) of the 1980 Act—
- “ child ”,
  - “ education authority ”,
  - “ grant-aided school ”,
  - “ Health Board ”,
  - “ independent school ”,
  - “ managers ”,
  - “ parent ”,
  - “ public school ”,
  - “ school ”,
  - “ school age ”,
  - “ school education ”,
  - F9  
....
- (3) In this Act [F10 and subject to subsection (3A) ], references to a child or young person for whose school education an education authority are responsible are to any child or young person being, or about to be, provided with school education—
- (a) in a school under the management of the education authority, or
  - (b) in pursuance of arrangements made or entered into by the authority.
- [F11(3A) For the purposes of this Act, where arrangements are made or entered into by an education authority in respect of the school education of a child or young person with another education authority, the authority responsible for that school education is the authority for the area to which the child or young person belongs despite the education being, or about to be, provided in a school under the management of another authority.]
- (4) In this Act, references to a child or young person belonging to an area are to be construed in accordance with section 23(3) of the 1980 Act.
- ( 5 ) In this Act, references to the doing of anything in writing include references to the doing of that thing by means of a document—
- (a) transmitted by electronic means,
  - (b) received in legible form, and
  - (c) capable of being used for subsequent reference.

#### Textual Amendments

- F3** Words in s. 29(1) inserted (1.8.2014) by Children and Young People (Scotland) Act 2014 (asp 8) , s. 102(3) , **Sch. 5 para. 10(4)(a)** ; S.S.I. 2014/131 , art. 2(2)(3) , Sch.
- F4** Words in s. 29(1) inserted (12.1.2018) by The First-tier Tribunal for Scotland (Transfer of Functions of the Additional Support Needs Tribunals for Scotland) Regulations 2018 (S.S.I. 2018/4), reg. 1(1), **sch. 2 para. 3(13)(c)**
- F5** Words in s. 29(1) omitted (1.8.2014) by virtue of Children and Young People (Scotland) Act 2014 (asp 8) , s. 102(3) , **Sch. 5 para. 10(4)(b)** ; S.S.I. 2014/131 , art. 2(2)(3) , Sch.
- F6** Words in s. 29(1) repealed (12.1.2018) by The First-tier Tribunal for Scotland (Transfer of Functions of the Additional Support Needs Tribunals for Scotland) Regulations 2018 (S.S.I. 2018/4), reg. 1(1), **sch. 2 para. 3(13)(a)**

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- F7** Words in s. 29(1) repealed (12.1.2018) by The First-tier Tribunal for Scotland (Transfer of Functions of the Additional Support Needs Tribunals for Scotland) Regulations 2018 (S.S.I. 2018/4), reg. 1(1), **sch. 2 para. 3(13)(b)**
- F8** Words in s. 29(1) inserted (10.1.2018) by Education (Scotland) Act 2016 (asp 8), s. 33(2), **sch. para. 21(a)**; S.S.I. 2017/354, reg. 2(a)
- F9** Words in s. 29(2) repealed (10.1.2018) by Education (Scotland) Act 2016 (asp 8), s. 33(2), **sch. para. 21(b)**; S.S.I. 2017/354, reg. 2(a)
- F10** Words in s. 29(3) inserted (14.11.2010) by virtue of Education (Additional Support for Learning) (Scotland) Act 2009 (asp 7), **ss. 5(a), 26(3)**; S.S.I. 2010/277, art. 2
- F11** S. 29(3A) inserted (14.11.2010) by Education (Additional Support for Learning) (Scotland) Act 2009 (asp 7), **ss. 5(b), 26(3)**; S.S.I. 2010/277, art. 2

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**Modifications etc. (not altering text)**

- C1** S. 29(5) applied (14.11.2005) by Additional Support for Learning Dispute Resolution (Scotland) Regulations 2005 (S.S.I. 2005/501), regs. 1, **2(2)**

### 30 Transitional provision: recorded children and young persons **S**

- (1) This section applies to any child or young person—
  - (a) for whose school education an education authority are, at the commencement date, responsible, and
  - (b) who, immediately before that date, was a recorded child or young person within the meaning of the 1980 Act.
- (2) Such a child or young person is, for the purposes of this Act, to be taken to have additional support needs.
- (3) The education authority must, before the end of the period of 2 years beginning with the commencement date, establish, in accordance with the arrangements made by them under section 6(1), whether the child or young person requires a co-ordinated support plan.
- (4) Until the appropriate date, the education authority must ensure that the provision made by them in pursuance of section 4(1)(a) for the additional support required by the child or young person is no less than the provision which was, immediately before the commencement date, made for the child or young person under section 62(3) (duty of education authority to provide for special educational needs of recorded children and young persons) of the 1980 Act.
- (5) In subsection (4), “the appropriate date” means—
  - (a) where the education authority establish in pursuance of subsection (3) that the child or young person requires a co-ordinated support plan, the date on which they so establish that matter,
  - (b) where the authority establish in pursuance of that subsection that the child or young person does not require such a plan, the date of expiry of the period of 2 years beginning with the date on which they so establish that matter, or
  - (c) if there is a significant change in the child’s or young person’s additional support needs, the date on which the authority establish the occurrence of that change,
 whichever occurs first.
- (6) In this section—

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“the commencement date” means the date on which this section comes into force, and

“the education authority” means the education authority responsible for the child’s or young person’s school education.

#### Commencement Information

**I2** S. 30 in force at 14.11.2005 by [S.S.I. 2005/564, art. 2](#)

### 31 Duty to inform in writing or alternative permanent form **S**

Where an education authority are, under this Act, to inform a parent [<sup>F12</sup>, child who has attained the age of 12 years] or young person of any matter, they must do so—

- (a) in writing, or
- (b) in such other form as the parent [<sup>F13</sup>, child] or young person may reasonably require, being a form which, by reason of its having some permanence, is capable of being used for subsequent reference (as, for example, an audio or video recording).

#### Textual Amendments

**F12** Words in s. 31 inserted (10.1.2018) by [Education \(Scotland\) Act 2016 \(asp 8\), s. 33\(2\), sch. para. 22\(a\)](#); [S.S.I. 2017/354, reg. 2\(a\)](#)

**F13** Word in s. 31 inserted (10.1.2018) by [Education \(Scotland\) Act 2016 \(asp 8\), s. 33\(2\), sch. para. 22\(b\)](#); [S.S.I. 2017/354, reg. 2\(a\)](#)

#### Commencement Information

**I3** S. 31 in force at 14.11.2005 by [S.S.I. 2005/564, art. 2](#)

### [<sup>F14</sup>31A Provision of support service **S**

- (1) The Scottish Ministers must secure the provision of a support service to be available, on request and free of charge, to children who have attained the age of 12 years and—
  - (a) who wish to exercise, or are considering exercising, relevant rights, or
  - (b) whose parents wish to exercise, or are considering exercising, relevant rights.
- (2) In this section, “a support service” means a service under which—
  - (a) advice (including legal advice), assistance and information in relation to relevant rights are provided to children mentioned in subsection (1),
  - (b) a person is provided to be present at any discussions with an education authority in relation to the relevant rights of such a child for the purpose of supporting the child (where the child wishes such a person to be present),
  - (c) a person is provided to conduct such discussions (or any part of them), or make representations to an education authority, on behalf of such a child (where the child wishes such a person to be provided), and
  - (d) an advocacy service (within the meaning of subsection (3) of section 14A) is provided to such children (the reference in that subsection to persons mentioned in subsection (2) being read as if such children were mentioned in that subsection).

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- (3) Subsection (4) applies where—
- (a) a child, or parent, as mentioned in subsection (1) wishes to exercise, or is considering exercising, relevant rights, or
  - (b) some other thing is done, or proposed to be done, under this Act by or in relation to such a child.
- (4) Any person providing a support service under this section may seek the views of the child as respects—
- (a) the exercise of the relevant rights, or
  - (b) the doing, or proposed doing, of the thing.
- (5) In this section, “relevant rights”—
- (a) in relation to a child who has attained the age of 12 years, means any rights conferred by or under this Act on such children, and includes the right—
    - (i) to receive any document or information, and
    - (ii) to give consent in relation to any matter, and
  - (b) in relation to the parents of such a child, means any rights conferred on the parents by or under this Act.]

#### Textual Amendments

- F14** S. 31A inserted (10.1.2018) by Education (Scotland) Act 2016 (asp 8), s. 33(2), **sch. para. 23**; S.S.I. 2017/354, reg. 2(a)

### 32 Ancillary provision **S**

The Scottish Ministers may by order make such incidental, supplemental, consequential, further transitional, transitory or saving provision as they consider necessary or expedient for the purposes or in consequence of this Act.

### 33 Modification of enactments **S**

Schedule 3 makes modifications of enactments in consequence of this Act.

#### Commencement Information

- I4** S. 33 in force at 14.11.2005 by S.S.I. 2005/564, **art. 2**

### 34 Orders, regulations and rules **S**

- (1) Any power of the Scottish Ministers to make orders, regulations or rules under this Act is exercisable by statutory instrument.
- (2) Any such power includes power to make—
  - (a) such incidental, supplemental, consequential, transitional, transitory or saving provision as the Scottish Ministers think necessary or expedient,
  - (b) different provision for different purposes.
- (3) An order under section 32 may modify any enactment, instrument or document.

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*Changes to legislation: There are currently no known outstanding effects for the Education (Additional Support for Learning) (Scotland) Act 2004, Cross Heading: General. (See end of Document for details)*

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- (4) A statutory instrument containing an order, regulations or rules under this Act (except [<sup>F15</sup>section 3B(3),] section 17(5), section 32 (where subsection (5) applies) and section 35) is subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (5) No—
- (a) order under sections 20 and 32 containing provisions which add to, replace or omit any part of the text of an Act, or
  - (b) regulations under section [<sup>F16</sup>3B(3) or] 17(5),
- is or are to be made unless a draft of the statutory instrument containing the order or regulations has been laid before, and approved by a resolution of, the Parliament.

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**Textual Amendments**

**F15** Words in s. 34(4) inserted (10.1.2018) by Education (Scotland) Act 2016 (asp 8), s. 33(2), **sch. para. 24(a)**; S.S.I. 2017/354, reg. 2(a)

**F16** Words in s. 34(5)(b) inserted (10.1.2018) by Education (Scotland) Act 2016 (asp 8), s. 33(2), **sch. para. 24(b)**; S.S.I. 2017/354, reg. 2(a)

**35 Commencement and short title** **S**

- (1) The provisions of this Act, other than sections 29, 32 and 34 and this section, come into force on such day as the Scottish Ministers may by order appoint.
- (2) This Act may be cited as the Education (Additional Support for Learning) (Scotland) Act 2004.

**Changes to legislation:**

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