

**Changes to legislation:** There are currently no known outstanding effects for the Education (Additional Support for Learning) (Scotland) Act 2004, SCHEDULE 2. (See end of Document for details)

## SCHEDULE 2

(introduced by section 22)

### CHILDREN AND YOUNG PERSONS WITH ADDITIONAL SUPPORT NEEDS: PLACING REQUESTS

#### *Introductory*

- 1 Sections 28A, 28C, 28E, 28F and 28G of the 1980 Act (which make provision as to the making of placing requests and appeals in relation to the refusal of such requests) do not apply in relation to children and young persons having additional support needs and instead the provisions of this schedule apply in relation to such children and young persons.

#### **Commencement Information**

- II** Sch. 2 para. 1 in force at 14.11.2005 by [S.S.I. 2005/564](#), [art. 2](#)

#### *Duty to comply with placing requests*

- 2 (1) Where the parent of a child having additional support needs makes a request to an education authority to place the child in the school specified in the request, being a school under their management, it is the duty of the authority, subject to paragraph 3, to place the child accordingly.
- (2) Where the parent of a child having additional support needs makes a request to the education authority for the area to which the child belongs to place the child in the school specified in the request, not being a public school but being—
- (a) a special school the managers of which are willing to admit the child,
  - (b) a school in England, Wales or Northern Ireland the managers of which are willing to admit the child and which is a school making provision wholly or mainly for children (or as the case may be young persons) having additional support needs, or
  - (c) a school at which education is provided in pursuance of arrangements entered into under section 35 of the 2000 Act,
- it is the duty of the authority, subject to paragraph 3, to meet the fees and other necessary costs of the child's attendance at the specified school.
- (3) A request made under sub-paragraph (1) or (2) is referred to in this Act as a “placing request” and the school specified in it is referred to in this schedule as the “specified school”.
- (4) Where a placing request relates to 2 or more schools being—
- (a) schools under the management of the education authority to whom it is made, or
  - (b) schools mentioned in sub-paragraph (2)(a), (b) or (c) the managers of which are willing to admit the child in respect of whom the request is made,
- the duty imposed by sub-paragraph (1) or, as the case may be, sub-paragraph (2) applies in relation to the first mentioned such school, which is to be treated for the purposes of this schedule as the specified school.
- [<sup>F1</sup>(5) In sub-paragraph (1), the reference to an education authority includes an education authority which are not responsible for the school education of the child.]

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#### **Textual Amendments**

**F1** Sch. 2 para. 2(5) added (14.11.2010) by [Education \(Additional Support for Learning\) \(Scotland\) Act 2009 \(asp 7\)](#), ss. **1(9)(a)**, 26(3); S.S.I. 2010/277, art. 2

#### **Commencement Information**

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

#### *Circumstances in which duty does not apply*

- 3 (1) The duty imposed by sub-paragraph (1) or, as the case may be, sub-paragraph (2) of paragraph 2 does not apply—
- (a) if placing the child in the specified school would—
    - (i) make it necessary for the authority to take an additional teacher into employment,
    - (ii) give rise to significant expenditure on extending or otherwise altering the accommodation at or facilities provided in connection with the school,
    - (iii) be seriously detrimental to the continuity of the child’s education,
    - (iv) be likely to be seriously detrimental to order and discipline in the school,
    - (v) be likely to be seriously detrimental to the educational well-being of pupils attending the school,
    - (vi) assuming that pupil numbers remain constant, make it necessary, at the commencement of a future stage of the child’s primary education, for the authority to elect either to create an additional class (or an additional composite class) in the specified school or to take an additional teacher into employment at the school, or
    - (vii) though neither of the tests set out in paragraphs (i) and (ii) is satisfied, have the consequence that the capacity of the school would be exceeded in terms of pupil numbers,
  - (b) if the education normally provided at the specified school is not suited to the age, ability or aptitude of the child,
  - (c) if the education authority have already required the child to discontinue attendance at the specified school,
  - (d) if, where the specified school is a school mentioned in paragraph 2(2)(a) or (b), the child does not have additional support needs requiring the education or special facilities normally provided at that school,
  - (e) if the specified school is a single sex school (within the meaning of <sup>F2</sup>substitute “paragraph 1(2) of Part 1 of Schedule 11 to the Equality Act 2010]) and the child is not of the sex admitted or taken (under that <sup>F3</sup>paragraph]) to be admitted to the school,
  - (f) if all of the following conditions apply, namely—
    - (i) the specified school is not a public school,
    - (ii) the authority are able to make provision for the additional support needs of the child in a school (whether or not a school under their management) other than the specified school,
    - (iii) it is not reasonable, having regard both to the respective suitability and to the respective cost (including necessary incidental expenses)

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- of the provision for the additional support needs of the child in the specified school and in the school referred to in paragraph (ii), to place the child in the specified school, and
- (iv) the authority have offered to place the child in the school referred to in paragraph (ii), or
- (g) if, where the specified school is a special school, placing the child in the school would breach the requirement in section 15(1) of the 2000 Act.
- (2) An education authority may place a child in the specified school notwithstanding sub-paragraph (1)(a) to (e).
- (3) The duty imposed by sub-paragraph (1) or, as the case may be, sub-paragraph (2) of paragraph 2 does not apply where the acceptance of a placing request in respect of a child who is resident outwith the catchment area of the specified school would prevent the education authority from retaining reserved places at the specified school or in relation to any particular stage of education at the school.
- (4) Nothing in sub-paragraph (3) prevents an education authority from placing a child in the specified school.
- (5) In sub-paragraph (3), “reserved places” means such number of places (not exceeding such number or, as the case may be, such percentage of places at the school or relating to the particular stage of education as the Scottish Ministers may by regulations prescribe) as are in the opinion of the education authority reasonably required to accommodate pupils likely to become resident in the catchment area of the school in the period from the time of consideration of the placing request up to and during the year from 1st August to which the placing request relates.
- (6) In sub-paragraphs (3) and (5) “catchment area”, in relation to a school, means the area from which pupils resident therein will be admitted to the school in terms of any priority based on residence in accordance with the guidelines formulated by the authority under section 28B(1)(c) of the 1980 Act.

#### Textual Amendments

- F2** Words in Sch. 2 para. 3(1)(e) substituted by 2010 c. 15 Sch. 26 Pt. 2 para. 106(a) (as inserted (1.10.2010) by [The Equality Act 2010 \(Consequential Amendments, Saving and Supplementary Provisions\) Order 2010 \(S.I. 2010/2279\)](#), art. 1(2), **Sch. 1 para. 6** (see S.I. 2010/2317, art. 2))
- F3** Words in Sch. 2 para. 3(1)(e) substituted by 2010 c. 15 Sch. 26 Pt. 2 para. 106(b) (as inserted (1.10.2010) by [The Equality Act 2010 \(Consequential Amendments, Saving and Supplementary Provisions\) Order 2010 \(S.I. 2010/2279\)](#), art. 1(2), **Sch. 1 para. 6** (see S.I. 2010/2317, art. 2))

#### Commencement Information

- I3** Sch. 2 para. 3(1)-(4) (6) in force at 14.11.2005 by [S.S.I. 2005/564](#), art. 2
- I4** Sch. 2 para. 3(5) in force at 14.11.2005 for specified purposes by [S.S.I. 2005/564](#), art. 2

#### *Placing requests: further provision*

- 4 (1) An education authority must inform a parent in writing of their decision on a placing request made by the parent.
- (2) On complying with a placing request relating to a child for whom a co-ordinated support plan has been prepared (and not discontinued), an education authority must modify accordingly the nomination in the plan of a school to be attended by the child.

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[<sup>F4</sup>(2A) Sub-paragraph (2) does not apply where the placing request was made to an education authority which, at the time of the request, were not responsible for the school education of the child.]

- (3) The Scottish Ministers may, by regulations, make provision for deeming an education authority to have refused a placing request in the event of their not having informed the parent of their decision on it in accordance with sub-paragraph (1) within such period or before such date as may be prescribed in the regulations.

#### Textual Amendments

**F4** Sch. 2 para. 4(2A) inserted (14.11.2010) by [Education \(Additional Support for Learning\) \(Scotland\) Act 2009 \(asp 7\)](#), [ss. 1\(9\)\(b\)](#), 26(3); S.S.I. 2010/277, art. 2

#### Commencement Information

**I5** Sch. 2 para. 4(1)(2) in force at 14.11.2005 by [S.S.I. 2005/564](#), [art. 2](#)

**I6** Sch. 2 para. 4(3) in force at 18.5.2005 for specified purposes by [S.S.I. 2005/263](#), [art. 2](#), [Sch.](#)

**I7** Sch. 2 para. 4(3) in force at 14.11.2005 in so far as not already in force by [S.S.I. 2005/564](#), [art. 2](#)

#### *Reference to appeal committee of refusal of placing request*

- 5 (1) A parent who has made a placing request may refer a decision of the education authority refusing the request to an appeal committee set up under section 28D of the 1980 Act.
- (2) Sub-paragraph (1) does not apply where the decision of the education authority refusing the request may be referred to [<sup>F5</sup>the First-tier Tribunal] under section 18(1).
- (3) Where a reference under this paragraph has been made in respect of a child, no further such reference in respect of the child is competent during the period of 12 months beginning with the day on which the immediately preceding such reference was lodged.
- (4) A reference under this paragraph must be lodged with the appeal committee within 28 days of the receipt by the parent of the decision of the education authority.
- (5) For the purposes of sub-paragraph (4), a decision which is posted is to be presumed to have been received (unless the contrary is proved)—
- (a) on the day after the date on which it was posted, or
  - (b) if posted on a Friday or Saturday, on the Monday next following.
- (6) The committee may, on good cause being shown, hear such a reference notwithstanding that it was not lodged within the time mentioned in sub-paragraph (4).

#### Textual Amendments

**F5** Words in [sch. 2 para. 5\(2\)](#) 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\(15\)\(a\)](#)

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### Commencement Information

**18** Sch. 2 para. 5 in force at 14.11.2005 by [S.S.I. 2005/564](#), [art. 2](#)

#### *References to appeal committees: supplementary provisions*

- 6 (1) An appeal committee may, on a reference made to them under paragraph 5,<sup>[F6]</sup> (including such a reference relating to a decision which has been referred back under section 19(5)(d) or (e)) confirm the education authority's decision if they are satisfied that—
- (a) in relation to the placing request, one or more of the grounds of refusal specified in paragraph 3(1) or (3) exists or exist, and
  - (b) in all the circumstances it is appropriate to do so,
- but otherwise must refuse to confirm the authority's decision.
- (2) Where they so refuse, the appeal committee shall require the education authority—
- (a) in the case of a placing request made under paragraph 2(1), to place the child in the specified school,
  - (b) in the case of a placing request made under paragraph 2(2), to meet the fees and other necessary costs of the child's attendance at the specified school,
- and the authority must comply with that requirement.
- (3) An appeal committee must notify their decision under this paragraph and the reasons for it in writing to the parent who made the reference and to the education authority and, where they confirm the authority's decision, they must inform the parent of the right of appeal to the sheriff under paragraph 7.
- (4) Sub-paragraph (5) applies where—
- (a) after a reference is made to an appeal committee under paragraph 5, but
  - (b) before the committee has disposed of the reference,
- <sup>[F7]</sup> the things mentioned in any of paragraphs (a), (b), (ba) and (c) of section 18(4) occur.]
- (5) Where this sub-paragraph applies—
- (a) the appeal committee must transfer the reference to the <sup>[F8]</sup>First-tier Tribunal, and
  - (b) on being so transferred, the reference is to be treated as if made to the <sup>[F8]</sup>First-tier Tribunal under section 18(1).
- (6) The Scottish Ministers may by regulations make provision for procedure in relation to references under paragraph 5 and any such regulations may, in particular, include provision—
- (a) requiring an education authority to make information relevant to their decision available to the appeal committee and to the parent referring the decision to the committee,
  - (b) deeming, for the purposes of this Act, an appeal committee to have confirmed the decision of an education authority on a placing request if the committee has not complied with sub-paragraph (3) of this paragraph within such period or before such date as may be prescribed in the regulations.

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#### Textual Amendments

- F6** Words in Sch. 2 para. 6(1) inserted (14.11.2010) by virtue of [Education \(Additional Support for Learning\) \(Scotland\) Act 2009 \(asp 7\), ss. 1\(9\)\(c\)\(i\), 26\(3\); S.S.I. 2010/277, art. 2](#)
- F7** Words in Sch. 2 para. 6(4) substituted (14.11.2010) by [Education \(Additional Support for Learning\) \(Scotland\) Act 2009 \(asp 7\), ss. 1\(9\)\(c\)\(ii\), 26\(3\); S.S.I. 2010/277, art. 2](#)
- F8** Words in sch. 2 para. 6(5) 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\(15\)\(b\)](#)

#### Commencement Information

- I9** Sch. 2 para. 6(1)-(5) in force at 14.11.2005 by [S.S.I. 2005/564, art. 2](#)
- I10** Sch. 2 para. 6(6) in force at 18.5.2005 for specified purposes by [S.S.I. 2005/263, art. 2, Sch.](#)
- I11** Sch. 2 para. 6(6) in force at 14.11.2005 in so far as not already in force by [S.S.I. 2005/564, art. 2](#)

#### *Appeal to sherrif from appeal committee*

- 7 (1) A parent who has made a reference to an appeal committee under paragraph 5 [F9(including such a reference relating to a decision which has been referred back under section 19(5)(d) or (e))] may appeal to the sheriff against the decision of the appeal committee on that reference.
- [F10(1A) Sub-paragraph (1) does not apply where the decision of the appeal committee may be referred to [F11the First-tier Tribunal] under section 18(1).]
- (2) The education authority may, but the appeal committee may not, be a party to an appeal under this paragraph.
- (3) An appeal under this paragraph—
- (a) is to be made by way of summary application,
  - (b) must be lodged with the sheriff clerk within 28 days from the date of receipt of the decision of the appeal committee, and
  - (c) is to be heard in chambers.
- (4) For the purposes of sub-paragraph (3)(b), a decision which is posted is to be presumed to have been received (unless the contrary is proved)—
- (a) on the day after the date on which it was posted, or
  - (b) if posted on a Friday or Saturday, on the Monday next following.
- (5) On good cause being shown, the sheriff may hear an appeal under this paragraph notwithstanding that it was not lodged within the time mentioned in sub-paragraph (3)(b).
- (6) The sheriff may, on an appeal made under this paragraph, confirm the education authority's decision if satisfied that—
- (a) in relation to the placing request, one or more of the grounds of refusal specified in paragraph 3(1) or (3) exists or exist, and
  - (b) in all the circumstances, it is appropriate to do,
- but otherwise must refuse to confirm the authority's decision.
- (7) Where the sheriff so refuses, the sheriff must require the education authority—

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- (a) in the case of a placing request made under paragraph 2(1), to place the child in the specified school,
  - (b) in the case of a placing request made under paragraph 2(2), to meet the fees and other necessary costs of the child's attendance at the specified school, and the authority must comply with that requirement.
- (8) Sub-paragraph (9) applies where—
- (a) after an appeal is made to the sheriff under this paragraph, but
  - (b) before the sheriff has disposed of the appeal,
- [<sup>F12</sup>the things mentioned in any of paragraphs (a), (b), (ba) and (c) of section 18(4) occur. ]
- (9) Where this sub-paragraph applies—
- (a) the sheriff must transfer the appeal to the [<sup>F13</sup>First-tier Tribunal] , and
  - (b) on being so transferred, the appeal is to be treated as if it were a reference made to the [<sup>F13</sup>First-tier Tribunal] under section 18(1).
- (10) The sheriff may make such order as to the expenses of an appeal under this paragraph as the sheriff thinks fit.
- (11) The judgment of the sheriff on an appeal under this paragraph is final.
- [<sup>F14</sup>(12) Any references to an appeal under this paragraph (however expressed), except such references in sub-paragraphs (3)(a) and (b) and (5), include references to an appeal relating to a decision which has been referred back under section 19(5)(f) or (g).]

#### Textual Amendments

- F9** Words in Sch. 2 para. 7(1) inserted (14.11.2010) by virtue of Education (Additional Support for Learning) (Scotland) Act 2009 (asp 7), ss. 1(9)(d)(i), 26(3); S.S.I. 2010/277, art. 2
- F10** Sch. 2 para. 7(1A) inserted (14.11.2010) by Education (Additional Support for Learning) (Scotland) Act 2009 (asp 7), ss. 1(9)(d)(ii), 26(3); S.S.I. 2010/277, art. 2
- F11** Words in sch. 2 para. 7(1A) 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(15)(c)(i)
- F12** Words in Sch. 2 para. 7(8) substituted (14.11.2010) by Education (Additional Support for Learning) (Scotland) Act 2009 (asp 7), ss. 1(9)(d)(iii), 26(3); S.S.I. 2010/277, art. 2
- F13** Words in sch. 2 para. 7(9) 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(15)(c)(ii)
- F14** Sch. 2 para. 7(12) added (14.11.2010) by Education (Additional Support for Learning) (Scotland) Act 2009 (asp 7), ss. 1(9)(d)(iv), 26(3); S.S.I. 2010/277, art. 2

#### Commencement Information

- I12** Sch. 2 para. 7 in force at 14.11.2005 by S.S.I. 2005/564, art. 2

#### *Young persons having additional support needs*

- 8 (1) Paragraphs 2 to 7 apply to a young person having additional support needs as they apply to a child having such needs.

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- (2) For the purposes of the application of those provisions to a young person having additional support needs references in the provisions to the parent of a child having additional support needs (as well as references to the child) are to be construed as references to the young person.
- (3) Sub-paragraph (2) does not apply in a case where the education authority are satisfied that the young person lacks capacity to do anything which the parent of a child may do under the provision concerned.

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**Commencement Information**

**I13** Sch. 2 para. 8 in force at 14.11.2005 by [S.S.I. 2005/564](#), **art. 2**



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