



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

2004 asp 4

Appeals

19 [F¹Powers of First-tier Tribunal in relation to reference]

- (1) This section specifies the powers of [F²the First-tier Tribunal] in relation to a reference made under section 18.
 - (2) Where the reference relates to a decision referred to in subsection (3)(a), (b) [F³, (d) (iv), (ea) or (eb)] of that section, the [F⁴First-tier Tribunal] may—
 - (a) confirm the decision, or
 - (b) overturn the decision and require the education authority to take such action as the [F⁴First-tier Tribunal] considers appropriate by such time as the [F⁴First-tier Tribunal] may require.
 - (3) Where the reference relates to a failure referred to in subsection (3)(c)[F⁵, [F⁶(d)(ia), (ii)] or (iii) or (g)] of that section, the [F⁷First-tier Tribunal] may require the education authority to take such action to rectify the failure as the [F⁷First-tier Tribunal] considers appropriate by such time as the [F⁷First-tier Tribunal] may require.
 - (4) Where the reference relates to information referred to in subsection (3)(d)(i) of that section, the [F⁸First-tier Tribunal] may—
 - (a) confirm the information, or
 - (b) require the education authority to make such amendment of the information as the [F⁸First-tier Tribunal] considers appropriate by such time as the [F⁸First-tier Tribunal] may require.
- [F⁹(4A) Where the reference relates to a decision referred to in subsection (3)(da) of that section the [F¹⁰First-tier Tribunal] may—
- (a) confirm the decision if satisfied that—
 - (i) one or more grounds of refusal specified in paragraph 3(1) or (3) of schedule 2 exists or exist, and
 - (ii) in all the circumstances it is appropriate to do so,
 - (b) overturn the decision and require the education authority to—

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- (i) place the child or young person in the school specified in the placing request to which the decision related by such time as the [F10First-tier Tribunal] may require, and
 - (ii) make such amendments to any co-ordinated support plan prepared for the child or young person as the [F10First-tier Tribunal] considers appropriate by such time as the [F10First-tier Tribunal] may require.]
- (5) Where the reference relates to a decision referred to in subsection (3)(e) of that section, the [F11First-tier Tribunal] may—
 - (a) confirm the decision if satisfied that—
 - (i) one or more of the grounds of refusal specified in paragraph 3(1) or (3) of schedule 2 exists or exist, and
 - (ii) in all the circumstances it is appropriate to do so,
 - (b) overturn the decision and require the education authority to—
 - (i) place the child or young person in the school specified in the placing request to which the decision related, and [F12by such time as the [F11First-tier Tribunal] may require]
 - (ii) make such amendments to the co-ordinated support plan prepared for the child or young person as the [F11First-tier Tribunal] considers appropriate by such time as the [F11First-tier Tribunal] may require, or
- [F13(ba) where—
 - (i) the decision was referred to the [F11First-tier Tribunal] by virtue of the application of subsection (4)(ba) of that section, and
 - (ii) the education authority have decided the child or young person does not require a co-ordinated support plan and that decision has not been referred to the [F11First-tier Tribunal] under subsection (1) of that section by the time within which such references are to be made,
 refer the decision to an appeal committee set up under section 28D of the 1980 Act,]
- (c) where—
 - (i) the decision was referred to the [F11First-tier Tribunal] by virtue of the application of subsection (4)(c) of that section, and
 - (ii) the [F11First-tier Tribunal] has confirmed the decision of the education authority that the child or young person does not require a co-ordinated support plan,
 refer the decision to an appeal committee set up under section 28D of the 1980 Act.
- [F14(d) where—
 - (i) the decision was transferred from an appeal committee to the [F11First-tier Tribunal] by virtue of paragraph 6(4) and (5) of schedule 2 because the thing described in subsection (4)(ba) of that section occurred, and
 - (ii) the education authority have decided the child or young person does not require a co-ordinated support plan and that decision has not been referred to the [F11First-tier Tribunal] under subsection (1) of that section by the time within which such references are to be made,
 refer the decision back to the appeal committee,
- (e) where—

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- (i) the decision was transferred from an appeal committee to the [F11First-tier Tribunal] by virtue of paragraph 6(4) and (5) of schedule 2 because the things described in subsection (4)(c) of that section occurred, and
- (ii) the [F11First-tier Tribunal] has confirmed the decision of the education authority that the child or young person does not require a co-ordinated support plan,

refer the decision back to the appeal committee,

(f) where—

- (i) the decision was transferred from the sheriff to the [F11First-tier Tribunal] by virtue of paragraph 7(8) and (9) of schedule 2 because the thing described in subsection (4)(ba) of that section occurred, and
- (ii) the education authority have decided the child or young person does not require a co-ordinated support plan and that decision has not been referred to the [F11First-tier Tribunal] under subsection (1) of that section by the time within which such references are to be made,

refer the decision back to the sheriff,

(g) where—

- (i) the decision was transferred from the sheriff to the [F11First-tier Tribunal] by virtue of paragraph 7(8) and (9) of schedule 2 because the things described in subsection (4)(c) of that section occurred, and
- (ii) the [F11First-tier Tribunal] has confirmed the decision of the education authority that the child or young person does not require a co-ordinated support plan,

refer the decision back to the sheriff.]

[F14(5A) Where the reference relates to a decision referred to in subsection (3)(f) of that section the [F15First-tier Tribunal] has the powers as mentioned in paragraphs (a) and (b) of subsection (5) of this section.]

- (6) Paragraphs 6 and 7 of schedule 2 apply to a reference made to an appeal committee under [F16paragraph (ba) or (c) of subsection (5)] as they apply to a reference made to an appeal committee under paragraph 5 of that schedule.
- (7) In exercising its powers under this section, [F17the First-tier Tribunal] must take account, so far as relevant, of any code of practice published by the Scottish Ministers under section 27(1).

Textual Amendments

- F1** S. 19 title 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(9)(ix)**
- F2** Words in s. 19(1) 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(9)(i)**
- F3** Words in s. 19(2) substituted (10.1.2018) by [Education \(Scotland\) Act 2016 \(asp 8\)](#), s. 33(2), **sch. para. 17**; S.S.I. 2017/354, reg. 2(a)
- F4** Words in s. 19(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(9)(ii)**

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- F5** Words in s. 19(3) substituted (14.11.2010) by Education (Additional Support for Learning) (Scotland) Act 2009 (asp 7), **ss. 19(2), 26(3)**; S.S.I. 2010/277, art. 2
- F6** Words in s. 19(3) substituted (14.11.2010 immediately after 2009 asp 7, s. 19(2) comes into force) by Education (Additional Support for Learning) (Scotland) Act 2009 (asp 7), **ss. 18(2), 26(3)**; S.S.I. 2010/277, art. 2
- F7** Words in s. 19(3) 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(9)(iii)**
- F8** Words in s. 19(4) 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(9)(iv)**
- F9** S. 19(4A) inserted (14.11.2010) by Education (Additional Support for Learning) (Scotland) Act 2009 (asp 7), **ss. 1(8)(a), 26(3)**; S.S.I. 2010/277, art. 2
- F10** Words in s. 19(4A) 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(9)(v)**
- F11** Words in s. 19(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(9)(vi)**
- F12** Words in s. 19(5)(b)(i) inserted (14.11.2010) by virtue of Education (Additional Support for Learning) (Scotland) Act 2009 (asp 7), **ss. 1(8)(b)(i), 26(3)**; S.S.I. 2010/277, art. 2
- F13** S. 19(5)(ba) inserted (14.11.2010) by Education (Additional Support for Learning) (Scotland) Act 2009 (asp 7), **ss. 1(8)(b)(ii), 26(3)**; S.S.I. 2010/277, art. 2
- F14** S. 19(5)(d)-(g), (5A) added (14.11.2010) by Education (Additional Support for Learning) (Scotland) Act 2009 (asp 7), **ss. 1(8)(b)(iii), 26(3)**; S.S.I. 2010/277, art. 2; S.S.I. 2010/277, art. 2
- F15** Words in s. 19(5A) 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(9)(vii)**
- F16** Words in s. 19(6) substituted (14.11.2010) by Education (Additional Support for Learning) (Scotland) Act 2009 (asp 7), **ss. 1(8)(c), 26(3)**; S.S.I. 2010/277, art. 2
- F17** Words in s. 19(7) 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(9)(viii)**

Commencement Information

- I1** S. 19 in force at 14.11.2005 by S.S.I. 2005/564, **art. 2**

Changes to legislation:

There are currently no known outstanding effects for the Education (Additional Support for Learning) (Scotland) Act 2004, Section 19.