



Education (Additional Support for Learning) (Scotland) Act 2009

2009 asp 7

Placing requests etc.

1 Placing requests

- (1) The Education (Additional Support for Learning) (Scotland) Act 2004 (asp 4) (“the 2004 Act”) is amended in accordance with this section.
- (2) In section 1(3)(a) (additional support needs), after “authority” insert “responsible for the school education of the child or young person, or in the case where there is no such authority, the education authority”.
- (3) In section 7(1)(b) (other children and young persons), for “the” substitute “an”.
- (4) In section 10 (reviews of co-ordinated support plans)—
 - (a) in subsection (1), for “belonging to their area” substitute “for whose school education they are responsible”,
 - (b) after subsection (5) insert—

“(5A) Where any such co-ordinated support plan as is mentioned in subsection (1) is transferred to the education authority by virtue of regulations made in pursuance of section 11(8), the authority must carry out a review of the plan as soon as practicable after the date of transfer.”.
- (5) In section 11(8) (co-ordinated support plans: further provision), in paragraph (e) the words from “when” to the end of the paragraph are repealed.
- (6) In section 12 (duties to seek and take account of views, advice and information), after subsection (3) insert—

“(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.”.

- (7) In section 18 (references to Tribunal in relation to co-ordinated support plan)—
- (a) after paragraph (d) of subsection (3) insert—
- “(da) a decision of an education authority refusing a placing request made in respect of a child or young person (including such a decision in respect of a child or young person for whose school education the authority refusing the request are not responsible)—
- (i) made under sub-paragraph (1) of paragraph 2 of schedule 2 in relation to a special school, or
- (ii) made under sub-paragraph (2) of paragraph 2 of schedule 2 in relation to a school mentioned in paragraph (a) or (b) of that sub-paragraph,”
- (b) in paragraph (e) of subsection (3)—
- (i) for “the”, where it occurs for the first time, substitute “an”,
- (ii) after “request” insert “, other than a placing request mentioned in paragraph (da),”,
- (iii) for “the”, where it occurs for the second time, substitute “a”,
- (iv) at the end add “(including such a decision in respect of a child or young person for whose school education the authority refusing the request are not responsible)”
- (c) after that paragraph insert—
- “(f) a decision of an appeal committee on a reference made to them under paragraph 5 of schedule 2 but only where the things mentioned in any of paragraphs (a), (b), (ba) and (c) of subsection (4) occur—
- (i) after the decision of the appeal committee, but
- (ii) before the time by which any appeal must be lodged in accordance with paragraph 7(3) of schedule 2.”
- (d) in subsection (4)—
- (i) the words “, at the time the placing request is refused” are repealed,
- (ii) after paragraph (b) insert—
- “(ba) no such plan has been prepared, but under subsection (2)(a) of section 11 the education authority have informed the persons mentioned in subsection (3) of that section of their proposal to establish whether the child or young person requires, or would require, such a plan,”
- (e) in subsection (7), for “(3)(e)” substitute “(3)(da) or (e)”.
- (8) In section 19 (powers of Tribunal in relation to reference)—
- (a) after subsection (4) insert—
- “(4A) Where the reference relates to a decision referred to in subsection (3) (da) of that section the 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—
 - (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 Tribunal may require, and
 - (ii) make such amendments to any co-ordinated support plan prepared for the child or young person as the Tribunal considers appropriate by such time as the Tribunal may require.”,
- (b) in subsection (5)—
 - (i) in paragraph (b), at the end of sub-paragraph (i) insert “by such time as the Tribunal may require”,
 - (ii) after paragraph (b) insert—
 - “(ba) where—
 - (i) the decision was referred to the 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 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,”,
 - (iii) after paragraph (c) add—
 - “(d) where—
 - (i) the decision was transferred from an appeal committee to the 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 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—
 - (i) the decision was transferred from an appeal committee to the 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 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 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 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 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 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.

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

- (c) in subsection (6), for the words “subsection (5)(c)” substitute “paragraph (ba) or (c) of subsection (5)”.

(9) In schedule 2 (placing requests)—

- (a) after paragraph 2(4) add—

“(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.”

- (b) after paragraph 4(2) insert—

“(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.”

- (c) in paragraph 6—

(i) in sub-paragraph (1), after “paragraph 5” insert “(including such a reference relating to a decision which has been referred back under section 19(5)(d) or (e))”,

(ii) in sub-paragraph (4), for the words from “there” to the end of the sub-paragraph substitute—

“the things mentioned in any of paragraphs (a), (b), (ba) and (c) of section 18(4) occur.”,

(d) in paragraph 7—

(i) in sub-paragraph (1), after “paragraph 5” insert “(including such a reference relating to a decision which has been referred back under section 19(5)(d) or (e))”,

(ii) after that sub-paragraph insert—

“(1A) Sub-paragraph (1) does not apply where the decision of the appeal committee may be referred to a Tribunal under section 18(1).”,

(iii) in sub-paragraph (8), for the words from “there” to the end of the sub-paragraph substitute—

“the things mentioned in any of paragraphs (a), (b), (ba) and (c) of section 18(4) occur.”,

(iv) after sub-paragraph (11), add—

“(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).”.

2 Mediation services

In section 15(1) of the 2004 Act (mediation services)—

(a) for paragraph (a) substitute—

“(a) the parents of any children,”,

(b) for paragraph (b) substitute—

“(b) any young persons,”,

(c) in paragraph (c), the word “such” is repealed,

(d) after the word “of”, where it occurs for the fifth time, insert “any of”,

(e) for the word “such”, where it occurs for the third time, substitute “the”.

3 Dispute resolution

In section 16(1) of the 2004 Act (dispute resolution), the following are repealed—

(a) in paragraph (a), the words “belonging to the area of the authority”,

(b) in paragraph (b), the words “belonging to that area”,

(c) in paragraph (c), the word “such” where it occurs for the first time.

4 Contributions not recoverable in respect of certain services

In section 23 of the Education (Scotland) Act 1980 (c. 44) (provision by education authority for education of pupils belonging to areas of other authorities), after subsection (2) insert—

“(2A) Subsection (2) does not permit an education authority to recover contributions in respect of—

- (a) mediation services provided under arrangements made in pursuance of section 15(1) of the 2004 Act (mediation services), or
- (b) services provided by the authority forming part of any procedure provided for in regulations under section 16(1) of that Act (dispute resolution).”.

5 Arrangements between education authorities

In section 29 of the 2004 Act (interpretation)—

- (a) in subsection (3), after the word “Act” insert “and subject to subsection (3A)”,
- (b) after that subsection insert—

“(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.”.