



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

2004 asp 4

Appeals

17 Additional Support Needs Tribunals for Scotland

(1) Tribunals to be known as Additional Support Needs Tribunals for Scotland (each referred to in this Act as “a Tribunal”) are to be constituted in accordance with this Act ^{F1}....

[^{F2}(1A) Tribunals are to exercise the functions which are conferred on them by virtue of—

- (a) this Act, and
- (b) the Equality Act 2010]

(2) There is to be an officer to be known as the President of the Additional Support Needs Tribunals for Scotland (referred to in this Act as “the President”) who is to be an individual appointed by the Scottish Ministers.

(3) The President has such functions as are conferred on the President by virtue of this Act.

(4) Schedule 1 makes further provision about the constitution and procedures of the Tribunals, the appointment and functions of the President and administrative and other matters in connection with the Tribunals and the President.

(5) The Scottish Ministers may by regulations make such further provision in connection with the Tribunals and the President as they think fit.

Textual Amendments

F1 Words in s. 17(1) repealed (1.10.2010 for specified purposes, 18.3.2011 in so far as not already in force) by [Equality Act 2010 \(c. 15\), s. 216\(3\), Sch. 17 para. 12\(a\), Sch. 27 Pt. 1](#) (with ss. 6(4), 205); [S.I. 2010/2317, arts. 2\(9\)\(k\)\(ii\), 3\(d\)](#) (with arts. 4-25, Schs. 1-8) (as amended (1.10.2010) by [S.I. 2010/2337, art. 2](#))

F2 S. 17(1A) inserted (1.10.2010 for specified purposes, 18.3.2011 in so far as not already in force) by [Equality Act 2010 \(c. 15\), s. 216\(3\), Sch. 17 para. 12\(b\)](#) (with ss. 6(4), 205); [S.I. 2010/2317, arts. 2\(9\)\(k\)\(ii\), 3\(d\)](#) (with arts. 4-25, Schs. 1-8) (as amended (1.10.2010) by [S.I. 2010/2337, art. 2](#))

Status: Point in time view as at 14/11/2010. This version of this cross heading contains provisions that are prospective.

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

Commencement Information

II S. 17 in force at 3.5.2005 by [S.S.I. 2005/154](#), [art. 2](#)

18 References to Tribunal ^{F3}...

- (1) Any of the persons specified in subsection (2) may refer to a Tribunal any decision, failure or information specified in subsection (3) relating to any child or young person for whose school education an education authority are responsible.
- (2) The persons referred to in subsection (1) are—
 - (a) where the decision, failure or information relates to a child, the parent of the child,
 - (b) where the decision, failure or information relates to a young person—
 - (i) the young person, or
 - (ii) where the young person lacks capacity to make the reference, the young person's parent.
- (3) The decisions, failures and information referred to in subsection (1) are—
 - (a) a decision of the education authority that the child or young person—
 - (i) requires a co-ordinated support plan, or
 - (ii) following a review carried out under section 10, still requires such a plan,
 - (b) a decision of the education authority that the child or young person—
 - (i) does not require such a plan, or
 - (ii) following a review carried out under section 10, no longer requires such a plan,
 - (c) where it has been established that the child or young person does require a co-ordinated support plan, failure by the education authority to prepare a plan by the time required by regulations made in pursuance of subsection (8)(f)(i) of section 11,
 - (d) where a co-ordinated support plan has been prepared (and not discontinued) for the child or young person—
 - (i) any of the information contained in the plan by virtue of subsection (2) (a) of section 9,
 - ^{F4}(ia) failure by the education authority to provide, or make arrangements for the provision of, the additional support (whether relating to education or not) identified by virtue of section 9(2)(a)(iii),]
 - (ii) failure by the education authority to carry out a review of the plan as required by subsection (2) of section 10,
 - (iii) where such a review is carried out, failure by the education authority to complete the review by the time required by regulations made in pursuance of subsection (8)(f)(ii) of section 11, or
 - (iv) a decision of the education authority to refuse a request referred to in subsection (4) of section 10,
 - ^{F5}(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)—

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- (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,]
 - (e) where subsection (4) applies, a decision of [^{F6}an] education authority refusing a placing request [^{F7}other than a placing request mentioned in paragraph (da)] made in respect of [^{F8}a] child or young person [^{F9} (including such a decision in respect of a child or young person for whose school education the authority refusing the request are not responsible)].
 - [^{F10}(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.]
 - [^{F11}(g) failure by the education authority to comply with their duties under section 12(6) and 13 in respect of the child or young person (except where consent for information to be provided under section 13(2)(a) or (4) has not been given under section 13(5)) .]
- (4) This subsection applies where^{F12}...—
 - (a) a co-ordinated support plan has been prepared (and not discontinued) for the child or young person,
 - (b) no such plan has been prepared, but it has been established by the education authority that the child or young person requires such a plan, or
 - [^{F13}(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,]
 - (c) the education authority have decided that the child or young person does not require such a plan and that decision has been referred to a Tribunal under subsection (1).
- (5) A decision of an education authority not to comply with a request referred to in section 6(2)(b) made in relation to any child or young person is to be treated for the purposes of this section as a decision of the authority that the child or young person does not require a co-ordinated support plan.
- [^{F14}(5A) Where an education authority fail, in response to a request referred to in section 6(2)(b)—
 - (a) to inform under subsection (2)(a) of section 11 the persons mentioned in subsection (3) of that section of their proposal to establish whether a child or young person requires, or would require, a co-ordinated support plan by the time required by regulations made in pursuance of subsection (8) of that section, or
 - (b) to inform those persons of any decision not to comply with the request by the time required by such regulations,that failure is to be treated for the purposes of this section as a decision of the authority that the child or young person does not require a co-ordinated support plan.
- (5B) Where 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

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whether the child or young person requires, or would require, a co-ordinated support plan, failure by the authority so to establish by the time required by regulations made in pursuance of subsection (8) of that section is to be treated for the purposes of this section as a decision of the authority that the child or young person does not require a co-ordinated support plan.]

- (6) Where, in respect of any child or young person for whom a co-ordinated support plan has been prepared (and not discontinued), any of the information referred to in subsection (3)(d)(i) has been referred under subsection (1) to a Tribunal, a further reference under that subsection in respect of the same information is not competent unless, since the last such reference was disposed of, a review of the plan has been carried out under section 10.
- (7) Where a decision referred to in subsection [F15 (3)(da) or (e)] in respect of a child or young person has been referred under subsection (1) to a Tribunal, a further reference under that subsection of such a decision in respect of the child or young person is not competent during the period of 12 months beginning with the day on which the last such reference of such a decision was made, unless, during that period—
- (a) a review of any co-ordinated support plan prepared for the child or young person has been carried out under section 10,
 - (b) any such plan prepared for the child or young person has been amended pursuant to a requirement made by a Tribunal under section 19(4)(b), or
 - (c) where the last such reference of such a decision was made by virtue of subsection (4)(c), a co-ordinated support plan has been prepared for the child or young person.

Textual Amendments

- F3** Words in s. 18 title omitted (14.11.2010) by virtue of Education (Additional Support for Learning) (Scotland) Act 2009 (asp 7), ss. 19(1)(a), 26(3); S.S.I. 2010/277, art. 2
- F4** S. 18(3)(d)(ia) inserted (14.11.2010) by Education (Additional Support for Learning) (Scotland) Act 2009 (asp 7), ss. 18(1)(a), 26(3); S.S.I. 2010/277, art. 2
- F5** S. 18(3)(da) inserted (14.11.2010) by Education (Additional Support for Learning) (Scotland) Act 2009 (asp 7), ss. 1(7)(a), 26(3); S.S.I. 2010/277, art. 2
- F6** Word in s. 18(3)(e) substituted (14.11.2010) by Education (Additional Support for Learning) (Scotland) Act 2009 (asp 7), ss. 1(7)(b)(i), 26(3); S.S.I. 2010/277, art. 2
- F7** Words in s. 18(3)(e) inserted (14.11.2010) by virtue of Education (Additional Support for Learning) (Scotland) Act 2009 (asp 7), ss. 1(7)(b)(ii), 26(3); S.S.I. 2010/277, art. 2
- F8** Word in s. 18(3)(e) substituted (14.11.2010) by Education (Additional Support for Learning) (Scotland) Act 2009 (asp 7), ss. 1(7)(b)(iii), 26(3); S.S.I. 2010/277, art. 2
- F9** Words in s. 18(3)(e) added (14.11.2010) by Education (Additional Support for Learning) (Scotland) Act 2009 (asp 7), ss. 1(7)(b)(iv), 26(3); S.S.I. 2010/277, art. 2
- F10** S. 18(3)(f) inserted (14.11.2010) by Education (Additional Support for Learning) (Scotland) Act 2009 (asp 7), ss. 1(7)(c), 26(3); S.S.I. 2010/277, art. 2
- F11** S. 18(3)(g) inserted (14.11.2010) by Education (Additional Support for Learning) (Scotland) Act 2009 (asp 7), ss. 19(1)(b), 26(3); S.S.I. 2010/277, art. 2
- F12** Words in s. 18(4) repealed (14.11.2010) by Education (Additional Support for Learning) (Scotland) Act 2009 (asp 7), ss. 1(7)(d)(i), 26(3); S.S.I. 2010/277, art. 2
- F13** S. 18(4)(ba) inserted (14.11.2010) by Education (Additional Support for Learning) (Scotland) Act 2009 (asp 7), ss. 1(7)(d)(ii), 26(3); S.S.I. 2010/277, art. 2
- F14** S. 18(5A)(5B) inserted (14.11.2010) by Education (Additional Support for Learning) (Scotland) Act 2009 (asp 7), ss. 18(1)(b), 26(3); S.S.I. 2010/277, art. 2

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F15 Words in s. 18(7) substituted (14.11.2010) by Education (Additional Support for Learning) (Scotland) Act 2009 (asp 7), ss. 1(7)(e), 26(3); S.S.I. 2010/277, art. 2

Commencement Information

I2 S. 18 in force at 14.11.2005 by S.S.I. 2005/564, art. 2

19 Powers of Tribunal in relation to reference

- (1) This section specifies the powers of a 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) or (d)(iv) of that section, the Tribunal may—
 - (a) confirm the decision, or
 - (b) overturn the decision and require the education authority to take such action as the Tribunal considers appropriate by such time as the Tribunal may require.
- (3) Where the reference relates to a failure referred to in subsection (3)(c)^[F16], ^[F17](d)(ia), (ii) or (iii) or (g) of that section, the Tribunal may require the education authority to take such action to rectify the failure as the Tribunal considers appropriate by such time as the Tribunal may require.
- (4) Where the reference relates to information referred to in subsection (3)(d)(i) of that section, the Tribunal may—
 - (a) confirm the information, or
 - (b) require the education authority to make such amendment of the information as the Tribunal considers appropriate by such time as the Tribunal may require.
- ^[F18](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.]
- (5) Where the reference relates to a decision referred to in subsection (3)(e) of that section, the 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—

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- (i) place the child or young person in the school specified in the placing request to which the decision related, and^{F19}by such time as the Tribunal may require]
 - (ii) make such amendments to the co-ordinated support plan prepared for the child or young person as the Tribunal considers appropriate by such time as the Tribunal may require, or
- ^{F20}(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,]
- (c) where—
- (i) the decision was referred to the Tribunal by virtue of the application of subsection (4)(c) of that section, 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 to an appeal committee set up under section 28D of the 1980 Act.
- ^{F21}(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,

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(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.]

[^{F21}(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.]

(6) Paragraphs 6 and 7 of schedule 2 apply to a reference made to an appeal committee under [^{F22}paragraph (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, a Tribunal must take account, so far as relevant, of any code of practice published by the Scottish Ministers under section 27(1).

Textual Amendments

- F16** 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
- F17** 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
- F18** 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
- F19** 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
- F20** 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
- F21** 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
- F22** 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

Commencement Information

- I3** S. 19 in force at 14.11.2005 by S.S.I. 2005/564, art. 2

PROSPECTIVE

20 [^{F23}References to First-tier Tribunal and powers of First-tier Tribunal: further provision]

- (1) The Scottish Ministers may by order extend the categories of decision, failure or information in respect of which a reference to the [^{F24}First-tier Tribunal] under section 18(1) may be made; and without prejudice to the generality such further categories of decision, failure or information may include—

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- (a) a decision of the education authority—
- (i) that the child or young person has, or does not have, additional support needs,
 - (ii) that a child or young person has additional support needs of a type that the person making the referral considers are not an accurate reflection of the child or young person's additional support needs,
 - (iii) to refuse an assessment request as referred to in section 8,
 - (iv) as to the person, or to the means used, or to be used, to carry out the process of assessment or examination referred to in section 8,
- (b) failure by—
- (i) the education authority,
 - (ii) any person identified in any co-ordinated support plan prepared for the child or young person as a person by whom additional support should be provided, or
 - (iii) a combination of these persons,
- to provide the additional support required by the child or young person.
- (2) Any order made under subsection (1) may also include provision to allow the [F25Chamber President] to reject references to the [F26First-tier Tribunal] arising from any further category of decision, failure or information referred to in the order without a hearing where the [F25Chamber President] is satisfied that the reference prima facie raises no substantial issue.
- (3) Orders made under subsection (1) may also make such consequential provision as the Scottish Ministers consider necessary or expedient, including provision as to the [F27First-tier Tribunal's] powers in relation to any new category of decision, failure or information that may be referred to it.

Textual Amendments

- F23** S. 20 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(10)(d)**
- F24** Words in s. 20(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(10)(a)**
- F25** Words in s. 20(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(10)(b)(ii)**
- F26** Words in s. 20(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(10)(b)(i)**
- F27** Words in s. 20(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(10)(c)**

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21 Appeal to Court of Session against Tribunal decision

- (1) Either of the persons specified in subsection (2) may appeal on a point of law to the Court of Session against a decision of a Tribunal relating to a reference made under section 18.
- (2) The persons referred to in subsection (1) are—
 - (a) the person who made the reference to the Tribunal,
 - (b) the education authority concerned.
- (3) Where the Court of Session allows an appeal under subsection (1) it may—
 - (a) remit the reference back to the Tribunal or to a differently constituted Tribunal to be considered again and give the Tribunal such directions about the consideration of the case as the Court considers appropriate,
 - (b) make such ancillary orders as it considers necessary or appropriate.

Commencement Information

I4 S. 21 in force at 14.11.2005 by [S.S.I. 2005/564, art. 2](#)

Status:

Point in time view as at 14/11/2010. This version of this cross heading contains provisions that are prospective.

Changes to legislation:

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