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

SCHEDULE 2

CHILDREN AND YOUNG PERSONS WITH ADDITIONAL SUPPORT NEEDS: PLACING REQUESTS

Appeal to sherrif from appeal committee

- 7 (1) A parent who has made a reference to an appeal committee under paragraph 5 [F¹(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.
- [F²(1A) Sub-paragraph (1) does not apply where the decision of the appeal committee may be referred to [F³the 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—
- (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,
- [F⁴the things mentioned in any of paragraphs (a), (b), (ba) and (c) of section 18(4) occur.]
- (9) Where this sub-paragraph applies—

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- (a) the sheriff must transfer the appeal to the [^{F5}First-tier Tribunal] , and
 - (b) on being so transferred, the appeal is to be treated as if it were a reference made to the [^{F5}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.
- [^{F6}(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

- F1** 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
- F2** 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
- F3** 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)**
- F4** 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
- F5** 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)**
- F6** 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

- I1** Sch. 2 para. 7 in force at 14.11.2005 by [S.S.I. 2005/564](#), **art. 2**

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