



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

2004 asp 4

Appeals

18 [F¹References to the First-tier Tribunal]

- (1) Any of the persons specified in subsection (2) may refer to [F²the First-tier 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,
 - [F³(aa) where the decision, failure or information relates to a child mentioned in subsection (2A), 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.
- [F⁴(2A) The child is a child who has attained the age of 12 years and—
- (a) who the [F⁵First-tier Tribunal] is satisfied has capacity to make the reference, and
 - (b) whose wellbeing would, in the opinion of the [F⁶First-tier Tribunal] , not be adversely affected were the child to make the reference.]
- (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,

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- (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,
 - [^{F7}(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,
 - [^{F8}(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,]
 - (e) where subsection (4) applies, a decision of [^{F9}an] education authority refusing a placing request [^{F10}other than a placing request mentioned in paragraph (da)] made in respect of [^{F11}a] child or young person [^{F12}(including such a decision in respect of a child or young person for whose school education the authority refusing the request are not responsible)].
 - [^{F13}(ea) a decision of an education authority in relation to the capacity of a child who has attained the age of 12 years to exercise a right under this Act,
 - (eb) a decision of an education authority that it is, or is not, satisfied as respects a matter relating to the wellbeing of such a child,]
 - [^{F14}(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.]
 - [^{F15}(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^{F16} ...—
- (a) a co-ordinated support plan has been prepared (and not discontinued) for the child or young person,

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- (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
 - [^{F17}(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 [^{F18}the First-tier 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.
- [^{F19}(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 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 [^{F20}the First-tier 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 [^{F21} (3)(da) or (e)] in respect of a child or young person has been referred under subsection (1) to [^{F22}the First-tier 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 [^{F22}the First-tier Tribunal] under section 19(4)(b), or

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- (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.
- [^{F23}(8) For the purposes of subsection (7), it is irrelevant whether the further reference, and the last reference, mentioned in that subsection relate to the same or to different specified schools (which expression is to be construed in accordance with paragraph 2(3) of schedule 2).
- (9) Nothing in subsection (7) prevents a further reference being made during the period mentioned in that subsection if the last reference so mentioned is, by virtue of rules under paragraph 11 of schedule 1, withdrawn before any hearing by [^{F24}the First-tier Tribunal] in relation to the last reference is held.
- (10) But where a further reference is made in the circumstances mentioned in subsection (9), the [^{F25}Chamber President] may, if satisfied that there is good reason to do so, decide that the reference is not to proceed to consideration by [^{F26}the First-tier Tribunal] .
- (11) Subsection (7) applies in relation to a decision referred to in subsection (3)(ea) or (eb) as it applies in relation to a decision referred to in subsection (3)(da) or (e); but only where any further reference would relate to—
- (a) the same right as mentioned in subsection (3)(ea) as the last such reference relates to, or
 - (b) the same matter as mentioned in subsection (3)(eb) as the last such reference relates to.]

Textual Amendments

- F1** S. 18 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(8)(h)(iii)**
- F2** Words in s. 18(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(8)(a)**
- F3** S. 18(2)(aa) inserted (10.1.2018) by [Education \(Scotland\) Act 2016 \(asp 8\)](#), s. 33(2), **sch. para. 16(a)**; [S.S.I. 2017/354](#), reg. 2(a)
- F4** S. 18(2A) inserted (10.1.2018) by [Education \(Scotland\) Act 2016 \(asp 8\)](#), s. 33(2), **sch. para. 16(b)**; [S.S.I. 2017/354](#), reg. 2(a)
- F5** Words in s. 18(2A)(a) 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(8)(b)**
- F6** Words in s. 18(2A)(b) 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(8)(c)**
- F7** 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
- F8** 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
- F9** 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
- F10** 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

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- F11** 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
- F12** 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
- F13** S. 18(3)(ea)(eb) inserted (10.1.2018) by Education (Scotland) Act 2016 (asp 8), s. 33(2), **sch. para. 16(c)**; S.S.I. 2017/354, reg. 2(a)
- F14** 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
- F15** 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
- F16** 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
- F17** 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
- F18** Words in s. 18(4)(c) 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(8)(d)**
- F19** 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
- F20** Words in s. 18(6) 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(8)(e)**
- F21** 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
- F22** Words in s. 18(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(8)(f)**
- F23** S. 18(8)-(11) inserted (10.1.2018) by Education (Scotland) Act 2016 (asp 8), s. 33(2), **sch. para. 16(d)**; S.S.I. 2017/354, reg. 2(a)
- F24** Words in s. 18(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(8)(g)**
- F25** Words in s. 18(10) 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(8)(h)(i)**
- F26** Words in s. 18(10) 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(8)(h)(ii)**

Commencement Information

- I1** S. 18 in force at 14.11.2005 by S.S.I. 2005/564, **art. 2**

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