

*These notes relate to the Education (Additional Support for Learning) (Scotland) Act (asp 7) which received Royal Assent on 25 June 2009 (asp 7) which received Royal Assent on 25 June 2009*

# **EDUCATION (ADDITIONAL SUPPORT FOR LEARNING) (SCOTLAND) ACT (ASP 7) WHICH RECEIVED ROYAL ASSENT ON 25 JUNE 2009**

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## **EXPLANATORY NOTES**

### **THE ACT – SECTION BY SECTION**

#### ***Section 1: Placing requests***

11. **Section 1** of the Act enables parents of children with additional support needs and young persons with additional support needs including those with co-ordinated support plans to make requests for their children or themselves (as appropriate) to attend a school outwith the local authority area in which the child or young person lives. It does this by amending paragraph 2 of schedule 2 to the 2004 Act to ensure that the description of the education authority which is to consider a placing request is not restricted to the authority which is currently responsible for the child or young person's education (see subsection (8)(a)). It also extends the jurisdiction of the Tribunal to enable it to hear appeals on refusals of such out of area placing requests by amending section 18(3) (e) of the 2004 Act to allow referral to the Tribunal of a placing request decision by an education authority which is not the authority responsible for the child (or young person) (see subsection (7)(b)(iv)).
12. The other provisions in section 1 make amendments that relate to placing requests to ensure the existing system continues to operate in a logical manner. They also ensure the system properly accommodates the possibility of an "out of area" placing request being made.
13. For children or young persons with additional support needs who are attending a school outwith the area in which they live following a successful out of area placing request, section 1 also transfers the duty to keep under review any co-ordinated support plan from the original home authority to the new host authority (see subsection (4)(a)). New subsection (5A) is inserted to section 10 of the 2004 Act which places a duty on the new host authority to carry out a review of the co-ordinated support plan as soon as possible after the date of any transfer of the co-ordinated support plan from the home authority to the host authority (time limits for conducting this review will be specified in secondary legislation).
14. Section 1 of the 2004 Act defines what is meant by the term "additional support needs". Subsection (2) amends the basis on which additional support needs are assessed to accommodate out of area placing requests. It provides that a child's or young person's additional support needs will be assessed against the provision made for children or young people of the same age in schools run by the education authority that are responsible for his/her education. Where no education authority are responsible for the child's or young person's education e.g. the child or young person is home or privately educated, his/her additional support needs will be assessed against the provision made

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15. Section 7 of the 2004 Act enables a request to be made to an education authority to establish whether a child or young person belonging to that authority's area, but for whose education the authority are not responsible, has additional support needs or requires a co-ordinated support plan. This allows the education authority for the area to which the child belongs (the home authority) to comply with such a request where the child or young person is home educated, privately schooled or attending school under the management of another authority (a host authority). Section 1(3) amends section 7 of the 2004 Act to restrict a home authority from complying with such a request in relation to children and young people for whose school education *any* education authority are responsible. The effect of this is that where a successful out of area placing request is made, the child or young person will be covered by the provisions in section 6 of the 2004 Act and will be unable to utilise the provision in section 7.
16. Subsection 6 inserts new subsection (3A) into section 12 of the 2004 Act and provides that, where a child or young person with a co-ordinated support plan moves from a school in one authority area to a school in another authority (e.g. following a change of residential address or a successful out of area placing request for a child or young person with a co-ordinated support plan), the new host authority are under a duty to seek and take account of information and advice from the education authority from which the co-ordinated support plan was transferred as well as any agencies or persons involved in providing support under the co-ordinated support plan prior to its transfer.
17. Section 18(3) of the 2004 Act lists the matters that can be referred to the Tribunal. Subsection 7(a) inserts a new paragraph (da) into section 18(3) to enable the decision of an education authority refusing a placing request in respect of a place in a Scottish special school to be referred to the Tribunal. It also allows the decision of an education authority refusing a placing request in respect of a place in a school in England, Wales and Northern Ireland which is a school making provision mainly or wholly for children or young people with additional support needs to be referred to the Tribunal.
18. Section 18(3)(e) of the 2004 Act enables a decision of an education authority refusing a placing request to be referred to the Tribunal in cases where a co-ordinated support plan has been prepared or is being considered. Subsection (7)(b)(ii) provides that where a placing request to a special school (including those in England, Wales and Northern Ireland) is submitted on behalf of a child or young person with additional support needs who has a co-ordinated support plan on the horizon, there is only one appropriate appeal route in place under section 18(3)(da). Without this subsection there would be two different appeal routes: one for children with additional support needs wanting to go to a special school and the other for those that have a co-ordinated support plan on the horizon.
19. Section 18(7) of the 2004 Act provides that references to the Tribunal on the refusal of a placing request can only be made once in each 12 month period unless the co-ordinated support plan has been reviewed in that period, or a Tribunal has ordered a co-ordinated support plan to be amended or prepared. Subsection (7)(e) extends the provisions in section 18(7) to prevent repeated references to the Tribunal under section 18(3)(da). A period of 12 months will have to lapse before another reference can be submitted to the Tribunal under section 18(3)(da).
20. Section 19 of the 2004 Act specifies the powers that a Tribunal has in relation to references. Subsection (8)(a) inserts new subsection (4A) into section 19 of the 2004 Act to give the Tribunal powers in relation to the new decisions referable under section 18(3) (da). It provides that when hearing a placing request appeal in respect of a place in a special school, the Tribunal has the power to confirm the decision of the authority or overturn the decision of the authority and specify when the placing request should commence and make any amendments to a co-ordinated support plan.

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21. Subsection (8)(b) amends section 19(5)(b)(i) of the 2004 Act to extend the power of the Tribunal, when considering a placing request appeal, to enable it to specify a time scale for placing the child in the school specified in the placing request.
22. Subsection (7)(c) inserts new paragraph (f) into section 18(3) of the 2004 Act to provide that a decision made by an education appeal committee to refuse a placing request may be referred to the Tribunal if, before the expiry of the time limit for appeal to the sheriff court (28 days), a co-ordinated support plan is involved or being considered.
23. Section 18(4) of the 2004 Act sets out circumstances which indicate (for the purposes of the 2004 Act) when a co-ordinated support plan is involved or is being considered. Subsection (7)(d)(ii) adds a new circumstance to that list. The new circumstance is that the education authority have advised the parent or young person that they will establish whether a co-ordinated support plan is required. The effect of this subsection is that a decision by an education authority referred to in section 18(3)(e) of the 2004 Act or by an education appeal committee referred to in section 18(3)(f) of the 2004 Act refusing a placing request can now be referred to the Tribunal if the authority have advised the parent that they will establish whether a co-ordinated support plan is required.
24. Subsection (9)(d)(ii) inserts a new sub-paragraph (1A) to paragraph 7 of schedule 2 to ensure that where a child or young person has a co-ordinated support plan or is being considered for a co-ordinated support plan, appeals regarding placing requests should be referred to the Tribunal rather than to the sheriff.
25. Subsection (9)(c)(ii) and (d)(iii) extends the circumstances in which a placing request appeal must be transferred from the education appeal committee or sheriff to the Tribunal from being limited to the event described in section 18(4)(c) of the 2004 Act to include the things described in the other paragraphs of section 18(4) (as amended by the Act). The effect of this extension, and subsection (7)(d)(i) (which removes the words “at the time the placing request is refused” from section 18(4) of the 2004 Act), is that if, at any time before the education appeal committee or sheriff has made their final decision on a placing request appeal, a co-ordinated support plan is being prepared or is being considered, the appeal is to be transferred to the Tribunal. Subsection (9)(d)(iv) inserts a new sub-paragraph (12) into paragraph 7 of schedule 2 to ensure that any reference transferred back to the sheriff from the Tribunal will be treated as if it were an appeal made directly to the sheriff in the first instance thus ensuring the sheriff has the power to deal with such a reference.
26. Subsection (8)(b) extends the circumstances in which a placing request appeal can be transferred from the Tribunal to the education appeal committee (see subsection (8)(b)(ii)). This section also provides the Tribunal with the discretion to transfer placing request decisions back to the education appeal committee or sheriff where it has been decided that no co-ordinated support plan is required (see subsection (8)(b)(iii)).