



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

2004 asp 4

## *General*

### **28 Requests under this Act: further provision**

- (1) References in this Act to a “request” are to a request which—
- (a) is in—
    - (i) writing, or
    - (ii) another form which, by reason of its having some permanence, is capable of being used for subsequent reference (as, for example, an audio or video recording), and
  - (b) contains a statement of the reasons for making the request.
- (2) Where an education authority decide not to comply with any request made to them under this Act, the authority must—
- (a) inform the person who made the request of that decision,
  - (b) in so doing, give reasons for the decision,
  - (c) except where the request was of the type specified in section 7(2)(b), provide the person who made the request with information as to—
    - (i) the mediation services provided in pursuance of arrangements made by the authority under section 15(1), and
    - (ii) any procedures for the resolution of disputes established by the authority in pursuance of any regulations under section 16,
  - (d) where the request was made under section 6(2)(b) or 10(4), inform the person who made the request of the right under section 18(1) to refer the decision to a Tribunal, and
  - (e) where the request was a placing request, inform the person who made the request of—
    - (i) the right under paragraph 5 of schedule 2 to refer the decision to an appeal committee, or
    - (ii) the right under section 18(1) to refer the decision to a Tribunal, (as appropriate).

## 29 Interpretation

(1) In this Act—

- “the 1980 Act” means the Education (Scotland) Act 1980 (c. 44),
- “the 2000 Act” means the Standards in Scotland’s Schools etc. Act 2000 (asp 6),
- “additional support” has the meaning given in section 1(3),
- “additional support needs” is to be construed in accordance with section 1(1),
- “appropriate agency” is to be construed in accordance with section 23(2),
- “co-ordinated support plan” has the meaning given in section 2(1) and, in relation to any such plan which has been amended by virtue of any provision of this Act, references in this Act to a co-ordinated support plan are (except where the context otherwise requires) to the plan as amended,
- “local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39),
- “placing request” has the meaning given in paragraph 2(3) of schedule 2,
- “prescribed pre-school child” means a child of any description prescribed in an order under section 1(1A) (children under school age in respect of whom education authorities must make provision for school education) of the 1980 Act,
- “President” means the President of the Additional Support Needs Tribunals for Scotland appointed under section 17(2),
- “primary education” is to be construed in accordance with section 135(2) of the 1980 Act,
- “special school” means—
  - (a) a school, or
  - (b) any class or other unit forming part of a public school which is not itself a special school,
 the sole or main purpose of which is to provide education specially suited to the additional support needs of children or young persons selected for attendance at the school, class or (as the case may be) unit by reason of those needs,
- “Tribunal” means an Additional Support Needs Tribunal for Scotland constituted under section 17(1).

(2) In this Act, the following expressions have the meanings given in section 135(1) of the 1980 Act—

- “child”,
- “education authority”,
- “grant-aided school”,
- “Health Board”,
- “independent school”,
- “managers”,
- “parent”,
- “public school”,
- “school”,
- “school age”,
- “school education”,
- “young person”.

- (3) In this Act, references to a child or young person for whose school education an education authority are responsible are to any child or young person being, or about to be, provided with school education—
  - (a) in a school under the management of the education authority, or
  - (b) in pursuance of arrangements made or entered into by the authority.
- (4) In this Act, references to a child or young person belonging to an area are to be construed in accordance with section 23(3) of the 1980 Act.
- (5) In this Act, references to the doing of anything in writing include references to the doing of that thing by means of a document—
  - (a) transmitted by electronic means,
  - (b) received in legible form, and
  - (c) capable of being used for subsequent reference.

### **30 Transitional provision: recorded children and young persons**

- (1) This section applies to any child or young person—
  - (a) for whose school education an education authority are, at the commencement date, responsible, and
  - (b) who, immediately before that date, was a recorded child or young person within the meaning of the 1980 Act.
- (2) Such a child or young person is, for the purposes of this Act, to be taken to have additional support needs.
- (3) The education authority must, before the end of the period of 2 years beginning with the commencement date, establish, in accordance with the arrangements made by them under section 6(1), whether the child or young person requires a co-ordinated support plan.
- (4) Until the appropriate date, the education authority must ensure that the provision made by them in pursuance of section 4(1)(a) for the additional support required by the child or young person is no less than the provision which was, immediately before the commencement date, made for the child or young person under section 62(3) (duty of education authority to provide for special educational needs of recorded children and young persons) of the 1980 Act.
- (5) In subsection (4), “the appropriate date” means—
  - (a) where the education authority establish in pursuance of subsection (3) that the child or young person requires a co-ordinated support plan, the date on which they so establish that matter,
  - (b) where the authority establish in pursuance of that subsection that the child or young person does not require such a plan, the date of expiry of the period of 2 years beginning with the date on which they so establish that matter, or
  - (c) if there is a significant change in the child’s or young person’s additional support needs, the date on which the authority establish the occurrence of that change,  
whichever occurs first.
- (6) In this section—

“the commencement date” means the date on which this section comes into force, and

“the education authority” means the education authority responsible for the child’s or young person’s school education.

### **31 Duty to inform in writing or alternative permanent form**

Where an education authority are, under this Act, to inform a parent or young person of any matter, they must do so—

- (a) in writing, or
- (b) in such other form as the parent or young person may reasonably require, being a form which, by reason of its having some permanence, is capable of being used for subsequent reference (as, for example, an audio or video recording).

### **32 Ancillary provision**

The Scottish Ministers may by order make such incidental, supplemental, consequential, further transitional, transitory or saving provision as they consider necessary or expedient for the purposes or in consequence of this Act.

### **33 Modification of enactments**

Schedule 3 makes modifications of enactments in consequence of this Act.

### **34 Orders, regulations and rules**

- (1) Any power of the Scottish Ministers to make orders, regulations or rules under this Act is exercisable by statutory instrument.
- (2) Any such power includes power to make—
  - (a) such incidental, supplemental, consequential, transitional, transitory or saving provision as the Scottish Ministers think necessary or expedient,
  - (b) different provision for different purposes.
- (3) An order under section 32 may modify any enactment, instrument or document.
- (4) A statutory instrument containing an order, regulations or rules under this Act (except section 17(5), section 32 (where subsection (5) applies) and section 35) is subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (5) No—
  - (a) order under sections 20 and 32 containing provisions which add to, replace or omit any part of the text of an Act, or
  - (b) regulations under section 17(5),
 is or are to be made unless a draft of the statutory instrument containing the order or regulations has been laid before, and approved by a resolution of, the Parliament.

### **35 Commencement and short title**

- (1) The provisions of this Act, other than sections 29, 32 and 34 and this section, come into force on such day as the Scottish Ministers may by order appoint.

- (2) This Act may be cited as the Education (Additional Support for Learning) (Scotland) Act 2004.