



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

## 2004 asp 4

### *Mediation and dispute resolution*

#### **15 Mediation services**

(1) Every education authority must make such arrangements as they consider appropriate for the provision of independent mediation services for the purposes of seeking to avoid or resolve disagreements between the authority and—

[<sup>F1</sup>(a) the parents of any children,]

[<sup>F2</sup>(b) any young persons,]

(c) in relation to any <sup>F3</sup>... young persons who lack capacity to express a view or make a decision for those purposes, their parents,

concerning the exercise by the authority of [<sup>F4</sup>any of ]their functions under this Act in relation to [<sup>F5</sup>the] children or young persons.

[<sup>F6</sup>(1A) In making arrangements under subsection (1) for the provision of mediation services in respect of a matter that is the subject of a disagreement (or potential disagreement) between an education authority and the parents of a child, the authority must seek and take account of the views of the child in respect of the matter.]

(2) Mediation services are independent for the purposes of subsection (1) if the person providing the services has no involvement in the exercise by or on behalf of the authority of their functions [<sup>F7</sup> relating to education or any of their other functions](apart from this section).

(3) Arrangements made in pursuance of subsection (1)—

(a) must not require any parent or young person—

(i) to refer any disagreement with the authority to the mediation services provided in accordance with the arrangements, or

(ii) to pay any fee or charge for the provision of the mediation services, and

(b) do not affect the entitlement of any parent or young person to refer any matter to [<sup>F8</sup>the First-tier Tribunal] .

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

- (4) In this section and section 16, references to the exercise by an education authority of any function include references to a failure to exercise the function.

#### Textual Amendments

- F1** S. 15(1)(a) substituted (14.11.2010) by Education (Additional Support for Learning) (Scotland) Act 2009 (asp 7), **ss. 2(a)**, 26(3); S.S.I. 2010/277, art. 2
- F2** S. 15(1)(b) substituted (14.11.2010) by Education (Additional Support for Learning) (Scotland) Act 2009 (asp 7), **ss. 2(b)**, 26(3); S.S.I. 2010/277, art. 2
- F3** Word in s. 15(1)(c) repealed (14.11.2010) by Education (Additional Support for Learning) (Scotland) Act 2009 (asp 7), **ss. 2(c)**, 26(3); S.S.I. 2010/277, art. 2
- F4** Words in s. 15(1) inserted (14.11.2010) by virtue of Education (Additional Support for Learning) (Scotland) Act 2009 (asp 7), **ss. 2(d)**, 26(3); S.S.I. 2010/277, art. 2
- F5** Word in s. 15(1) substituted (14.11.2010) by Education (Additional Support for Learning) (Scotland) Act 2009 (asp 7), **ss. 2(e)**, 26(3); S.S.I. 2010/277, art. 2
- F6** S. 15(1A) inserted (10.1.2018) by Education (Scotland) Act 2016 (asp 8), s. 33(2), **sch. para. 14**; S.S.I. 2017/354, reg. 2(a)
- F7** Words in s. 15(2) substituted (14.11.2010) by Education (Additional Support for Learning) (Scotland) Act 2009 (asp 7), **ss. 11**, 26(3); S.S.I. 2010/277, art. 2
- F8** Words in s. 15(3)(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(5)**

#### Commencement Information

- I1** S. 15 in force at 14.11.2005 by S.S.I. 2005/564, **art. 2**

## 16 Dispute resolution

- (1) The Scottish Ministers may by regulations make provision about the resolution of disputes between any education authority and—

- (a) the parent of any child <sup>F9</sup> ...,
- [<sup>F10</sup>(aa) any child who has attained the age of 12 years and who the authority is satisfied has capacity as respects views or decisions relating to the purposes of resolving such disputes,]
- (b) any young person <sup>F11</sup> ..., or
- (c) in relation to any <sup>F12</sup>...young person who lacks capacity to express a view or make a decision for the purposes of resolving such disputes, the young person's parent,

concerning the exercise by the authority of any of their functions under this Act in relation to the child or young person.

- (2) Regulations under subsection (1) may, in particular, make provision—

- [<sup>F13</sup>(za) requiring any application by a person mentioned in subsection (1)(a) to (c) for referral to dispute resolution to be made to the Scottish Ministers,]
- (a) requiring education authorities to establish a procedure in accordance with the regulations for the resolution of such disputes,
- (b) applying to all such disputes or only to such descriptions of such disputes as may be specified in the regulations.

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

- (3) However, such regulations, and any provision made in pursuance of such regulations—
- (a) must not require any parent [<sup>F14</sup>, child] or young person—
    - (i) to use any procedure established in accordance with the regulations for the resolution of any dispute with an education authority, or
    - (ii) to pay any fee or charge for using any such procedure, and
  - (b) do not affect the entitlement of any parent [<sup>F15</sup>, child] or young person to refer any matter to [<sup>F16</sup>the First-tier Tribunal] .

#### Textual Amendments

- F9** Words in s. 16(1)(a) repealed (14.11.2010) by Education (Additional Support for Learning) (Scotland) Act 2009 (asp 7), **ss. 3(a)**, 26(3); S.S.I. 2010/277, art. 2
- F10** S. 16(1)(aa) inserted (1.8.2017) by Education (Scotland) Act 2016 (asp 8), s. 33(2), **sch. para. 15(a)**; S.S.I. 2017/164, reg. 2, sch.
- F11** Words in s. 16(1)(b) repealed (14.11.2010) by Education (Additional Support for Learning) (Scotland) Act 2009 (asp 7), **ss. 3(b)**, 26(3); S.S.I. 2010/277, art. 2
- F12** Word in s. 16(1)(c) repealed (14.11.2010) by Education (Additional Support for Learning) (Scotland) Act 2009 (asp 7), **ss. 3(c)**, 26(3); S.S.I. 2010/277, art. 2
- F13** S. 16(2)(za) inserted (2.4.2010) by Education (Additional Support for Learning) (Scotland) Act 2009 (asp 7), **ss. 12**, 26(3); S.S.I. 2010/129, art. 2(b)
- F14** Word in s. 16(3)(a) inserted (1.8.2017) by Education (Scotland) Act 2016 (asp 8), s. 33(2), **sch. para. 15(b)**; S.S.I. 2017/164, reg. 2, sch.
- F15** Word in s. 16(3)(b) inserted (1.8.2017) by Education (Scotland) Act 2016 (asp 8), s. 33(2), **sch. para. 15(b)**; S.S.I. 2017/164, reg. 2, sch.
- F16** Words in s. 16(3)(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(6)**

#### Commencement Information

- I2** S. 16 in force at 18.5.2005 for specified purposes by S.S.I. 2005/263, art. 2, **Sch.**
- I3** S. 16 in force at 14.11.2005 in so far as not already in force by S.S.I. 2005/564, **art. 2**

**Changes to legislation:**

There are currently no known outstanding effects for the Education (Additional Support for Learning) (Scotland) Act 2004, Cross Heading: Mediation and dispute resolution.