



# Education (Additional Support for Learning) (Scotland) Act 2009

2009 asp 7

**The Bill for this Act of the Scottish Parliament was passed by the Parliament on 20th May 2009 and received Royal Assent on 25th June 2009**

An Act of the Scottish Parliament to amend the law in respect of placing requests in relation to the school education of children and young persons having additional support needs and in respect of arrangements between education authorities in relation to such school education; to make minor provision in relation to additional support needs; to make further provision in relation to the practice and procedure of the Additional Support Needs Tribunals for Scotland; and for connected purposes.

*Placing requests etc.*

## **1 Placing requests**

- (1) The Education (Additional Support for Learning) (Scotland) Act 2004 (asp 4) (“the 2004 Act”) is amended in accordance with this section.
- (2) In section 1(3)(a) (additional support needs), after “authority” insert “responsible for the school education of the child or young person, or in the case where there is no such authority, the education authority”.
- (3) In section 7(1)(b) (other children and young persons), for “the” substitute “an”.
- (4) In section 10 (reviews of co-ordinated support plans)—
  - (a) in subsection (1), for “belonging to their area” substitute “for whose school education they are responsible”,
  - (b) after subsection (5) insert—

“(5A) Where any such co-ordinated support plan as is mentioned in subsection (1) is transferred to the education authority by virtue of regulations made in pursuance of section 11(8), the authority must carry out a review of the plan as soon as practicable after the date of transfer.”.
- (5) In section 11(8) (co-ordinated support plans: further provision), in paragraph (e) the words from “when” to the end of the paragraph are repealed.

- (6) In section 12 (duties to seek and take account of views, advice and information), after subsection (3) insert—

“(3A) Where any such co-ordinated support plan as is mentioned in section 10(1) is transferred to the education authority by virtue of regulations made in pursuance of section 11(8), the authority’s duty under subsection (2)(a) includes a duty to seek and take account of information and advice (within such period as will enable the authority to comply with their duty under section 10(5A)) from the education authority from which the plan was transferred and any agencies or persons involved in providing support under the plan prior to its transfer.”

- (7) In section 18 (references to Tribunal in relation to co-ordinated support plan)—

- (a) after paragraph (d) of subsection (3) insert—

“(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,”

- (b) in paragraph (e) of subsection (3)—

- (i) for “the”, where it occurs for the first time, substitute “an”,
- (ii) after “request” insert “, other than a placing request mentioned in paragraph (da),”,
- (iii) for “the”, where it occurs for the second time, substitute “a”,
- (iv) at the end add “(including such a decision in respect of a child or young person for whose school education the authority refusing the request are not responsible)”

- (c) after that paragraph insert—

“(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.”

- (d) in subsection (4)—

- (i) the words “, at the time the placing request is refused” are repealed,
- (ii) after paragraph (b) insert—

“(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,”

- (e) in subsection (7), for “(3)(e)” substitute “(3)(da) or (e)”.

(8) In section 19 (powers of Tribunal in relation to reference)—

(a) after subsection (4) insert—

“(4A) Where the reference relates to a decision referred to in subsection (3) (da) of that section the Tribunal may—

(a) confirm the decision if satisfied that—

(i) one or more grounds of refusal specified in paragraph 3(1) or (3) of schedule 2 exists or exist, and

(ii) in all the circumstances it is appropriate to do so,

(b) overturn the decision and require the education authority to—

(i) place the child or young person in the school specified in the placing request to which the decision related by such time as the Tribunal may require, and

(ii) make such amendments to any co-ordinated support plan prepared for the child or young person as the Tribunal considers appropriate by such time as the Tribunal may require.”,

(b) in subsection (5)—

(i) in paragraph (b), at the end of sub-paragraph (i) insert “by such time as the Tribunal may require”,

(ii) after paragraph (b) insert—

“(ba) where—

(i) the decision was referred to the Tribunal by virtue of the application of subsection (4) (ba) of that section, and

(ii) the education authority have decided the child or young person does not require a co-ordinated support plan and that decision has not been referred to the Tribunal under subsection (1) of that section by the time within which such references are to be made,

refer the decision to an appeal committee set up under section 28D of the 1980 Act.”,

(iii) after paragraph (c) add—

“(d) where—

(i) the decision was transferred from an appeal committee to the Tribunal by virtue of paragraph 6(4) and (5) of schedule 2 because the thing described in subsection (4)(ba) of that section occurred, and

(ii) the education authority have decided the child or young person does not require a co-ordinated support plan and that decision has not been referred to the Tribunal under subsection (1) of that section by the time within which such references are to be made,

refer the decision back to the appeal committee,

(e) where—

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*Status: This is the original version (as it was originally enacted).*

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- (i) the decision was transferred from an appeal committee to the Tribunal by virtue of paragraph 6(4) and (5) of schedule 2 because the things described in subsection (4)(c) of that section occurred, and
- (ii) the Tribunal has confirmed the decision of the education authority that the child or young person does not require a co-ordinated support plan,

refer the decision back to the appeal committee,

(f) where—

- (i) the decision was transferred from the sheriff to the Tribunal by virtue of paragraph 7(8) and (9) of schedule 2 because the thing described in subsection (4)(ba) of that section occurred, and
- (ii) the education authority have decided the child or young person does not require a co-ordinated support plan and that decision has not been referred to the Tribunal under subsection (1) of that section by the time within which such references are to be made,

refer the decision back to the sheriff,

(g) where—

- (i) the decision was transferred from the sheriff to the Tribunal by virtue of paragraph 7(8) and (9) of schedule 2 because the things described in subsection (4)(c) of that section occurred, and
- (ii) the Tribunal has confirmed the decision of the education authority that the child or young person does not require a co-ordinated support plan,

refer the decision back to the sheriff.

(5A) Where the reference relates to a decision referred to in subsection (3)(f) of that section the Tribunal has the powers as mentioned in paragraphs (a) and (b) of subsection (5) of this section.”,

- (c) in subsection (6), for the words “subsection (5)(c)” substitute “paragraph (ba) or (c) of subsection (5)”.

(9) In schedule 2 (placing requests)—

(a) after paragraph 2(4) add—

“(5) In sub-paragraph (1), the reference to an education authority includes an education authority which are not responsible for the school education of the child.”,

(b) after paragraph 4(2) insert—

“(2A) Sub-paragraph (2) does not apply where the placing request was made to an education authority which, at the time of the request, were not responsible for the school education of the child.”,

(c) in paragraph 6—

(i) in sub-paragraph (1), after “paragraph 5” insert “(including such a reference relating to a decision which has been referred back under section 19(5)(d) or (e))”,

(ii) in sub-paragraph (4), for the words from “there” to the end of the sub-paragraph substitute—

“the things mentioned in any of paragraphs (a), (b), (ba) and (c) of section 18(4) occur.”,

(d) in paragraph 7—

(i) in sub-paragraph (1), after “paragraph 5” insert “(including such a reference relating to a decision which has been referred back under section 19(5)(d) or (e))”,

(ii) after that sub-paragraph insert—

“(1A) Sub-paragraph (1) does not apply where the decision of the appeal committee may be referred to a Tribunal under section 18(1).”,

(iii) in sub-paragraph (8), for the words from “there” to the end of the sub-paragraph substitute—

“the things mentioned in any of paragraphs (a), (b), (ba) and (c) of section 18(4) occur.”,

(iv) after sub-paragraph (11), add—

“(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).”.

## **2 Mediation services**

In section 15(1) of the 2004 Act (mediation services)—

(a) for paragraph (a) substitute—

“(a) the parents of any children,”,

(b) for paragraph (b) substitute—

“(b) any young persons,”,

(c) in paragraph (c), the word “such” is repealed,

(d) after the word “of”, where it occurs for the fifth time, insert “any of”,

(e) for the word “such”, where it occurs for the third time, substitute “the”.

## **3 Dispute resolution**

In section 16(1) of the 2004 Act (dispute resolution), the following are repealed—

(a) in paragraph (a), the words “belonging to the area of the authority”,

(b) in paragraph (b), the words “belonging to that area”,

(c) in paragraph (c), the word “such” where it occurs for the first time.

#### **4 Contributions not recoverable in respect of certain services**

In section 23 of the Education (Scotland) Act 1980 (c. 44) (provision by education authority for education of pupils belonging to areas of other authorities), after subsection (2) insert—

“(2A) Subsection (2) does not permit an education authority to recover contributions in respect of—

- (a) mediation services provided under arrangements made in pursuance of section 15(1) of the 2004 Act (mediation services), or
- (b) services provided by the authority forming part of any procedure provided for in regulations under section 16(1) of that Act (dispute resolution).”.

#### **5 Arrangements between education authorities**

In section 29 of the 2004 Act (interpretation)—

- (a) in subsection (3), after the word “Act” insert “and subject to subsection (3A)”,
- (b) after that subsection insert—

“(3A) For the purposes of this Act, where arrangements are made or entered into by an education authority in respect of the school education of a child or young person with another education authority, the authority responsible for that school education is the authority for the area to which the child or young person belongs despite the education being, or about to be, provided in a school under the management of another authority.”.

#### *Additional support needs*

#### **6 Additional support**

In section 1(3) of the 2004 Act (additional support needs)—

- (a) in paragraph (a), after “provision”, where it occurs for the first time, insert “(whether or not educational provision)”,
- (b) in paragraph (b), for “educational provision” substitute “provision (whether or not educational provision)”.

#### **7 Assessments and examination**

After section 8 of the 2004 Act insert—

##### **“8A Assessments and examinations: further provision**

- (1) A person specified in subsection (3) may request that the education authority arrange for a child or young person to whom section 4(1)(a) applies to undergo, for the purpose of considering the additional support needs of the child or young person, a process of assessment or examination.

- (2) The education authority must comply with the request unless it is unreasonable.
- (3) The persons referred to in subsection (1) are—
  - (a) where the request relates to a child, the child’s parent,
  - (b) where the request relates to a young person, the young person or, where the authority are satisfied the young person lacks capacity to make the request, the young person’s parent.
- (4) The education authority must, in accordance with the arrangements made by them under section 4(1)(b), take into account the results of any assessment or examination undertaken by virtue of this section.
- (5) A process of assessment or examination undertaken by virtue of this section is to be carried out by such person as the education authority consider appropriate.
- (6) In this section the reference to assessment or examination includes educational, psychological or medical assessment or examination.”

## **8 Additional support needs etc.: specified children and young people**

- (1) In section 1 (additional support needs) of the 2004 Act, after subsection (1) insert—
  - “(1A) Without prejudice to the generality of subsection (1), a child or young person has additional support needs if the child or young person is looked after by a local authority (within the meaning of section 17(6) of the Children (Scotland) Act 1995 (c. 36)).
  - (1B) But where, in the course of identifying (in accordance with the arrangements made by them under section 6(1)(b)) the particular additional support needs of a child or young person who is looked after by a local authority (within the meaning of section 17(6) of the Children (Scotland) Act 1995 (c. 36)), an education authority form the view that the child or young person is, or is likely to be, able without the provision of additional support to benefit from school education provided to or to be provided for the child or young person, subsection (1A) ceases to apply.”
- (2) In section 6 (children and young persons for whom education authority are responsible) after subsection (1) insert—
  - “(1A) Without prejudice to the generality of subsection (1), every education authority must in particular consider whether each child or young person falling within section 1(1A) for whose school education they are responsible requires a co-ordinated support plan.”

### *Pre-school children*

## **9 Functions of education authority in relation to certain pre-school children with additional support needs**

In section 5 of the 2004 Act (general functions of education authority in relation to additional support needs), for subsections (2) and (3) substitute—

- “(2) Where a child falling within subsection (3) has been brought to the education authority’s attention as appearing to have needs of the type mentioned in

subsection (3)(c), the authority must (unless the child’s parent does not consent)

- (a) in accordance with the arrangements made by them under section 6(1), establish whether the child does have such needs, and
- (b) provide such additional support as is appropriate for the child.

(3) A child falls within this subsection if the child—

- (a) is under school age (unless the child is a prescribed pre-school child),
- (b) belongs to the authority’s area, and
- (c) appears to have additional support needs arising from a disability (within the meaning of the Disability Discrimination Act 1995 (c. 50)) which the child has.”.

#### *Advocacy services*

### **10 Provision of advocacy service: Tribunal**

After section 14 of the 2004 Act (supporters and advocacy), insert—

#### **“14A Provision of advocacy service: Tribunal**

- (1) The Scottish Ministers must, in respect of Tribunal proceedings, secure the provision of an advocacy service to be available on request and free of charge to the persons mentioned in subsection (2).
- (2) The persons are—
  - (a) in the case of a child, the child’s parent,
  - (b) in the case of a young person—
    - (i) the young person, or
    - (ii) where the young person lacks capacity to participate in discussions or make representations of the type referred to in subsection (3), the young person’s parent.
- (3) In subsection (1) “advocacy service” means a service whereby another person conducts discussions with or makes representations to the Tribunal or any other person involved in the proceedings on behalf of a person mentioned in subsection (2).”.

#### *Mediation services*

### **11 Mediation services**

In section 15(2) (independence of mediation services) of the 2004 Act, for the words “under this Act” substitute “relating to education or any of their other functions”.

#### *Dispute resolution*

### **12 Dispute resolution**

In section 16(2) (dispute resolution) of the 2004 Act, before paragraph (a), insert—



“(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.”.

*Publication of information by education authority*

**13 Provision of published information to certain persons**

In section 26 of the 2004 Act—

- (a) in subsection (1)—
  - (i) the word “and” immediately following paragraph (b) is omitted, and
  - (ii) after paragraph (c), insert “, and
  - (d) provide the persons mentioned in subsection (2A) with any information published under paragraph (a) or (c).”.
- (b) after subsection (2), insert—

“(2A) The persons referred to in subsection (1)(d) are—

  - (a) in the case of a child with additional support needs for whose school education the authority are responsible, the child’s parent,
  - (b) in the case of a young person with additional support needs for whose school education the authority are responsible—
    - (i) the young person, or
    - (ii) if the authority are satisfied that the young person lacks capacity to understand the information published under this subsection by the authority, the young person’s parent.”.

**14 Availability of published information**

In section 26(1) of the 2004 Act (publication of information by education authority), after paragraph (a) insert—

- “(e) ensure that a summary of the information published by the authority under this subsection is available—
  - (i) on request, from each place in the authority’s area where school education is provided,
  - (ii) in any handbook or other publications provided by any school in the authority’s area or by the authority for the purposes of providing general information about the school or, as the case may be, the services provided by the authority, and
  - (iii) on any website maintained by any such school or the authority for that purpose (whether or not the website is also maintained for any other reason).”.

**15 Publication of information on dispute resolution**

In section 26(2) of the 2004 Act (publication of information by education authority), after paragraph (e) insert—

“(ea) any dispute resolution procedures established by the authority in pursuance of section 16.”.

## **16 Power to specify additional sources of information**

In section 26(2) of the 2004 Act (publication of information by education authority), after paragraph (h) insert “, and

- (i) any other persons specified by the Scottish Ministers by order as persons from which the persons referred to in subsection (2)(f)(i) and (ii) can obtain advice, further information and support in relation to the provision for such needs, including such support and advocacy as is referred to in section 14”.

### *Provision of information by education authority on occurrence of certain events*

## **17 Provision of information by education authority on occurrence of certain events**

In section 13 of the 2004 Act (provision of information etc. on occurrence of certain events), after subsection (4) insert—

“(4A) In relation to the provision of any information under subsection (2)(a) or (4) in the case of a child, the education authority must seek and take account of the views of the child (unless the authority are satisfied that the child lacks capacity to express a view).”.

### *Additional Support Needs Tribunals for Scotland*

## **18 References to Tribunal in relation to co-ordinated support plan**

(1) In section 18 of the 2004 Act (references to Tribunal in relation to co-ordinated support plan)—

- (a) after subsection (3)(d)(i) insert—

“(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),”.

- (b) after subsection (5) insert—

“(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.”.

(2) In section 19(3) of the 2004 Act (powers of Tribunal in relation to reference) for “(d)(ii)” substitute “(d)(ia), (ii)”.

## **19 References to Tribunal in relation to duties under section 12(6) and 13**

(1) In section 18 of the 2004 Act—

- (a) in the title, omit “in relation to co-ordinated support plan”, and
- (b) in subsection (3), after paragraph (f) (as inserted by section 1(7)(c) of this Act), insert—
  - “(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)).”.

(2) In section 19(3) of the 2004 Act, for “or (d)(ii) or (iii)”, substitute “, (d)(ii) or (iii) or (g)”.

## **20 Power to make rules in respect of Tribunal practice and procedure**

In paragraph 11(2) of schedule 1 to the 2004 Act (Additional Support Needs Tribunals for Scotland)—

- (a) after paragraph (k) insert—
  - “(ka) enabling specified matters relating to the failure by an education authority to comply with time limits required by virtue of this Act to be determined by the convener of a Tribunal alone,”,
- (b) after paragraph (t) add—
  - “(u) enabling a Tribunal, in specified circumstances, to—
    - (i) review,
    - (ii) vary or revoke,any of its decisions, orders or awards,
  - (v) enabling a Tribunal, in specified circumstances, to review the decisions, orders or awards of another Tribunal and take such action (including variation and revocation) in respect of those decisions, orders or awards as it thinks fit.”.

**21 Power to monitor implementation of Tribunal decisions**

In schedule 1 of the 2004 Act (Additional Support Needs Tribunals for Scotland) after paragraph 11, insert—

*“Power to monitor implementation of Tribunal decisions*

- 11A The President may, in any case where a decision of a Tribunal required an education authority to do anything, keep under review the authority’s compliance with the decision and, in particular, may—
- (a) require the authority to provide information about the authority’s implementation of the Tribunal decision,
  - (b) where the President is not satisfied that the authority is complying with the decision, refer the matter to the Scottish Ministers.”.

*Availability of information on additional support needs***22 Availability of information on additional support needs**

After section 26 of the 2004 Act insert—

**“26A Availability of information on additional support needs**

The Scottish Ministers must report to the Scottish Parliament in each of the five years following the commencement of this section on what progress has been made in each of those years in ensuring that sufficient information relating to children and young persons with additional support needs is available to effectively monitor the implementation of this Act.”.

*Collection of data on additional support needs***23 Collection of data on additional support needs**

After section 27 of the 2004 Act insert—

**“27A Collection of data on additional support needs**

- (1) The Scottish Ministers must each year collect from each education authority information on—
  - (a) the number of children and young persons for whose school education the authority are responsible having additional support needs,
  - (b) the principal factors giving rise to the additional support needs of those children and young persons,
  - (c) the types of support provided to those children and young persons, and
  - (d) the cost of providing that support.
- (2) The Scottish Ministers must publish the information collected each year under subsection (1).

- (3) The Scottish Ministers may (after consulting such persons as they consider appropriate) by regulations specify the format in and method by which the information mentioned in subsection (1) is to be—
- (a) provided to, and
  - (b) published by,
- them.”.

### *General*

#### **24 Ancillary provision**

- (1) The Scottish Ministers may by order make such transitional, transitory or saving provision as they consider necessary or expedient for the purposes of, or in consequence of, or for the purposes of giving full effect to, any provision of this Act.
- (2) An order under this section may modify any enactment, instrument or document.

#### **25 Orders**

- (1) Any power conferred by this Act on the Scottish Ministers to make an order—
  - (a) must be exercised by statutory instrument,
  - (b) may be exercised so as to make different provision for different purposes.
- (2) A statutory instrument containing an order under section 24 is, subject to subsection (3), subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (3) An order containing provisions which add to, replace or omit any part of the text of an Act is not to be made unless a draft of the statutory instrument containing the order has been laid before, and approved by resolution of, the Parliament.

#### **26 Short title and commencement**

- (1) This Act may be cited as the Education (Additional Support for Learning) (Scotland) Act 2009.
- (2) This section and sections 24 and 25 come into force on Royal Assent.
- (3) The remaining provisions of this Act come into force on such day as the Scottish Ministers may by order appoint