

Education (Additional Support for Learning) (Scotland) Bill

[AS AMENDED AT STAGE 2]

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Amendments to the Bill since the previous version are indicated by sidelining in the right margin. Wherever possible, provisions that were in the Bill as introduced retain the original numbering.

Education (Additional Support for Learning) (Scotland) Bill

[AS AMENDED AT STAGE 2]

5 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

10 (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”.

15 (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—

20 “(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(co-ordinated support plans: further provision), in paragraph (e) the words from “when” to the end of the paragraph are repealed.

25 (5A) 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.”

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

(za) 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,”

(a) in paragraph (e) of subsection (3)—

(i) for “the”, where it occurs for the first time, substitute “an”,

(ia) after “request” insert “, other than a placing request mentioned in paragraph (da),”,

(ii) for “the”, where it occurs for the second time, substitute “a”,

(iii) 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)”

(b) 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.”

(c) 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,”

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

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

(za) 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—

- 5 (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—

- 10 (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.”,

15 (a) in subsection (5)—

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

(i) after paragraph (b) insert—

“(ba) where—

- 20 (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
- 25 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,”,

(ii) after paragraph (c) add—

“(d) where—

- 30 (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
- 35 section by the time within which such references are to be made,

refer the decision back to the appeal committee,

(e) where—

- 40 (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,

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- (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

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- (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—

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- (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

20

- (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.”,

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

- (8) In schedule 2 (placing requests)—

- (a) after paragraph 2(4) add—

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“(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—

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“(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))”,

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- (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

5A Additional support

In section 1(3)(a) of the 2004 Act (additional support needs), after “provision”, where it occurs for the first time, insert “(whether or not educational provision)”.

5B 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.”.

5C 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—

(a) is looked after and accommodated by a local authority under section 26 of the Children (Scotland) Act 1995 (c.36),

(b) is a carer (within the meaning of section 12AA of the Social Work (Scotland) Act 1968 (c.49) or section 24 of the Children (Scotland) Act 1995 (c.36)),

(b) has a mental disorder (within the meaning of section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13)),

(c) is deaf or partially deaf,

(d) is blind or partially sighted,

(e) is (any or all) deaf, partially deaf, blind or partially sighted.”.

(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***5D 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.”.

*Publication of information by education authority***5E 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, the child’s parent,

(b) in the case of a young person with additional support needs—

(i) the young person, or

(ii) if the authority are satisfied that the young person lacks capacity to understand the information or advice, the young person’s parent.”.

5F Availability of published information

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

“(aa) ensure that a summary of the published information 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).”.

5G 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.”.

*Additional Support Needs Tribunals for Scotland***6 References to Tribunal in relation to co-ordinated support plan**

In section 18 of the 2004 Act (references to Tribunal in relation to co-ordinated support plan), 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.”.

6A 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(6)(b) 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)”.

7 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.”.

7A 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.”.

Recovery of costs

7B Provision by education authority for education of pupils belonging to areas of other authorities: recovery of costs where pupil has additional support needs

After section 27 of the 2004 Act insert—

“Recovery of costs

27A **Provision by education authority for education of pupils belonging to areas of other authorities: recovery of costs where pupil has additional support needs**

Where the responsible education authority make a claim to recover reasonable costs for the education of pupils belonging to areas of other authorities, where the child or young person has additional support needs and in respect of those additional needs, that other education authority must make payment.”.

General

8 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.

9 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.

- 5
- (2) A statutory instrument containing an order under section 8 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.

10 Short title and commencement

- 10
- (1) This Act may be cited as the Education (Additional Support for Learning) (Scotland) Act 2009.
 - (2) This section and sections 8 and 9 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.

Education (Additional Support for Learning) (Scotland) Bill

[AS AMENDED AT STAGE 2]

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.

Introduced by: Fiona Hyslop
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Bill type: Executive Bill

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