

# Education (Additional Support for Learning) (Scotland) Bill

[AS INTRODUCED]

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## ACCOMPANYING DOCUMENTS

Explanatory Notes, together with other accompanying documents, are printed separately as SP Bill 16-EN. A Policy Memorandum is printed separately as SP Bill 16-PM.

# Education (Additional Support for Learning) (Scotland) Bill

[AS INTRODUCED]

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 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(co-ordinated support plans: further provision), in paragraph (e) the words from “when” to the end of the paragraph are repealed.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 18 (references to Tribunal in relation to co-ordinated support plan)—
  - (a) in paragraph (e) of subsection (3)—
    - (i) for “the”, where it occurs for the first time, substitute “an”,
    - (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.”

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

(a) in subsection (5)—

(i) 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,”

(ii) 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—

(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

5 (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—

10 (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

15 (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—

20 (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,

25 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.”,

30 (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—

35 “(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.”,

40 (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.”,

- 5 (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—

10 “(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—

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

## 2 Mediation services

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

- (a) for paragraph (a) substitute—

“(a) the parents of any children,”,

- 20 (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”.

## 25 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.

## 30 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—

35 “(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 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.”.

## 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—

5 “(u) enabling a Tribunal, in specified circumstances, to—

(i) review,

(ii) vary or revoke,

any of its decisions, orders or awards,

10 (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.”.

### *General*

#### **8 Ancillary provision**

- 15 (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**

- 20 (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 8 is, subject to subsection (3), subject to annulment in pursuance of a resolution of the Scottish Parliament.
- 25 (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**

- 30 (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.



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