

EDUCATION (ADDITIONAL SUPPORT FOR LEARNING)
(SCOTLAND) ACT 2004

CHILDREN AND YOUNG PERSONS WITH
ADDITIONAL SUPPORT NEEDS: PLACING REQUESTS

CONSULTATION PAPER

Additional Support Needs 09



SCOTTISH EXECUTIVE

Background

1. The system relating to placing requests, where the child or young person has additional support needs, is contained within Schedule 2 of the Education (Additional Support for Learning) (Scotland) Act 2004. Whilst the system there is broadly similar to that which operates where the child does not have additional support needs (which is contained in sections 28A to H of the Education (Scotland) Act 1980) there are, however, some differences that require to be taken into account. The main issues are:

- parents of children with additional support needs can make a placing request for their child to attend an independent special school¹ or a grant-aided special school.
- a refusal of a placing request will be referred to the Additional Support Needs Tribunal (section 18(1)) instead of an education authority appeal committee, set up under the Education (Scotland) Act 1980, for consideration when
 - a) the child has a co-ordinated support plan,
 - b) a co-ordinated support plan has not been prepared but it has been established that the child requires one or
 - c) the education authority have decided that the child does not require a plan and that decision has been referred to a Tribunal by the parents

2. Further information and guidance on placing requests for children and young people with additional support needs will be in the Code of Practice.

3. Schedule 2 paragraphs 3(5), 4(3) and 6(6) of the 2004 Act give Scottish Ministers a discretionary power to make further provision, by way of regulations, on matters relating to “reserved places”, “deemed decisions” and procedures relating to references to an appeal committees by way of regulations.

4. This paper sets out our intentions in relation to these provisions. We would welcome your views and suggestions relating to any aspect of this paper.

Schedule 2 para 3(5) - Reserved Places

5. When an education authority receives a placing request to place a child in a specified school under their management then it is their duty to place the child accordingly, unless certain circumstances or exceptions apply.

6. One such exception is when accepting the placing request for a child who is resident outwith the catchment area of the school specified in the placing request, would prevent the authority from keeping places free (“reserved places”) for children likely to become resident in the catchment area.

¹ See section 29 of the Act for a definition of ‘special school’

7. Paragraph 3(5) of Schedule 2 of the 2004 Act (which replaces section 28A(3) (C) of the 1980 Act) allows education authorities to keep such number or percentage of places at a school, (or relating to a particular stage of education), as are in the opinion of the education authority reasonably required to accommodate pupils likely to become resident in the catchment area of the school in the period from the time of consideration of the placing request up to and during the year from 1st August to which the placing request relates. It allows Scottish Ministers to make regulations setting a specific number, or percentage of places (or relating to a particular stage of education), that cannot be exceeded by the education authority.

8. The current regulation making power in section 28A(3)(C) of the 1980 Act has, however, never been exercised. Consideration has therefore to be given as to whether or not to use the power conferred by Schedule 2 now.

9. Current practice is that different education authorities operate different systems in the light of local circumstances when reserving places for children and young people likely to become resident in their areas. To date, the Executive has not been made aware of any particular difficulty with this.

10. According to the Executive's Statistical Bulletin, *Placing Requests in Local Authority Schools in Scotland, 2002/03*, a total of 3,852 placing requests were refused in 2002/03 with only 281 (7.3%) of these being refused on the grounds of places to be retained for children moving into a catchment area. These figures would appear to support the view that this would appear not to be a particularly problematic area.

11. We have additionally sought the views of a small number of key stakeholders on this issue. They were generally in agreement that there was no need, certainly at present, for regulations to set an upper limit for reserved places. It was felt that any number set would be somewhat arbitrary and would not account for changes in local circumstances such as large scale housing or business developments or areas housing armed forces families for example. It was generally felt that existing systems were working satisfactorily.

12. Monitoring implementation of the Additional Support for Learning Act will be crucial. As part of that monitoring we will continue to collect statistical information on the number of placing requests made and refused as well as the reasons for refusal. Consideration is currently being given to what additional statistical information we may need to collect in light of the changes the Act will bring about. The new system will need time to bed down but we will be able to monitor whether there is a need to use the powers in the 2004 Act to set an upper limit for reserved places or not.

13. On balance, we do not feel it is necessary or appropriate to develop regulations in terms of Schedule 2 paragraph 3(5) at this stage but the position will be kept under review as part of the ongoing monitoring of the operation of the 2004 Act.

Schedule 2 paragraph 4(3) and 6(6)(b) - Deemed Refusals

14. The Education (Placing in Schools Etc – Deemed Decisions) (Scotland) Regulations 1982 currently set out procedures and specified timescales for deemed decisions relating to education authority and education appeal committee decisions about placing requests and exclusions. These Regulations are made in terms of sections 28A(5), 28A(6), 28D(3)(b), 28H(5) and 63(6)(b) of the 1980 Act not all of which will apply in relation to children and young people with additional support needs once the Additional Support for Learning Act is commenced. Schedule 2 of the Act therefore makes provision for deemed decisions in relation to children and young people with additional support needs.

15. Paragraph 4(3) allows Scottish Ministers to make regulations in relation to the situation when an education authority have not notified the parents or young person making a placing request of their decision within a set timescale. If the timescale is not met the placing request is treated as if the education authority had turned it down and the parents or young person can appeal.

16. Paragraph 6(6)(b) allows Scottish Ministers to make regulations in relation to an appeal committee as well. If an appeal committee has not informed parents of their decision and their reasons within a specified timescale then it is treated as if the appeal committee had confirmed the decision of the education authority to refuse the placing request.

Timescales

17. We intend to continue to apply the same timescales as contained in the 1982 Regulations for both education authorities and appeal committees as they are still relevant in relation to children and young people with additional support needs.

18. An **education authority** will be deemed to have refused a placing request made in accordance with Schedule 2 paragraph 2 of the Act if:

- a) an education authority have not informed the parent or young person in writing of their decision by the 30th April on a request made on or before 15th March for a school placement at the start of the school year in August
- b) in the case of any other placing request, on the expiry of the period of 2 months, immediately following receipt by the authority of the placing request.

19. An **appeal committee** will be deemed to have confirmed the decision of the education authority if they have failed to notify the parents or young person who made the reference and the education authority of their decision and the reasons for it within the period of 14 days immediately following the conclusion of the hearing

20. Under regulations 5(1)(a) and (b) of the 1982 Regulations an appeal committee are also deemed to have confirmed the decision of the education authority if they have:

- a) failed to hold a hearing within 2 months immediately following receipt by them of the reference; or
- b) failed within the period of 14 days immediately following an adjournment of a hearing, to fix a date for a resumed hearing of the reference

21. We are proposing that appeal committees should be subject to these timescales in relation to placing requests for children and young people with additional support needs.

22. We are considering using powers conferred on Scottish Ministers by the Act to allow us to adopt regulations 5(1)(a) and (b) of the 1982 Regulations.

Transfer of reference to the Additional Support Needs Tribunal

23. When an appeal committee has not yet disposed of a placing request reference, and they become aware that a reference has been made to the Tribunal about a related co-ordinated support plan matter they must transfer the placing request reference to the Tribunal. The appeal committee are not required to take any further action until the Tribunal's decision on the co-ordinated support plan is known. On the transfer to the Additional Support Needs Tribunal, the timescales applying to the appeal committee's consideration stop.

24. If the Tribunal uphold the education authority's decision that the child or young person does not require a co-ordinated support plan then the Tribunal will return the placing request reference to the appeal committee for determination. At the transfer back to the committee, the timescales applying to the appeal committee's consideration resume.

25. It is our intention that regulations will specify that upon transfer to the Tribunal the applicable time limits are frozen and only reapply if the placing request is referred back to the appeal committee. The committee then has whatever number of days remaining from the original statutory period to take the appropriate action.

Schedule 2 paragraph 6(6)(a)

26. Paragraph 6(6)(a) allows Scottish Ministers to make regulations for procedures in relation to references made to an appeal committee about the refusal of a placing request. These regulations can include provision requiring an education authority to provide information about their decision to the appeal committee and to the parent. (6(6)(a)).

27. It is our intention to make it a requirement that the education authority should be required to provide the appeal committee and the parents with details of the child's or young person's additional support needs and information about the current

Children and Young Persons with Additional Support Needs:
Placing Requests policy paper

provision made for the child or young person, including the school currently attended or to be attended. The regulations will state that this should be done as soon as possible after the education authority has been notified that a reference has been made.

**Scottish Executive Education Department
Additional Support Needs Division
May 2005**

© Crown copyright 2005

ISBN: 0-7559-1100-8

Scottish Executive
St Andrew's House
Edinburgh
EH1 3DG

Produced for the Scottish Executive by Astron B41329 05/05

Published by the Scottish Executive, May, 2005