

EDUCATION (SCOTLAND) BILL

[AS AMENDED AT STAGE 2]

REVISED EXPLANATORY NOTES

INTRODUCTION

1. As required under Rule 9.7.8A of the Parliament's Standing Orders, these Revised Explanatory Notes are published to accompany the Education (Scotland) Bill (which was introduced in the Scottish Parliament on 23 March 2015) as amended at Stage 2. Text has been added or deleted as necessary to reflect the amendments made to the Bill at Stage 2 and these changes are indicated by sidelining in the right margin.
2. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.
3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE BILL

Summary and background

4. In its Programme for Government the Scottish Government set out a commitment to tackle poverty and inequality and to improve education and attainment for all. A programme for action has been designed to build on existing activity and is supported by additional funding targeted at some of Scotland's most deprived communities.
5. New legislative provision in the Education (Scotland) Bill ("the Bill") will place additional responsibilities on the Scottish Government and local authorities to exercise their functions with regard to the need to reduce inequalities of outcomes – arising out of socio-economic disadvantage or otherwise.
6. The Bill will also ensure that children have rights to question any support needs they may have in order to make the most of their learning while at school. It will ensure that all children and young people have appropriately qualified teachers and that local authorities have a qualified

and experienced Chief Education Officer with responsibility for delivering their education functions. The Bill will also introduce a power which will ensure that there is a clear process for parents to make complaints to the Scottish Ministers with regard to the delivery of educational duties by local authorities and a clear process for requesting that a local authority assess the need to provide Gaelic medium education.

7. Specifically, the Bill aims to:

- Promote excellence and equity within our education system through the establishment of a National Improvement Framework and by imposing duties on education authorities and the Scottish Ministers in relation to reducing inequalities of educational outcome experienced by disadvantaged children.
- Place a duty on local authorities both to assess the need for Gaelic medium primary education (GMPE) following a parental request and to actively promote and support Gaelic medium education (GME) and Gaelic learner education (GLE). The Bill will also place a duty on Bòrd na Gàidhlig to prepare guidance on how GME should operate in Scotland;
- Extend rights under the Education (Additional Support for Learning) (Scotland) Act 2004 (“the 2004 Act”) to children aged 12 and over with capacity to exercise those rights;
- Legislate for school pupils to receive a minimum number of learning hours annually.
- Restate section 53 of the Education (Scotland) Act 1980 (“the 1980 Act”) which sets out the provision for school food in Scotland. This section has been amended a number of times since enactment and it is considered that the section would benefit from restatement;
- To place a duty on local authorities to provide grants of a specified amount for school clothing for certain pupils.
- Modify the types of complaints that can be made to the Scottish Ministers under section 70 of the 1980 Act and introduce a power to make regulations about the procedure to be followed in relation to the investigation and determination of such complaints;
- Legislate for the role of Chief Education Officer in local authorities in Scotland;
- Modify the powers of the Scottish Ministers to make regulations in relation to independent schools and grant-aided schools in Scotland so they are exercisable in such a way as to ensure that all teaching staff are registered with the General Teaching Council for Scotland;
- Ensure that all schools in Scotland are led by qualified teachers. All new head teachers in Scotland will have to hold the ‘Into Headship’ qualification prior to their first head teacher post.
- Amend section 47(3) of the Children and Young People (Scotland) Act 2014 (“the 2014 Act”) as it currently excludes a small group of children from the early learning and childcare provisions.

COMMENTARY ON SECTIONS

PART 1: SCHOOL EDUCATION

8. This Part introduces a series of new duties on education authorities and the Scottish Ministers which are designed to promote a reduction in inequalities of educational outcome experienced by pupils as a result of socio-economic disadvantage or otherwise. Further, it introduces a series of new duties on education authorities and the Scottish Ministers to establish, and work with a view to delivering, the priorities of a National Improvement Framework for Scottish education.

Section A1: Pupils experiencing inequalities of outcome

9. This section inserts new sections 3A and 3B into the Standards in Scotland's Schools etc. Act 2000 ("the 2000 Act"). Section 3A places a duty on the Scottish Ministers to have due regard to the need to reduce inequalities of educational outcome experienced by pupils as a result of socio-economic disadvantage. The Scottish Ministers must fulfil this duty when exercising their powers in relation to the delivery of school education. The duty extends to both the Scottish Government and its agencies.

10. Section 3B of the 2000 Act places an equivalent duty on education authorities. Education authorities must satisfy this duty when making strategic decisions about how to carry out their functions for the delivery of school education and when considering what steps to take to implement such decisions. Section 3B(3) requires the education authority to seek and have regard to the views of head teachers, trade unions representing teachers, pupils, parents, voluntary organisations and others when seeking to satisfy their duty.

11. Section 3A(2)(b)(ii) of the 2000 Act provides for the Scottish Ministers to extend, through regulations, the scope of the duties placed on them and education authorities so as to capture other groups of children experiencing inequalities of educational outcome in addition to those who are impacted by socio-economic disadvantage. This enabling power is subject to affirmative procedure.

12. The term 'school education' (which is defined in section 58(2) of the 2000 Act as having the meaning given in section 135(1) of the 1980 Act) extends to the delivery of early learning and childcare as defined in section 46 of the Children and Young People (Scotland) Act 2014.

Section 1A: National Improvement Framework

13. This section inserts new sections 3C and 3D into the 2000 Act. Section 3C establishes a statutory National Improvement Framework for Scottish education, to be published and annually reviewed by the Scottish Ministers. The National Improvement Framework is prepared in pursuance of the duty imposed on the Scottish Ministers by section 3(1) of the 2000 Act (duty to endeavour to secure improvement in the quality of school education provided in Scotland). In reviewing the Framework, the Scottish Ministers must seek and have regard to the views of specified persons (education authorities, representatives of teachers, pupils and parents) and must evidence the way in which this has been achieved.

14. Section 3D of the 2000 Act requires that where education authorities endeavour to secure improvement in the quality of school education under section 3(2) of the 2000 Act, they must do so with a view to achieving the strategic priorities set out in the National Improvement Framework. In this context, school education requires to be education directed to the development of the personality, talents and mental and physical abilities of the child or young person to their fullest potential (as described in section 2 of the 2000 Act).

15. Finally, section 1A(3) repeals section 4 (national priorities in education) and section 5 (education authority's annual statement of improvement objectives) of the Standards in Scotland's Schools etc. Act 2000 and section 1A(4) makes consequential amendments to the interpretation provisions in section 58(1) of the 2000 Act.

Section 1B: Plans and reports

16. Section 1B inserts new sections 3E, 3F, 3G, 3H and 3I into the 2000 Act.

17. Section 3E requires the Scottish Ministers, before the beginning of the planning period, to prepare and publish a plan describing the steps they intend to take during the planning period to reduce the inequalities of outcome experienced by pupils mentioned in section 3A(2) and the educational benefits they intend to secure as a result of taking those steps. This annual plan may form part of the National Improvement Framework. The planning period is defined as meaning the period of 12 months beginning with such day as the Scottish Ministers may prescribe by regulations subject to negative procedure.

18. Section 3F requires education authorities, before the beginning of the planning period, to prepare and publish "annual plans" describing the steps they intend to take during the planning period in pursuance of the National Improvement Framework for Scottish education. The annual plan will also describe the steps they intend to take to reduce the inequalities of outcome experienced by pupils mentioned in section 3A(2) and the ways in which they will consult key partners when deciding how this should be achieved. Finally, the plan must set out any educational benefits they intend to secure as a result of taking all of these steps. Education authorities must give a copy of the annual plan to the Scottish Ministers as soon as reasonably practicable after publishing the plan. Where a new National Improvement Framework has been published, education authorities must review and, where necessary, revise their "annual plan". Such a revised plan must be published and a copy given to the Scottish Ministers.

19. Sections 3G and 3H require both education authorities and the Scottish Ministers to prepare and publish "annual reports" setting out the steps they have taken in pursuance of the National Improvement Framework for Scottish education. The reports will also describe the steps they have taken to reduce the inequalities of outcome experienced by pupils mentioned in section 3A(2). Further, they will set out any educational benefits secured as a result of taking these steps. In preparing their annual report, Scottish Ministers must take account of relevant international benchmarking data. In addition, the education authority annual report must set out the steps taken by the education authority to fulfil its duty under section 3B(3) of the 2000 Act (duty to seek and have regard to the views of, and provide appropriate advice and support to, specified persons). The education authority annual report must be given to the Scottish Ministers as soon as reasonably practicable after publishing. The Scottish Ministers must as soon as

reasonably practicable after publishing an annual report, lay a copy before the Scottish Parliament.

20. Section 3I places a duty on education authorities to prepare an annual statement which sets out the way in which they will encourage equal opportunities and in particular the observance of the equal opportunity requirements and to report thereon. Section 3I restates the previous duty which was contained in section 5 of the 2000 Act and which is repealed by section 1A(3) of the Bill.

21. Subsections (3), (4), (6) and (7) of section 1B amend section 6, section 8 and section 58(1) of the 2000 Act, re-naming school development plans as school improvement plans and requiring that those plans take account of the relevant education authority “annual plan” (including any revised plan) and annual report, thereby aligning those plans with the National Improvement Framework.

22. Subsection (5) amends section 7 of the 2000 Act, requiring that education authorities take both the National Improvement Framework and their “annual plan” (published under section 3F of the 2000 Act) into account when defining and publishing measures and standards of performance for schools in their area.

Section 1C: Guidance

23. Section 1C amends section 13 of the 2000 Act to require that the Scottish Ministers consult specified persons before issuing any guidance relating to an education authority’s duties under sections 3B (pupils experiencing inequalities of outcome) and 3D (carrying out of education authority duty under section 3(2)) of the 2000 Act (as inserted by sections A1 and 1A respectively of the Bill). Those persons include education authorities, parents of pupils, voluntary organisations and any other persons that the Scottish Ministers think appropriate.

Section 4A: Duties in relation to promotion of health

24. Section 4A amends section 2A of the 2000 Act. New subsection (4A) requires an education authority to publish an annual statement setting out the ways in which the authority proposes to carry out its health promoting duties in section 2A(2) of that Act. New subsection (4B) imposes a requirement on education authorities to prepare and publish an annual report describing the ways in which the education authority has fulfilled its health promoting duties during the relevant period (defined in new subsection (4C) as meaning the period of 12 months beginning with the day after the day on which the annual statement is published). The section restates duties previously set out under section 5 of the 2000 Act (repealed by section 1A(3) of this Bill).

Section 4B: Parental involvement

25. Section 4B amends section 2 of the Scottish Schools (Parental Involvement) Act 2006 (the 2006 Act) so as to insert a new subsection (4A), requiring an education authority to publish their strategy for parental involvement prepared under section 2(1) of that Act.

26. Subsection (3) inserts a new section 2A into the 2006 Act, requiring an education authority to prepare and publish an annual report on the activities undertaken by the authority during the

relevant period in pursuance of the general policies contained within the strategy. The “relevant period” is defined as meaning the 12 month period ending with the day on which the annual report is published. The section restates duties previously set out under section 5 of the 2000 Act (repealed by section 1A(3) of this Bill).

PART 2: GAELIC MEDIUM EDUCATION

Assessments: primary education

27. This Part sets out the assessment process to be followed by an education authority following receipt of a parental request to assess the need for GMPE as well as imposing duties on an education authority to promote and support GME and GLE and on Bòrd na Gàidhlig to publish guidance on GME and GLE.

Section 5: Assessment requests

28. Subsection (1) provides that the parent of a child who is under school age and has not commenced attendance at a primary school may make a request to the education authority in whose area the child is resident for an assessment of the need for GMPE. Subsection (1) of section 16 explains that the term “parent” has the same meaning as in the 1980 Act and so such a request can be made by the guardian of, or any person who has parental responsibilities in relation to, such a child.

29. Subsection (2)(a) states that a parental request under subsection (1) can only be made in relation to one child who must be specified in the request. However, subsection (2)(b) states that a request under subsection (1) must contain, or be accompanied by, evidence that there is a demand for GMPE from other parents of children resident in that same education authority area and who are in the same year group as the specified child. Subsection (3) provides that a parental request may also contain evidence that there is a demand for GMPE from parents of other children under school age who are resident in the same education authority area but in a different year group to the specified child.

30. Subsection (4) provides for the meaning of “year group” to be the group of children under school age who will be in the same yearly stage of education on commencing primary school in the area of the education authority that has received the request.

31. Subsections (5) and (6) state that the Scottish Ministers may, by regulations, make further provision about parental requests under section 5(1), including provision about the form of the request and how it should be made; information to be included in, or accompany, the request; and evidence for the purposes of subsection (2) and (3). These regulations are subject to negative procedure.

Section 6: GMPE assessment areas

32. Subsections (1) and (2) require that, on receipt of a parental request, an education authority must designate the area in relation to which it will undertake its assessment of the need for GMPE. Subsection (3) states that that area will be referred to as a ‘GMPE assessment area’. Subsections (4) and (5) stipulate the broad approach that the education authority must take to designating a GMPE assessment area. An education authority must, so far as reasonable, seek to

accommodate the demand for GMPE evidenced in the request and any other demand that the authority knows about from parents of children resident in that education authority area who are under school age and have not yet commenced attendance at a primary school. An education authority must also take into account factors that might affect how that demand could reasonably be met, such as the residence of the children who the demand relates to; accessibility in relation to the potential provision of GMPE in that GMPE assessment area and guidance issued by Bòrd na Gàidhlig.

Section 7: Initial assessments

33. Subsection (1) states that this section applies where an education authority receives a parental request under section 5(1). Subsection (2) further explains that, on receipt of such a request, an education authority must make an initial assessment of the need for GMPE in relation to the designated GMPE assessment area and the year group of the child specified in the request.

34. Subsections (3) and (4) state that, in making an initial assessment, an education authority must take into account any information it holds - including any information contained in the parental request - that relates to the demand for GMPE in the designated GMPE assessment area from parents of children resident in that area and who are in either the same or a different year group as the child specified in the request, provided that the children in those year groups are under school age (see the definition of “year group” in subsection (4) of section 5).

35. Subsection (5) provides that, following an initial assessment, an education authority must decide that there is a potential need for GMPE in the GMPE assessment area if it is satisfied that the condition in subsection (6) is met. If an education authority is not satisfied that that condition is met, the authority must decide that there is no potential need for GMPE in that area. The condition in subsection (6) is that the child specified in the request and the children resident in that GMPE assessment area who are in the same year group as the specified child and in respect of whose parents the authority holds information about demand as mentioned in section 5(3)(a), total 5 or more in number.

36. Subsection (7) gives the Scottish Ministers the power to amend subsection (6) by regulations so as to substitute a different total number of children. The Scottish Ministers may exercise this power so that a different number applies in different education authority areas. These regulations are subject to affirmative procedure.

37. Subsection (8) highlights that this section is subject to section 9 which explains the circumstances in which there is no duty on an education authority to undertake an initial assessment following receipt of a parental request.

Section 8: Duties of education authorities

38. This section explains the duties that apply to an education authority after it has undertaken an initial assessment of the need for GMPE in relation to a GMPE assessment area.

39. Subsection (1) states that, where an education authority decides under section 7(5)(a) that there is a potential need for GMPE in the GMPE assessment area, the authority must either carry out a full assessment of the need for GMPE in accordance with section 10 or, without carrying

out such an assessment, simply exercise its discretion to take such steps as are necessary to secure the provision of such GMPE as it considers appropriate in the GMPE assessment area.

40. Subsection (2) states that where an education authority decides under section 7(5)(b) that there is no potential need for GMPE in the GMPE assessment area, the authority must either take no further action to provide GMPE in relation to that parental request, carry out a full assessment of the need for GMPE in that area in accordance with section 10 or, without carrying out such an assessment, take such steps as are necessary to secure the provision of such GMPE as it considers appropriate in the area.

41. Whatever action an education authority decides to take following an initial assessment of the need for GMPE, subsections (4), (4A) and (5) make it clear that the authority is obliged to notify the parent who made the request, the parents of other children in the same year group who requested GMPE and the parents of other children who were included in the parental request as evidence of demand in a different year group. The authority is also obliged to publish its determination as to whether or not there is a potential need for GMPE, its decision about what action to take, the reasons for its determination and decision and information about the GMPE assessment area those relate to on its website no later than 6 weeks after receipt of the request that triggered the assessment.

42. Where an education authority decides under either subsection (1) or (2) to take steps to secure the provision of GMPE, subsection (6) requires that the authority must ensure that the GMPE is provided in the GMPE assessment area within such period after making the decision as is reasonable in all the circumstances.

Section 9: Requests that need not be considered

43. Subsection (2) states that an education authority need not comply with the duty in section 7(2) to undertake an initial assessment in relation to a parental request under section 5(1) (a “further request”) where the conditions in subsection (1) apply. These are that a parental request under section 5(1) (the “original request”) was made within the preceding 2 years in relation to the same GMPE assessment area and an initial assessment was carried out in relation to that request. This exemption from the duty in section 7(2) applies whatever the outcome of the earlier initial assessment.

44. Subsection (3) clarifies that the exception in subsection (2) applies irrespective of whether the further request is made by the same person who made the original request or by another person, or is made by a parent of a child in the same or a different year group from the child whose parent made the original request, or whether or not GMPE is in fact being provided in that GMPE assessment area.

45. However, subsection (4) gives the Scottish Ministers the power to direct that an education authority must comply with its duty under section 7(2) to undertake an initial assessment, even if the conditions in subsection (1) are met, where the Scottish Ministers consider this appropriate.

Section 10: Full assessments

46. This section applies where an education authority has received a parental request under section 5(1) and decided, under section 8, to carry out a full assessment of the need for GMPE in a GMPE assessment area.

47. In undertaking a full assessment, subsections (2) and (3) state that an education authority must provide Her Majesty's inspectors of schools (in practice this means Education Scotland), Bòrd na Gàidhlig and the National Parent Forum of Scotland with details of the request and the information the authority took into account under section 7(3) in making an initial assessment. The education authority must seek the views of those bodies on those matters and on the authority's determination under section 7(5) as to whether there is, or is not, a potential need for GMPE in the GMPE assessment area. Subsection (4) provides that Education Scotland and Bòrd na Gàidhlig must provide these views within 4 weeks of being asked. The National Parent Forum of Scotland is under no duty to provide these views but may do so and subsection (6)(a) of this section requires that the education authority must have regard to all views provided within that 4 week period, including any of the National Parent Forum of Scotland, when undertaking the full assessment.

48. Subsection (5) explains that, at the completion of a full assessment, an education authority must decide whether or not to secure the provision of GMPE in the GMPE assessment area. Subsection (5) is subject to subsection (7A) which provides that, in taking this decision the authority must decide to secure the provision of GMPE in the GMPE assessment area unless, having regard to the matters in subsection (6), the authority considers it would be unreasonable to do so.

49. Subsection (6) states that an education authority must have regard to a number of mandatory factors in making the decision under subsection (5). The mandatory factors are set out in paragraphs (a) to (o) of subsection (6). Because education authorities have the power under section 23 of the 1980 Act to provide education to pupils belonging to other education authority areas, these factors include, at paragraphs (g) and (h), a requirement for education authorities to have regard to the location of GMPE provision in neighbouring education authorities as well as the extent to which children resident in another education authority, adjacent to the GMPE assessment area, could access GMPE in that area and the extent to which children resident in the GMPE assessment area could access GMPE in another education authority, adjacent to the GMPE assessment area.

50. Subsection (8) gives the Scottish Ministers the power by regulations to modify subsections (3) and (6). This power may be exercised to change the bodies from whom views must be sought during the full assessment or to amend, remove or add a factor to the list of factors that an education authority must have regard to in deciding whether or not to secure the provision of GMPE in that GMPE assessment area.

Section 11: Procedure following full assessment

51. This section explains the duties that apply to an education authority following completion of a full assessment of the need for GMPE in a GMPE assessment area under section 10.

52. Subsections (2), (4) and (5) provide that an education authority must publish on its website, no later than 10 weeks after deciding to carry out a full assessment, a report that sets out its decision on whether or not to secure the provision of GMPE in that GMPE assessment area. The report must also set out the reasons for the authority's decision with reference to its duty under section 10(7A) and each of the factors listed in section 10(6). Finally, the report must set out the period within which the authority thinks it would be reasonable for GMPE to be provided where it has taken the decision to secure GMPE provision. Therefore, an education authority must complete a full assessment no later than 10 weeks after deciding to carry out a full assessment.

53. Subsection (3) requires the authority to send a copy of the report to the parent who made the request and to other parents who were considered in the authority's assessment of the level of demand for GMPE at the initial assessment stage.

54. Subsections (6) and (7) state that, where a full assessment leads to the authority deciding to secure the provision of GMPE in the GMPE assessment area, it must take the necessary steps to secure the provision of such GMPE as it considers appropriate. The authority must do this within such a period as is reasonable in all the circumstances.

Early learning and childcare

Section 12: Power to extend Part to early learning and childcare

55. This section gives the Scottish Ministers the power, by regulations, to require an education authority to treat a parental request made under section 5(1) as a request to assess the need for GME at the level of early learning and childcare. Currently, the Bill provides that the assessment process only applies to primary school education. Specifically, subsection (3) provides that the Scottish Ministers may, by regulations, make such provision as they consider necessary or expedient to enable an education authority to treat a parental request made under section 5(1) as a request to assess the need for GME at the level of early learning and childcare provided under sections 1(1) and 1(1A) of the 1980 Act i.e. the mandatory amount of early learning and childcare that an education authority is required to secure under section 47(1) of the Children and Young People (Scotland) Act 2014. Section 12(4)(a) provides that such regulations may do so by modifying Part 2 of the Bill or any other enactment. Section 12(4)(b) provides that such regulations may do so by providing that the Bill or any other enactment applies with or without such modifications as may be stated in the regulations. These regulations will be subject to affirmative procedure.

Promotion, support and guidance

Section 13: Duty to promote and support Gaelic medium education and learning

56. Subsection (1) provides that, irrespective of whether GME and GLE are in fact provided in an education authority area, an education authority must promote the potential provision of school education in its area by means of GME by publicising the right to make a request under section 5(1) and promote the potential provision of school education in its area by means of GLE in such manner as it thinks appropriate.

57. Subsections (2) to (4) provide that, where an education authority secures the provision of GME or GLE in pursuance of its duty under the 1980 Act to secure the provision of school

education, including mandatory early learning and childcare, it must promote and support that provision so far as reasonably practicable.

58. Subsection (5) provides that the duty of promotion under subsection (2) includes a duty to take reasonable steps to publicise the existing provision of GME and GLE in its area, in such manner as it thinks appropriate.

59. Subsection (6) provides that the duty of support under subsection (2) requires an education authority to take reasonable steps to ensure that teachers in any class providing GME or GLE have such resources, training and opportunities as are reasonably necessary to adequately and effectively provide that education and that pupils in any such class have such resources as are reasonably necessary to adequately and effectively receive and benefit from that education. An education authority must also have regard to any guidance on Gaelic education published by Bòrd na Gàidhlig under section 9 of the Gaelic Language (Scotland) Act 2005 (“the 2005 Act”) when carrying out its duty of support.

Section 14: Guidance

60. This section amends section 9 of the 2005 Act (guidance on Gaelic education) to convert the existing power of Bòrd na Gàidhlig to issue guidance on Gaelic education into a duty. Subsection (3) clarifies that this guidance may, in particular, cover the provision of Gaelic education in schools. Subsection (4) ensures that any relevant public authority having functions relating to Gaelic education must have regard to the guidance in carrying out its functions. A relevant public authority is defined in section 10(2) of the 2005 Act to mean a Scottish public authority, the Scottish Parliamentary Corporate Body and a cross-border public authority in relation to functions exercisable in Scotland that do not relate to a reserved matter. The meaning of “Scottish public authority” is given by section 126 of the Scotland Act 1998 to be “any public body public office or holder of such an office whose functions are exercisable only in or as regards Scotland”.

Definitions of “Gaelic education” and “Gaelic medium education” in other Acts

Section 15: Meaning of “Gaelic education” and “Gaelic medium education”

61. This section makes consequential amendments to the 2005 Act and the Schools (Consultation) (Scotland) Act 2010 to ensure that the definitions of “Gaelic education” and “Gaelic medium education” in those Acts are consistent with the definitions given in this Bill.

Interpretation of Part 2

Section 16: Interpretation of Part 2

62. This section contains definitions relevant to Part 2, including definitions of “full assessment”, “Gaelic language”, “Gaelic learner education”, “Gaelic medium education”, “Gaelic medium primary education”, “GMPE”, “GMPE assessment area”, “initial assessment”, “primary education”, “primary school”, “specified child” and “year group”. Various other expressions are ascribed the meanings given to them by section 135 of the 1980 Act.

PART 3: MISCELLANEOUS MODIFICATIONS OF ENACTMENTS

Section 17: Additional support for learning

63. Currently under the 2004 Act, when establishing whether a child has additional support needs or the level of provision required, an education authority has a duty to seek and take account of the views of the child, unless the authority is satisfied that the child lacks capacity to express a view (section 12). Parents and young people (aged 16-18 and in school) have a series of rights under the 2004 Act. The schedule to the Bill amends the 2004 Act to extend some of these rights to children aged 12 or over with capacity.

64. Annex A to these notes contain a ‘Keeling schedule’ which sets out the amendments made by this Bill in the context of the 2004 Act. This document is provided to assist in the scrutiny of the Bill and is for illustrative purposes only.

New section 3: Children and young persons: capacity

65. Paragraph 2 of the schedule substitutes a new section 3 into the 2004 Act. This new section 3 defines what is meant by a child “having capacity” and a young person “lacking capacity” for the purposes of the 2004 Act and expands on the definition of capacity included in the original section 3, by specifying what capacity means with reference to the particular action being carried out by the child or by the education authority. Section 3(1) provides that a child has capacity:

- a. in relation to an act that may be carried out by them under the 2004 Act, if they have sufficient maturity and understanding to carry out the act;
- b. in relation to a decision they may make under the 2004 Act, if they have sufficient maturity and understanding to make, communicate, understand and retain memory of that decision (including understanding the implications of the decision);
- c. in relation to the provision of any information, advice or a co-ordinated support plan by the education authority under the 2004 Act, if they have sufficient maturity and understanding to understand the advice, information or plan; and
- d. in relation to any view they might express as mentioned in the 2004 Act, if they have sufficient maturity and understanding to express the view.

66. New section 3(2) of the 2004 Act provides that for the purposes of the Act, a young person lacks capacity to do something if they do not have sufficient understanding to do it.

67. New section 3(3) provides that a child or young person is not to be treated as lacking capacity due to a communication difficulty if the child or young person can communicate through another human, electronic or mechanical aid.

New section 3A: Children: assessment of capacity, etc.

68. Paragraph 3 of the schedule to the Bill inserts new section 3A into the 2004 Act. Section 3A(3) requires education authorities:

- (a) to carry out an assessment of the **capacity** of the child to do something (such as to request an assessment of their additional support needs under section 6 as amended by paragraph 4 of the schedule to the Bill), or to have something done in relation to them

(such as the requirement on an authority to provide the child with information and advice as to the additional support the child requires under section 7(8)(aa) as inserted by paragraph 5 of the schedule), and

(b) to consider whether a child's doing something or having something done in relation to the child would adversely impact on the child's wellbeing. Wellbeing is defined within new section 3AA which is described below. (In the example in (a) above, this consideration would apply to whether the assessment of a child's additional support needs would adversely impact their wellbeing e.g. the authority must consider whether the child will manage the process of assessment).

69. New section 3A(1) (as read with section 3A(3)) provides that a child may only do something and the authority may (where it has a power) or must (where it has a duty) only do something, if the authority is satisfied that the child has capacity to do that thing (e.g. to exercise their rights,) or for the authority to do the thing in relation to that child.

70. New section 3A(2) provides that, before a child can exercise a right under the 2004 Act as mentioned in subsection (1)(a) or (c), they must notify the education authority of their intention to exercise that right. This is consistent with the practice followed by young people and parents in relation to the 2004 Act.

71. New section 3A(4) and 3A(5) provide that where an education authority, having carried out the capacity assessment and having considered the impact on wellbeing, (as required by subsection (3)), is satisfied that the child lacks capacity to do something or have something done in relation to them, or that it would adversely impact their wellbeing to do something or have something done in relation to them, the child or education authority (as the case may be) may not do the thing.

72. New section 3A(6) provides that where an education authority is notified that a child proposes to do something under the 2004 Act, the education authority must notify the child's parents that the authority intend to assess the child's capacity to do that thing and consider whether would have an adverse impact on the child's wellbeing to do so. Further to that, following the assessment and consideration of capacity and impact on wellbeing, the education authority must notify both the child and the child's parents of the results of the assessment and consideration.

New section 3AA: Assessment of wellbeing

73. Paragraph 3 of the schedule to the Bill also inserts new section 3AA into the 2004 Act which provides that where an education authority or a Tribunal is required to consider whether the wellbeing of a child aged 12 years and over would or would not be adversely affected, they are required to do so by reference to the extent to which the child is or would be safe, healthy, achieving, nurtured, active, respected, responsible and included (section 3AA(2)). These factors replicate those specified in section 96 of the Children and Young People (Scotland) Act 2014, which are to be considered where any person is required to assess the wellbeing of a child under that Act. New section 3AA(3) and (4) make provision for Scottish Ministers to be able to adjust the list of factors specified in section 3AA(2) of wellbeing by regulation, and to require Scottish Ministers to consult such persons as they consider appropriate prior to making any such regulations.

New section 3B: Rights of parents of children aged 12 or over

74. Paragraph 3 of the schedule to the Bill also inserts new section 3B into the 2004 Act to provide that where a right is conferred on both a child who is aged 12 years or over and a parent of such a child under the 2004 Act, the parent may exercise that right if the parent wishes to do so. This includes the circumstances where their child does not wish to exercise that right and does not wish their parents to exercise that right.

Amendment to section 6: children and young persons for whom education authority is responsible

75. Paragraph 4(a) of the schedule to the Bill amends section 6(3) of the 2004 Act by inserting a new paragraph (aa) which allows a child aged 12 or over for whose school education the education authority is responsible, and who the authority is satisfied has capacity and where it would not adversely impact their wellbeing, to request that the education authority establish whether the child has additional support needs or requires a co-ordinated support plan. Paragraph 4(b) of the schedule to the Bill amends section 6(4) of the 2004 Act to provide that, where an education authority establishes that a child has additional support needs following a request made by a child, it must inform both the child and the child's parent of that.

Amendment to section 7: other children and young persons

76. Paragraph 5(a) of the schedule to the Bill amends section 7(3) of the 2004 Act to insert new paragraph (aa) which allows a child aged 12 or over for whose school education the education authority is *not* responsible, and who the authority is satisfied has capacity and where it would not adversely impact their wellbeing, to request that an education authority establish whether the child has additional support needs or would require a co-ordinated support plan if the education authority were responsible for the child's education.

77. Paragraph 5(b) of the schedule to the Bill amends section 7(8) of the 2004 Act. The effect is that where an authority establishes under section 7 that a child has additional support needs, or would if the authority were responsible for their school education require a co-ordinated support plan, the authority is required under subsection (7) to provide a child that makes a request (referred to under section 7(3)(aa)), with information and advice. That information and advice would be on the additional support required by the child, if the authority is satisfied that the child has capacity to understand it and if it is not considered to have an adverse impact on the child's wellbeing to receive the advice and information.

78. Paragraph 5(c) inserts new subsections (9) and (10) into section 7 of the 2004 Act to allow an education authority to request information and advice from the managers of an independent or grant aided school for the purposes of assessing the child's capacity where a request is made by a child under section 7(1).

Amendment to section 8: Assessments and examinations

79. Section 8(1) of the 2004 Act applies where an education authority proposes to establish whether a child or young person has additional support needs or requires, or would require, a co-ordinated support plan or a review of such a plan, and where "an appropriate person" requests that the education authority arranges for a child or young person to undergo an assessment or

examination to establish this. In that case the authority must comply with such an assessment request unless it is unreasonable.

80. Paragraph 6(a) of the schedule to the Bill inserts new section 8(2)(b)(ia) into the 2004 Act, the effect of which is that a child aged 12 years or over is “an appropriate person” for the purposes of subsection (1) and may therefore make an assessment request. Paragraph 6(b) of the schedule to the Bill inserts new subsection (2A) into section 8 to provide that a child aged 12 years or over is only an appropriate person and therefore able to make an assessment request if:

- a. The education authority is satisfied there *has not been* a significant change in the circumstances of the child since the child made a request referred to in section 6(2), 7(1) or 10(4) of the 2004 Act. That is to establish if the child has additional support needs, if the child requires, or would require a co-ordinated support plan, or if the child requires a review of such a plan was made, thus indicating a significant change which might have affected the child’s capacity since it was assessed by the authority under those sections;
- b. Where the authority consider that *there has been* a significant change in the circumstances of the child since the child made a request in section 6(2), 7(1) or 10(4), the authority is satisfied that the child has capacity to make the assessment request under section 8(1) at the time the request is made, or
- c. No such request was made by the child under section 6(2), 7(1), or 10(4), and the authority is satisfied that the child has capacity to make an assessment request under section 8(1).

Amendments to section 8A: Assessments and examinations: further provision

81. Paragraph 7 of the schedule to the Bill amends section 8A of the 2004 Act to allow a child aged 12 years or over, for whose school education the education authority is responsible, to request that the education authority arranges for the child to undergo a process of assessment or examination for the purpose of considering their additional support needs as long as the authority is satisfied the child has capacity to make the request.

Amendments to section 9: Duty to prepare a co-ordinated support plan

82. Paragraph 8 of the schedule to the Bill amends section 9(2)(d) of the 2004 Act to provide that, where an authority establishes that a child for whose school education it is responsible, requires a co-ordinated support plan following a request under sections 6(2), 7(2)(a) or 10(4), the plan prepared must contain the name and appropriate contact details of an officer of the authority from whom the child can obtain advice and information as long as the authority is satisfied that the child has capacity to understand the advice and information and where receiving the information would not adversely impact their wellbeing. It also makes various other consequential amendments to subsection (2)(d).

Amendments to section 10: Reviews of co-ordinated support plans

83. Paragraph 9 of the schedule to the Bill amends section 10 of the 2004 Act which relates to the requirements on education authorities to review co-ordinated support plans previously prepared. Paragraph 9 inserts new section 10(5)(aa) which enables children aged 12 or over to request a review of their co-ordinated support plan, where the authority is satisfied the child has capacity and where it would not adversely impact their wellbeing.

Amendments to section 11: Co-ordinated support plans: further provision

84. Paragraph 10 of the schedule to the Bill amends section 11 of the 2004 Act which specifies further matters in relation to the establishment and review of co-ordinated support plans. This section enables parents and young people to be informed: (a) that it is proposed by the education authority to establish whether the child or young person requires a co-ordinated support plan, or a review of the co-ordinated support plan prepared; and (b) of the outcome of those proposals, and as a result of the outcome, any rights to make a reference to the Additional Support Needs Tribunals for Scotland under section 18 of the 2004 Act. The effect of new section 11(3)(aa) is to require an authority to provide this information to a child aged 12 or over (provided the child has capacity to understand the information and where it would not adversely impact their wellbeing to receive information as previously set out by section 6(3)(aa), 7(3)(aa) and 10(5)(aa)) where the authority's proposal arises as a result of a request to:

- establish whether the child has additional support needs or requires a co-ordinated support plan under section 6(2), or,
- establish whether the child has additional support needs or would require a co-ordinated support plan if the education authority were responsible for the education of the child under section 7(2), or,
- review a co-ordinated support plan under section 10(4).

85. Section 11(5) requires education authorities to provide a copy of any co-ordinated support plan or amended plan prepared to parents and young people. The effect of new section 11(5)(a)(ia) is to require authorities to provide copies of these plans to children aged 12 or over with capacity where they have made the original request either to establish that they require a co-ordinated support plan or that it should be reviewed. Section 11(5)(a) will still require the authority to give a copies of these plans to their parents in this scenario.

Amendment to section 12: Duties to seek and take account of views, advice and information

86. Paragraph 11 of the schedule to the Bill is a technical consequential amendment of section 12 of the 2004 Act required as a result of the new definition of "capacity" in the substituted section 3 of the 2004 Act.

Amendment to section 13: provision of information etc. on occurrence of certain events

87. Paragraph 12(a) of the schedule to the Bill is a technical consequential amendment to section 13(4A) of the 2004 Act required as a result of the new definition of "capacity" in the substituted section 3 of the 2004 Act

88. Paragraph 12(b) of the schedule to the Bill inserts new section 13(5)(za) which requires an education authority to obtain consent from a child who is aged 12 years or over and who has capacity to give consent to the authority providing an appropriate agency or agencies with information in relation to post school transition. Paragraph 12(b) also makes a consequential amendment to subsection (5)(a) to make it clear that in relation to a child who is younger than 12 years, the parent requires to give this consent.

Amendment to section 14: supporters and advocacy

89. Paragraph 13 of the schedule to the Bill amends section 14(2) of the 2004 Act, the effect of which is to allow a child who is 12 years or over to have a supporter present at discussions, or an advocate to conduct discussions on the child's behalf with the education authority regarding the child's education provision. This request can be made only if the education authority is satisfied that (a) the wishes of the child are not unreasonable (b) the child has capacity to participate in discussions or make representations.

Amendment to section 15: mediation services

90. Paragraph 15 of the schedule to the Bill inserts new subsection (1A) into section 15 which places a duty on education authorities to seek and take account of the views of a child in respect of the matter disagreed upon which is the subject of mediation (for example in a mediation between the parent of the child and the education authority in relation to a concern about the provision to meet the child's additional support needs).

Amendment to section 16: dispute resolution

91. Paragraph 16(a) of the schedule to the Bill amends section 16(1) of the 2004 Act to allow the Scottish Ministers by regulations to make provision about the resolution of disputes between an education authority and a child aged 12 or over (who the authority is satisfied has capacity to express a view or make a decision for the purpose of resolving disputes to do so) concerning the exercise of the authority's functions under the 2004 Act.

92. Paragraph 16(b) of the schedule to the Bill amends section 16(3) to make it clear that such regulations (a) must not require any child to use any procedure established in accordance with the regulations for the resolution of any dispute with the authority or to pay any fee or charge for using any procedure, and (b) do not affect the child's entitlement to refer any matter to the Tribunal.

Amendment to section 18: references to Tribunal

93. Paragraph 17(a) of the schedule to the Bill amends section 18(2) of the 2004 Act, the effect of which is to allow a child referred to in new subsection (2A) to make a reference to the Tribunal in connection with any education authority decisions, the provision of information by authorities or any education authority failures under the 2004 Act.

94. Paragraph 17(b) of the schedule to the Bill inserts new subsection (2A) into section 18. New subsection (2A) provides that a child may only make a reference to the Tribunal under new section 18(1) if the child is aged 12 or over, and if the Tribunal is satisfied that it would not have an adverse impact on the child's wellbeing. The effect of this new subsection is to require the Tribunal to assess the capacity and consider the impact on the child's wellbeing if they seek to make a reference to the Tribunal.

95. Paragraph 17(c) of the schedule to the Bill amends section 18(3) of the 2004 Act to make it clear that an education authority decision (a) in relation to the capacity of a child aged 12 or over to exercise a right and (b) that the authority is satisfied in relation to a matter relating to the

impact on the wellbeing of a child are decisions which may be referred to the Tribunal under section 18.

96. Paragraph 17(d) of the schedule to the Bill inserts new subsections (7A), (7B) and (7C) into section 18 of the 2004 Act. The effect is that a second or subsequent placing request reference to the Tribunal within a 12 month period cannot be made regardless of whether the reference is in relation to a placing request at the same school or a different school.

97. The further effect is that an exception is made to this general provision, where a placing request reference has been made within the 12 month period but withdrawn prior to any hearing. In such circumstances, a further request can be made within the 12 month period and the President of the Tribunal will have discretion to agree to its proceeding.

98. Paragraph 17(d) of the schedule to the Bill also inserts new section 18(8) into the 2004 Act. The effect of new section 18(8) is that it is not competent for a further reference to be made to the Tribunal under section 18(1) in relation to a decision of an authority on capacity and wellbeing of a child, within 12 months of a reference being made, unless:

- a. a review of a co-ordinated support plan prepared for the child has been carried out;
- b. any such plan has been amended; or
- c. where the previous reference related to subsection (4)(c) of section 18 of the 2004 Act a co-ordinated support plan has been prepared for the child.

99. However, despite the above, it will be competent for a child to make a reference to the Tribunal in relation to an education authority decision on their capacity and wellbeing if it relates to the exercise of a different right under the 2004 Act (for example right to request assessment and right to express a view) within 12 months.

Amendment to section 19: powers of Tribunal in relation to a reference

100. Paragraph 18 of the schedule to the Bill amends section 19(2) of the 2004 Act to allow the Tribunal to confirm or overturn the decision of an education authority in relation to the child's capacity and wellbeing.

Amendment to section 26: publication of information by education authority

101. Paragraph 19(a) of the schedule to the Bill amends section 26(2) of the 2004 Act, the effect of which is to require education authorities to publish and keep under review information on the officer or officers from whom children aged 12 and over with additional support needs can obtain advice and information about the provision for such needs.

102. Paragraph 19(b) of the schedule to the Bill amends section 26(2A) of the 2004 Act, the effect of which is to require education authorities to provide children aged 12 or over with the information (or revised information) referred to in section 26(2).

Amendment to section 27: code of practice and directions

103. Paragraph 20 of the schedule to the Bill amends section 27 of the 2004 Act to provide that the code of practice published by the Scottish Ministers under section 27 (which code provides guidance as to the exercise by authorities and agencies of the functions conferred on them by virtue of the 2004 Act) may include provision as to:

- the carrying out of capacity assessments (in terms of new section 3A(3)(a));
- the consideration of whether something would adversely impact on the wellbeing of the child (in terms of new section 3A(3)(b)); and
- the assessment of whether there has been a significant change in the circumstances of a child (in terms of new section 8(2A)(a)).

Amendment to section 27A: Collection of data on additional support needs

104. Paragraph 20A of the schedule to the Bill amends section 27A of the 2004 Act to remove the current provision at section 27 and to introduce a regulation-making power to place requirements on Scottish Ministers to collect data. Section 27(1A) requires Scottish Ministers to consult prior to making a regulation using the power.

Amendment to section 29: Interpretation

105. Paragraph 20B of the schedule to the Bill introduces a new definition of ‘young person’ to the 2004 Act and deletes the definition of young person currently within the 2004 Act.

Amendment to section 31: duty to inform in writing or alternative permanent form

106. Paragraph 21 of the schedule to the Bill amends section 31 of the 2004 Act which requires education authorities, where they have to inform parents or young persons of any matter, to do so in writing or alternative permanent form. The amendment extends this requirement to apply also in relation to children aged 12 or over.

Section 31A: provision of support service

107. Paragraph 22 of the schedule to the Bill inserts new section 31A into the 2004 Act which requires the Scottish Ministers to secure the provision of a support service to be available free of charge to children aged 12 or over who wish to exercise, or are considering exercising, their rights or whose parents wish to exercise, or are considering exercising, their rights in relation to their children under the 2004 Act.

108. Section 31A(2) describes a support service as a service under which:

- a. advice, assistance and information including legal advice in relation to relevant rights are provided to children aged 12 or over;
- b. a person (supporter or advocate) is provided who could be *present at* discussions with the education authority or could conduct discussions or make representations on behalf of such a child in relation to the relevant rights of that child;
- c. a service to allow a person (for example an advocate) to *conduct* discussions with education authorities or make representations to them on behalf of such a child; and

- d. an advocacy service provided to such children whereby a person conducts discussions and makes representations to the Additional Support Needs Tribunals for Scotland.

109. Section 31A(5) defines the “relevant rights” in relation to which children can seek information and advice. These are, for a child who is aged 12 years, any right which is conferred on the child by the 2004 Act including the right to receive any document and information or the right to give consent in relation to any matter. In relation to the parents of such a child, “relevant rights” means any rights conferred on the parents by or under the 2004 Act.

110. New section 31A(3) and (4) provides that any person providing the support service may seek the views of the child as respect the exercise of relevant rights or an action to be carried out in relation to the child under the 2004 Act.

Amendment to schedule 1: Additional Support Needs Tribunals for Scotland

111. Paragraph 23 of the schedule to the Bill amends paragraph 11 of schedule 1 to the 2004 Act which requires the Scottish Ministers to make rules as to the practice and procedure of the Tribunals. New paragraph (fa) introduces a rule-making power in relation to the seeking of the views of children in the circumstances where their parent is making a reference to the Tribunals. A further amendment is that the rules may include provision enabling the decision of an authority as to whether a child aged 12 or over has capacity and whether something would adversely impact their wellbeing, to be decided by a convener of a Tribunal alone, without holding a hearing. This includes the practice and procedures relating to matters which will be decided by a convener alone, and the determinations that may be made by applying section 19(2) to these decisions.

Section 17A: Children unable to attend early learning and childcare

112. Section 14 of the 1980 Act gives the Scottish Ministers the power (where a pupil is unable, or it would be unreasonable, to expect a pupil to attend a suitable educational establishment to receive education, due to some extraordinary circumstance) and the duty (where a pupil is unable, or it would be unreasonable, to expect a pupil to attend a suitable educational establishment to receive education due to the child’s prolonged ill health) to make special arrangements for the pupil to receive education elsewhere than at an educational establishment.

113. Section 17A of the Bill inserts a new subsection (4) into section 14 of the 1980 Act, to provide that this power and duty also applies in relation to eligible pre-school children who receive their early learning and childcare entitlement under section 35 of the Standards in Scotland’s Schools etc. Act 2000, that is, those children receiving their early learning and childcare entitlement at a partner provider setting. Section 35 allows education authorities to enter in to arrangements with providers in the private or third sector to deliver the funded statutory entitlement to early learning and childcare.

114. New subsection (4)(a) provides that in relation to eligible pre-school children receiving their early learning and childcare entitlement at partner provider settings, the reference in subsection (1) to “a suitable educational establishment for the purpose of receiving education” is to be read as if it were a reference to “a place where early learning and childcare is provided for the purposes of receiving early learning and childcare”. This change is required as not all

eligible pre-school children will be attending “educational establishments” as defined in section 135 of the 1980 Act: some of them will attend childminders and playgroups, which are not covered by this definition.

115. New subsection (4)(b) provides that in relation to eligible pre-school children receiving their early learning and childcare entitlement at partner provider settings, the reference in subsection (1)(b) to “an establishment”, is to be read as if it were a reference to “a place” and is required for the same reason.

116. New subsection (4)(c) provides that in relation to eligible pre-school children receiving their early learning and childcare entitlement at partner provider settings, the reference in subsection (1) to “education elsewhere than at an educational establishment” is to be read as if it were a reference to “early learning and childcare at a place other than a place where such learning and childcare is normally provided”. This amendment is also required for the same reason.

Section 17B: Learning hours

117. Section 17B inserts new section 2ZA into the Education (Scotland) Act 1980, and makes amendments to section 133 of the 1980 Act.

118. Section 2ZA(1) places a duty on education authorities and managers of grant aided schools to make available each year to pupils for whose education they are responsible, no fewer than the number of learning hours prescribed by Scottish Ministers.

119. Section 2ZA(2) provides that education authorities are responsible for the school education of pupils who belong to their authority area (a concept which is determined by the residence of their parents), and who either attend a school managed by that authority, or are educated by virtue of arrangements made by that authority. Managers of grant-aided schools are responsible for the school education of pupils who attend their grant-aided school, other than where the pupil is attending in consequence of arrangements made by that pupil’s education authority, in which case, the authority remains responsible.

120. Section 2ZA(3) allows an exception to be made to the application of the minimum hours duty in section 2ZA(1), where an education authority or the managers of a grant aided school are satisfied that it would not be in an individual pupil’s best interests to receive the prescribed number of learning hours.

121. New section 2ZA(4) of the 1980 Act provides that a different number of learning hours and/or a different definition of what constitutes learning hours may be prescribed for different purposes, and for different types of pupils.

122. New section 2ZA(5) of the 1980 Act defines learning hours as hours of school education of a type prescribed by Scottish Ministers by regulation. School education is defined to exclude early learning and childcare. A school year is defined as the 12 month period beginning on 1 August.

123. Subsection 17B(3)(a) and (b) amend section 133 of the 1980 Act (Regulations, etc.) to provide that regulations made under new section 2ZA(1) are subject to affirmative procedure.

124. Subsection 17B(3)(c) and (d) amend section 133 of the 1980 Act to extend to managers of grant aided schools, as well as to education authorities, the right to apply to Scottish Ministers for a direction that any regulations made under section 2ZA(1) shall not apply to those managers or that authority, or shall only apply subject to such modification as the Scottish Ministers may specify. The Scottish Ministers may only make such a direction if it appears to them that application of the regulations would be unreasonable.

Section 18: Provision of school meals

125. Section 18(2) of the Bill substitutes a new section 53 (provision of school meals) into the 1980 Act.

126. Section 53(1) provides that the section applies to pupils in attendance at public schools and other educational establishments under the management of an education authority (this includes eligible pre-school children receiving early learning and childcare at education authority managed providers) and to pupils who receive their funded entitlement to early learning and childcare under section 35 of the Standards in Scotland's Schools etc. Act 2000, that is those who attend a partner provider setting.

127. Subsection (2) requires an education authority to provide pupils with a free school lunch if they meet one of the income-related criteria set out in subsection (7). An authority may also secure the provision of free school lunches to such pupils. This means that education authorities can provide the lunches directly themselves, or they can pass on funding or arrangements to others, including partner providers delivering the entitlement to early learning and childcare. The option of securing a free school lunch is especially important for eligible pre-school children receiving their early learning and childcare entitlement at a partner provider, as those can be small businesses, third sector organisations or childminders; and, it is important to ensure that while the legal responsibility is on the education authority to provide a free school lunch to those eligible, allowing the authority to secure the provision of the lunches by others, gives it flexibility in terms of the delivery or physical provision of the meals.

128. Subsection (3) provides that an education authority has power to provide or secure the provision of other food and drink to pupils already receiving a free school lunch under subsection (2), because they satisfy the eligibility criteria set out in subsection (7). Further, an education authority has power to provide or secure the provision of food and drink, including school lunches, to pupils who are not entitled to a free school lunch under subsection (2). This amendment is in consequence of the amendment to subsection (2) outlined above.

129. Subsection (4) provides that where an education authority chooses to provide or secure the provision of food or drink to pupils under subsection (3), they can either do so free of charge or charge pupils for it. This amendment is also in consequence of the amendment to subsection (2) outlined above.

130. Subsection (5) provides that an education authority may exercise its power under subsection (4) to provide or secure the provision food and drink free of charge to pupils who

satisfy such conditions as the authority sees fit. For example, the education authority could choose to provide or secure free food and drink to pupils who are in a particular yearly stage of education. It also allows education authorities to provide or secure food and drink at such times of the day as they see fit, for example, at lunchtime or at a breakfast club.

131. Subsection (6) makes clear that an education authority which chooses to charge for food or drink under subsection (4) must charge the same amount for the same quantity of food and drink at each school within the education authority. This means they cannot charge one pupil one amount and another pupil a different amount for the same product (within the same school or another school within the same local authority), for example a sandwich.

132. Subsection (7) sets out the criteria for eligibility for those children who the education authority is obliged to provide a free school lunch under subsection (2). A pupil falls within subsection (7)(a) where they, or their parents, are in receipt of income support, an income-based job seekers allowance, or an income-related allowance. A pupil will fall within subsection (7)(b) if their parents are in receipt of support provided under Part 6 of the Immigration and Asylum Act 1999 (support given to those whose asylum claims are on-going and support given to refused asylum seekers).

133. Subsection (8) enables the Scottish Ministers, by regulations, to modify the eligibility criteria for free school lunches set out in subsection (7). This means that the Scottish Ministers can make changes to the eligibility criteria resulting from, for example, changes to the welfare system, or where they wish to extend free school lunches to a new category of pupil, for example, an additional yearly stage of primary school.

134. Subsection (9) provides that an education authority must provide facilities, as it considers appropriate, for pupils who bring their own food and drink to schools and other educational establishments under their management: for example, seating for pupils who bring packed lunches. This duty does not extend to partner provider premises, therefore education authorities do not have a duty to provide or to secure the provision of facilities for pupils at partner provider settings.

135. Subsection (10) sets out the places where an education authority can provide or secure the provision of food and drink, namely, on the premises of the school, at other educational establishments under their management, at any place used by partner providers to provide early learning and childcare, or at any other place, for example, a community centre within the local authority.

136. Subsection (11) specifies that in relation to the provision of food and drink under the new section 53, any pupil for whom the education authority has made special arrangements under section 14 of the 1980 Act, for example placement at a private educational establishment, may still be deemed to be in attendance at a public school. This decision is at the discretion of the education authority. This means that if an education authority places an excluded pupil in an educational facility run by a voluntary organisation, the education authority would still be able to provide food and drink, free of charge, to that pupil, in the same way as they provide food and drink to other pupils in schools or educational establishments under their management.

137. Subsection (12) of the new section 53 defines a school lunch as meaning anything provided or the provision of which is secured by the education authority (for example at partner providers) in the middle of the day that the education authority deem to be appropriate for pupils to consume as a meal at that time of day.

138. Section 18 of the Bill also inserts a new section 53ZA into the 1980 Act. Section 53ZA allows Scottish Ministers to make regulations imposing a requirement on education authorities to provide or secure the provision of a free meal (of a description prescribed in the regulations and at a time of day prescribed in the regulations) other than a free school lunch for eligible pre-school children who meet the free school lunch criteria at section 53(7). For example Scottish Ministers could require education authorities to provide a breakfast or evening meal, for eligible pre-school children who meet the free school lunch criteria, which suits the timing of their session.

139. Section 18(3) makes a consequential amendment to section 133(2YA) of the 1980 Act (regulations etc.), which ensures that regulations made under subsection (8)(a)(iii) and (8)(b) of the new section 53 are subject to affirmative procedure (for example where a description of a pupil is added to subsection (7) by reference to their yearly stage of education or such other description). It also ensures that any regulations made under section 53ZA(1) and 54A(1) are also subject to affirmative procedure: for example, regulations that require education authorities to provide meals other than school lunches, or regulations requiring an education authority to pay a grant of a specified amount to or in respect of a pupil of a specified description for the provision of clothing for the pupil. This procedure does not apply to regulations made under subsection (8)(a)(i) and (ii) which add a description of a pupil by reference to any benefit, allowance, or tax credit. These regulations will be subject to negative procedure by virtue of section 133(2) of the 1980 Act.

140. Consequential amendments have been made by section 18 of the Bill to update the references in sections 56A and 56E to various subsections of the new section 53. They are required as a result of the restructuring of section 53. These amendments will maintain the current position in relation to who the nutritional requirements and sustainable development guidance applies to. The duties will not be extended to partner providers. This is because nutritional regulations have already been made under section 56A, which exempt pre-school children who have different nutritional needs from school children; and, it would be too onerous to expect partner providers, which include childminders, to adhere to sustainable development guidance.

Section 18A: Clothing grants

141. This section inserts new section 54A into the 1980 Act. Section 54A introduces a regulation-making power enabling the Scottish Ministers to make regulations requiring an education authority to provide grants of a specified amount for school clothing for certain specified pupils. Subsection (4) defines “specified” as meaning specified in regulations.

142. Subsection (2) provides that such regulations may make the payment of a grant subject to specified conditions (including conditions as to repayment). Subsection (3) provides that regulations can make different provision for different purposes. For example, a different amount might be specified for secondary school pupils compared with primary school pupils.

143. Section 18(3) of the Bill amends section 133 of the 1980 Act (regulations etc.) to provide that the section 54A regulation-making power will be subject to affirmative procedure.

Section 19: Enforcement of statutory duties

144. Section 19 of the Bill amends section 70 of the 1980 Act. Currently section 70(1) of the 1980 Act allows the Scottish Ministers to make an order declaring an education authority, the managers of a school or educational establishment, or other persons to be in default of a duty or duties following a complaint by any person that the body concerned has failed to comply with a duty imposed on them by or for the purposes of an education related enactment. The order may require the body concerned to comply with the relevant duty before a date stated in the order.

145. New subsection (3) provides that, despite subsection (2) (in relation to what an education enactment includes), no order can be made regarding the types of duty failures specified in new subsection (4) (which are under the jurisdiction of the Additional Support Needs Tribunals for Scotland in terms of section 18 of the 2004 Act and detailed at paragraph 115). These duties only apply to education authorities.

146. Subsection (4)(a) relates to:

- a failure by an education authority to prepare a co-ordinated support plan for a child or young person who requires one,
- a failure to prepare one by the time required by regulations made under section 11(8)(f)(i),
- a failure by an education authority to provide additional support as outlined by section 9(2)(a)(iii) of the 2004 Act,
- a failure by the education authority to carry out a review of a co-ordinated support plan as required by section 10(2),
- a failure by an education authority to carry out a review of a co-ordinated support plan, within the time required by regulations made under section 11(8)(f)(ii) of the 2004 Act, and
- a failure by the education authority to comply with its duties under section 12(6) and 13 in respect of a child or young person.

147. Subsection (4)(b) relates to a failure by an education authority in relation to a decision or information mentioned in section 18(3) (such as a decision that a child or young person does or does not require a co-ordinated support plan, whether or not a review has taken place). This subsection also relates to a failure by an education authority to include information detailed by section 9(2)(a) where a co-ordinated support plan exists.

148. Subsection (4)(c) relates to a failure by the education authority to inform the child or young person, or the child or young person's parent, of its intention to establish whether a co-ordinated support plan is required, where a request has been received by the education authority to establish if a child or young person requires a co-ordinated support plan, by the time required by regulations under section 11(8). The subsection also relates to a failure by an education

authority to inform the child or young person, or the child or young person's parent, of its decision not to comply with the request within the regulated timescale.

149. Subsection (4)(c) also relates to a failure to establish whether the child or young person requires a co-ordinated support plan within the timescales required by regulations made under section 11(8), where the education authority has informed a child or young person, or a child or young person's parent, of its intention to establish if the child or young person requires a co-ordinated support plan.

150. Subsection (4)(d) relates to any failure by an education authority under subsection (4)(a), (b) or (c) (as referred to above) which also amounts to a failure to provide adequate and efficient provision for the additional support needs of each child or young person for whose school education it is responsible, or a failure to make appropriate arrangements for keeping the additional support needs of each such child under consideration (as required by section 4 of the 2004 Act).

151. Subsection (5) allows the Scottish Ministers, by regulations, to prescribe a procedure to be followed in relation to the investigation of a complaint, or in relation to the determination as to whether or not an order should be made.

152. Subsection (6) allows for regulations to make provision for different purposes (such as for different timescales to be provided for in relation to different types of complaint).

Section 20: Appointment of Chief Education Officer

153. This section requires all education authorities to appoint a Chief Education Officer to advise the authority on carrying out the authority's legislative functions under this Act and other education Acts. Subsection (3) provides that the Scottish Ministers may prescribe the qualifications required for this role by regulations and that the Chief Education Officer must be appropriately experienced, as determined by the authority. This provision will not preclude authorities from moving to a model of shared service delivery of functions such as education. There is currently no statutory requirement for education authorities to appoint such an officer. However, section 78 of the Education (Scotland) Act 1980 stipulated that education authorities had to employ a 'director of education, who shall be the chief education officer of the authority', although the legislation did not prescribe required qualifications. This requirement was removed by the Local Government etc. (Scotland) Act 1994 to as it was considered that this should be left to the discretion of the new unitary authorities.

Section 21: Registration of independent schools

154. Part 5 of the 1980 Act provides the legal framework for the registration and regulation of independent schools. Section 98 of the 1980 Act provides for the Scottish Ministers to consider applications for registration as independent schools. Section 98A(5) sets out the grounds by which the Scottish Ministers may not be satisfied in relation to certain matters. These grounds include that a teacher (or proposed teacher) is not a proper person to be a teacher in any school in that s/he is disqualified in terms of Part 5, is barred from regulated work with children in accordance with the Protection of Vulnerable Groups (Scotland) Act 2007 or is a "prescribed person". Section 98A(6) enables the Scottish Ministers by regulations (subject to affirmative

procedure in accordance with section 133(2C) of the 1980 Act) to set out what a prescribed person is. The Scottish Ministers intend to exercise this power to require that all teachers in independent schools should be General Teaching Council for Scotland (GTCS) registered.

155. Section 21 amends section 133 of the 1980 Act (regulations etc) to insert new subsections (2D) and (2E). Subsection (2D) will allow the Scottish Ministers, when making regulations under section 98A(6) of the 1980 Act (to set out who is a prescribed person), to also make different provisions for different purposes and to make incidental, supplementary, consequential, transitional, transitory or saving provisions and to modify any enactment. The effect is to enable a phased implementation of the policy to require that all teachers in independent schools are to be GTCS registered; the Scottish Ministers will be able to make exceptions to be applied in respect of the current teacher workforce, should that be necessary to secure an effective transition to the new arrangements. Subsection (2E) makes it clear that “enactment” includes an Act of the Scottish Parliament (or any instrument made under an Act of the Scottish Parliament); without this, the Interpretation Act 1978 (which covers the 1980 Act) would have the effect that “enactment” would exclude an Act of the Scottish Parliament.

Section 22: Employment of teachers in grant-aided schools

156. Section 22 amends section 90(1) of the 1980 Act (employment of teachers). Section 90(1) currently enables the Scottish Ministers, by regulations made under section 2 (Scottish Ministers may prescribe standards etc. for education authorities) or 74(1) (payment of grants to be subject to conditions), to prescribe that only registered teachers (defined in section 135(1) of the 1980 Act as a teacher registered under the Public Services Reform (General Teaching Council for Scotland) Order 2011 (i.e. registered with the GTCS)) shall be employed or continue to be employed as teachers by education authorities in the educational establishments to which the regulations apply. Section 22 extends section 90(1) to cover managers of grant-aided schools with the effect that regulations under section 2 or 74(1) of the 1980 Act can prescribe that only teachers registered with the GTCS shall be employed as teachers in grant-aided schools. Section 90(1) enables regulations to make exceptions, thereby retaining flexibility (similar to independent schools) to make exceptions to the requirement that teachers in grant-aided schools must be GTCS registered which will support a phased implementation of the requirement.

Section 22A: Head teachers: education and training standards

157. Section 22A(1) and 22A(2) of the Bill insert new sections 90A and 98DA into the 1980 Act and section 22A(3) amends section 133 (regulations) of that Act

Section 90A: Headteachers: education and training standards (education authority/grant-aided)

158. Subsections (1) and (2) of section 90A extend the regulation-making power in sections 2 and 74(1) of the 1980 Act to allow Ministers to specify the standards of education and training which prospective head teachers at grant-aided and education authority-managed schools are required to have before they can be appointed to the position.

159. Subsection (3) provides Ministers with flexibility in such regulations to make different provision for different purposes while allowing for exceptions and exemptions from the general rule that prospective headteachers will be required to have obtained the standards and training

specified, before being permanently appointed. It also allows the regulations to make consequential, transitional, transitory or savings provision.

Section 98DA: Headteachers: education and training standards (independent schools)

160. Section 98DA(1) gives Ministers a regulation making power to make provision for the education and training which prospective head teachers at independent schools are required to have before they can be appointed to the position. Section 98DA(2) makes it clear that such provision can apply to independent schools already registered or to a school which is the subject of an application for registration as an independent school (under section 98A of the 1980 Act).

161. Subsection (3) provides Ministers with flexibility in regulations under section 98DA(1) to make different provision for different purposes while allowing for exceptions and exemptions from the general rule that prospective headteachers will be required to have obtained the standards of education and training specified before being permanently appointed.

162. Section 22A(3) amends section 133 of the 1980 Act (regulations). New subsection (2BA) of section 133 disapplies section 133(2) (the default negative procedure) from applying to regulations under section 2 and 74(1) that make provision under section 90A or to regulations under section 98DA(1) and provides that such regulations will instead be subject to the affirmative procedure.

Section 23: Provision of early learning and childcare: children with guardians

163. This section amends section 47(3) of the 2014 Act.

164. Subsection (2) amends section 47(3) to ensure that all children aged 2 and over, who have or have had a guardian appointed under section 7 of the Children (Scotland) Act 1995 (“the 1995 Act”) are entitled to the mandatory amount of early learning and childcare provided for under Part 6 of the 2014 Act. The provision captures the small group of children who were excluded from the mandatory amount of early learning and childcare; those children described in section 71(3)(f) of the 2014 Act, who had a guardian appointed under section 7 of the 1995 Act, but who were not at risk of becoming looked after. The amendment puts these children on a par with others who are looked after, the subject of a kinship care order or who have a court-appointed guardian under section 11 of the 1995 Act.

165. Subsection (3) makes a consequential amendment to section 49(1)(a) of the 2014 Act, which refers to section 47(3)(a) of the 2014 Act. This subsection substitutes the reference to section 47(3)(a) with a reference to section 47(3)(a)(i).

PART 4: GENERAL

Section 25: Regulations

166. This section relates to the powers of the Scottish Ministers contained in the Bill to make subordinate legislation. It provides standard powers for regulations to make such ancillary provision as the Scottish Ministers consider appropriate and to make different provision for different purposes. Subordinate legislation is subject to negative procedure under the Bill unless

specific contrary provision is made in relation to particular sections of the Bill (subsections (2) and (3)). This section does not apply to regulations made under section 27 (commencement). This prevents commencement regulations, which are made without any parliamentary procedure, from making incidental, consequential or supplementary provisions.

Section 26: Ancillary provision

167. This section allows the Scottish Ministers, by regulations, to make consequential, supplementary, incidental, transitional, transitory or savings provision as they consider appropriate for the purposes of, in consequence of, or for giving full effect to, any provision of the Bill. Such regulations may modify any enactment (including any Act resulting from the Bill itself). If the regulations make textual changes to an Act, they will be subject to affirmative procedure (in accordance with section 25(3)).

Section 27: Commencement

168. This section provides for Part 4 of the Bill (other than section 24 (defining the “1980 Act”)) to come into force the day following Royal Assent, with the remaining sections of the Act to be commenced by regulations made by the Scottish Ministers. Regulations made under subsection (2) may include transitional, transitory or saving provisions and appoint different days for different purposes.

Keeling Schedule

This document sets out the amendments made by this Bill in the context of the Education (Additional Support for Learning) (Scotland) Act 2004 (as amended).

The document is provided to assist in the scrutiny of the Education (Scotland) Bill 2015 and although every effort has been made to ensure the accuracy of the information, it is for illustrative purposes only.

Text in **purple** indicates amendments to the Act as proposed on introduction of the Bill. Text in **blue** indicates amendments to the Act agreed at Stage 2 consideration.

Education (Additional Support for Learning) (Scotland) Act 2004 (as amended)

An Act of the Scottish Parliament to make provision for additional support in connection with the school education of children and young person's having additional support needs; and for connected purposes.

Main definitions

1 Additional support needs

- (1) A child or young person has additional support needs for the purposes of this Act where, for whatever reason, the child or young person is, or is likely to be, unable without the provision of additional support to benefit from school education provided or to be provided for the child or young person.
- (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 subsection (1), the reference to school education includes, in particular, such education directed to the development of the personality, talents and mental and physical abilities of the child or young person to their fullest potential.
- (3) In this Act, “additional support” means—
 - (a) in relation to a prescribed pre-school child, a child of school age or a young person receiving school education, provision (whether or not educational provision) which is additional to, or otherwise different from, the educational provision made generally for children or, as the case may be, young persons of the same age in schools (other than special

schools) under the management of the education authority [responsible for the school education of the child or young person, or in the case where there is no such authority, the education authority for the area to which the child or young person belongs,

(b) in relation to a child under school age other than a prescribed pre-school child, such provision (whether or not educational provision) as is appropriate in the circumstances.

2 Co-ordinated support plans

(1) For the purposes of this Act, a child or young person requires a plan (referred to in this Act as a “co-ordinated support plan”) for the provision of additional support if—

(a) an education authority are responsible for the school education of the child or young person,

(b) the child or young person has additional support needs arising from—

(i) one or more complex factors, or

(ii) multiple factors,

(c) those needs are likely to continue for more than a year, and

(d) those needs require significant additional support to be provided—

(i) by the education authority in the exercise of any of their other functions as well as in the exercise of their functions relating to education, or

(ii) by one or more appropriate agencies (within the meaning of section 23(2)) as well as by the education authority themselves.

(2) For the purposes of subsection (1)—

(a) a factor is a complex factor if it has or is likely to have a significant adverse effect on the school education of the child or young person,

(b) multiple factors are factors which—

(i) are not by themselves complex factors, but

(ii) taken together, have or are likely to have a significant adverse effect on the school education of the child or young person.

[3...]

3 Children and young persons: capacity

(1) For the purposes of this Act, a child [] has capacity—

(a) in relation to an act that may be carried out by the child [] under a provision of this Act, if the child [] has sufficient maturity and understanding to carry out the act,

(b) in relation to a decision of the child [] mentioned in a provision of this Act, if the child [] has sufficient maturity and understanding—

(i) to make the decision,

(ii) to communicate the decision,

(iii) to understand the decision and its implications for the child [], and

(iv) to retain the memory of the decision,

(c) in relation to the provision, under a provision of this Act, of any information, advice or co-ordinated support plan by an education authority to the child [], if the child or young person has sufficient maturity and understanding to understand the advice, information or (as the case may be) plan,

(d) in relation to any view of the child [] mentioned in this Act, if the child has sufficient maturity and understanding to express the view;

and any references in this Act to a child [] who lacks capacity are to be read accordingly.

(2) For the purposes of [] this Act, a young person lacks capacity to do something if the young person does not have sufficient understanding to do it.

(3) But a child [] is not to be treated as lacking capacity by reason only of a lack or deficiency in a faculty of communication if that lack or deficiency can be made good by human, electronic or mechanical aid (whether of an interpretive nature or otherwise).”.

3A Children []: assessment of capacity, etc.

(1) Subsection (3) applies where, under a provision of this Act—

(a) a child who has attained the age of 12 years may do something only if an education authority is satisfied that the child has capacity in relation to the thing,

(b) an education authority may or must do something in relation to such a child only if the authority is satisfied that the child has capacity for the thing to be done in relation to the child,

(c) a child [] may do something in relation to an education authority only if the authority is satisfied that the child [] does not lack capacity in relation to the thing, or

(d) an education authority may or must do something in relation to a child [] only if the authority is satisfied that the child [] does not lack capacity in relation to the thing.

(2) Before a child [] does a thing as mentioned in subsection (1)(a) or (c), the child [] must notify the education authority that he or she proposes to do the thing.

(3) Before the child [] or education authority does the thing, the education authority must—

(a) carry out an assessment of the capacity of the child [] to do the thing, or have the thing done in relation to the child, [] and

(b) consider whether it [] would adversely affect the wellbeing of the child [] to do the thing or have the thing done in relation to the child [].

(4) Subsection (5) applies where an education authority, having complied with its duties under subsection (3), is satisfied that—

(a) the child [] lacks capacity to do the thing or have the thing done in relation to the child [], or

(b) it [] would adversely affect the wellbeing of the child [] to do the thing or have the thing done in relation to the child [].

(5) The child [] or (as the case may be) education authority may not do the thing in question.

(6) Where an education authority is notified by a child under subsection (2) that the child proposes to do the thing mentioned in that subsection, the education authority must—

(a) notify the child’s parents that the authority intends to—

(i) carry out an assessment of the child’s capacity to do the thing, and

(ii) consider whether it [] would adversely affect the wellbeing of the child to do the thing, and

(b) notify the child and the child's parents of—

(i) the result of the assessment, and

(ii) the authority's determination as to whether it [] would adversely affect the wellbeing of the child to do the thing.

[]

3AA Assessment of wellbeing

(1) Subsection (2) applies where, by virtue of this Act, an education authority or Tribunal is required to consider whether the wellbeing of a child who has attained the age of 12 years would, or would not, be adversely affected.

(2) The authority or, as the case may be, Tribunal is to consider the matter by reference to the extent to which the child is or would be—

safe,

healthy,

achieving,

nurtured,

active,

respected,

responsible, and

included.

(3) The Scottish Ministers may by regulations modify the list in subsection (2) so as to amend, remove or add to the matters for the time being mentioned in the list.

(4) Before making any regulations under subsection (3), the Scottish Ministers must consult such persons as they consider appropriate.>

3B Rights of parents of children aged 12 or over

(1) Subsection (2) applies where—

(a) a right is conferred under this Act on a child who has attained the age of 12 years,

(b) the right is one that is also exercisable by the parents of the child,

(c) the child—

(i) does not wish to exercise the right, and

(ii) does not wish the child's parents to exercise it, and

(d) the parents of the child do wish to exercise the right.

(2) The parents of the child may exercise the right.”.

4 Duties of education authority in relation to children and young persons for whom they are responsible

- (1) Every education authority must—
 - (a) in relation to each child and young person having additional support needs for whose school education the authority are responsible, make adequate and efficient provision for such additional support as is required by that child or young person, and
 - (b) make appropriate arrangements for keeping under consideration—
 - (i) the additional support needs of, and
 - (ii) the adequacy of the additional support provided for, each such child and young person.
- (2) Subsection (1)(a) does not require an education authority to do anything which—
 - (a) they do not otherwise have power to do, or
 - (b) would result in unreasonable public expenditure being incurred.

5 General functions of education authority in relation to additional support needs

- (1) Every education authority must in exercising any of their functions in connection with the provision of school education, take account of the additional support needs of children and young persons having such needs.
- (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 Equality Act 2010) which the child has.
- (4) An education authority may provide such additional support as is appropriate for children (other than children to whom the education authority have a duty under subsection (2)) and young persons belonging to the area of the authority—
 - (a) having additional support needs, but
 - (b) for whose school education the authority are not responsible.

6 Children and young persons for whom education authority are responsible

- (1) Every education authority must make such arrangements as they consider appropriate for identifying—
 - (a) from among the children and young persons for whose school education they are responsible—
 - (i) those who have additional support needs, and
 - (ii) those having additional support needs who require a co-ordinated support plan, and

(b) the particular additional support needs of the children and young persons so identified.

(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 coordinated support plan.

(2) Where an education authority receive from a person specified in subsection (3) a request to establish whether any child or young person for whose school education the authority are responsible—

- (a) has additional support needs, or
- (b) requires a co-ordinated support plan,

the authority must, in accordance with the arrangements made by them under subsection (1), comply with the request unless the request is unreasonable.

(3) The persons referred to in subsection (2) are—

(a) in the case of a child, the child's parent,

(aa) in the case of a child who has attained the age of 12 years and who the authority is satisfied has capacity to make the request, the child,

(b) in the case of a young person—

- (i) the young person, or
- (ii) if the authority are satisfied that the young person lacks capacity to make the request, the young person's parent.

(4) Where, in pursuance of a request referred to in subsection (2), an education authority establish that a child or young person has additional support needs, the authority must inform -

(a) the person who made the request of that fact; and

(b) where that person is a child falling within subsection (3)(aa), the child's parent of that fact.

(5) Subsection (6) applies where a child or young person for whose school education an education authority are responsible comes to the attention of the authority as—

- (a) having, or appearing to have, additional support needs, or
- (b) having such needs and requiring, or appearing to require, a co-ordinated support plan.

(6) Where this subsection applies, the education authority must, in accordance with the arrangements made by them under subsection (1), establish whether the child or young person does have additional support needs or, as the case may be, require a co-ordinated support plan, unless the authority consider it unreasonable to do so.

(7) Subsections (2) and (6) are without prejudice to subsection (1).

7 Other children and young persons

(1) Where an education authority receive a request of a type specified in subsection (2) relating to any child or young person—

- (a) belonging to the area of the authority, but

(b) for whose school education an authority are not responsible, the authority may, in accordance with the arrangements made by them under section 6(1), comply with the request.

- (2) The types of request referred to in subsection (1) are—
- (a) a request from a person specified in subsection (3) to establish whether the child or young person in relation to whom the request is made—
 - (i) has additional support needs, or
 - (ii) would, if the education authority were responsible for the school education of the child or young person, require a co-ordinated support plan,
 - (b) in the case of a child or young person being provided with school education at an independent school or a grant-aided school, a request from the managers of the school to establish whether the child or young person would, if the education authority were responsible for the school education of the child or young person, require such a plan.
- (3) The persons referred to in subsection (2)(a) are—
- (a) in the case of a child, the child's parent,
 - (aa) in the case of a child who has attained the age of 12 years and who the authority is satisfied has capacity to make the request, the child,*
 - (b) in the case of a young person—
 - (i) the young person, or
 - (ii) if the authority are satisfied that the young person lacks capacity to make the request, the young person's parent.
- (4) Subsection (5) applies where a child or young person—
- (a) belonging to the area of an education authority, but
 - (b) for whose school education an education authority are not responsible,
- comes to the attention of the authority (otherwise than as a result of a request referred to in subsection (1)) as having, or appearing to have, additional support needs.
- (5) Where this subsection applies, the education authority may, in accordance with the arrangements made by them under section 6(1), establish whether the child or young person does have additional support needs.
- (6) Subsection (7) applies where, in pursuance of this section, an education authority establish that a child or young person—
- (a) has additional support needs, or
 - (b) would, if the education authority were responsible for the school education of the child or young person, require a co-ordinated support plan.
- (7) Where this subsection applies, the education authority must provide the persons mentioned in subsection (8) with such information and advice as to the additional support required by the child or young person as they consider appropriate.
- (8) The persons referred to in subsection (7) are—
- (a) in the case of a child, the child's parent,
 - (aa) in the case of a child falling within subsection (3)(aa) who the authority is satisfied has capacity in relation to the information or advice, the child,*
 - (b) in the case of a young person—
 - (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,
- (c) where the authority establish the matter referred to in subsection (6) pursuant to a request made by the managers of an independent school or a grant-aided school, those managers.

(9) Subsection (10) applies where an education authority receives a request as mentioned in subsection (1) relating to a child or young person attending an independent or grant-aided school.

(10) The authority may request the managers of the school to provide the authority with such information and advice as the authority thinks appropriate for the purpose of enabling the authority to assess the capacity of the child or young person in relation to the request.

8 Assessments and examinations

(1) Where—

- (a) an education authority propose—
 - (i) in pursuance of any provision of this Act, to establish whether a child or young person has additional support needs or requires, or would require, a co-ordinated support plan, or
 - (ii) to review under section 10 any such plan prepared for any child or young person, and
- (b) the appropriate person makes a request that the education authority arrange for the child or young person to whom the proposal referred to in paragraph (a) relates to undergo, for the purposes of the proposal, a process of assessment or examination (such a request being referred to in this section as an “assessment request”),

the education authority must comply with the assessment request unless the request is unreasonable.

(2) In subsection (1)(b), “the appropriate person” means—

- (a) where the proposal referred to in subsection (1)(a) arises from a request referred to in section 6(2), 7(1) or 10(4), the person making the request,
- (b) in any other case—
 - (i) where the proposal relates to a child, the child's parent,
(ia) where the proposal relates to a child who has attained the age of 12 years, the child,
 - (ii) where the proposal relates to a young person, the young person or, where the authority are satisfied that the young person lacks capacity to make the request, the young person's parent.

(2A) But a child who has attained the age of 12 years is an appropriate person for the purposes of subsection (2) only if—

- (a) in a case where paragraph (a) of that subsection applies—
 - (i) the authority is satisfied that there has been no significant change in the circumstances of the child since the request mentioned in that paragraph was made, or*
 - (ii) where the authority is not so satisfied, the authority is satisfied that the child has capacity to make the request referred to in subsection (1)(b) at the time that request is made,**

(b) in any other case, the authority is satisfied that the child has capacity to make the request referred to in that subsection.

- (3) Where a child or young person is to undergo a process of assessment or examination in pursuance of an assessment request, the process is to be carried out by such person as the education authority consider appropriate.
- (4) In subsection (1)(b), the reference to assessment or examination includes educational, psychological or medical assessment or examination.

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,
(aa) where the request relates to a child who has attained the age of 12 years and who the authority is satisfied has capacity to make the request, the child,
 - (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.

9 Duty to prepare co-ordinated support plans

- (1) Where an education authority establish in pursuance of any provision of this Act that a child or young person for whose school education they are responsible requires a co-ordinated support plan, they must prepare such a plan for the child or young person.
- (2) A co-ordinated support plan prepared under subsection (1) must contain—
 - (a) a statement of the education authority's conclusions as to—
 - (i) the factor or factors from which the additional support needs of the child or young person arise,
 - (ii) the educational objectives sought to be achieved taking account of that factor or those factors,
 - (iii) the additional support required by the child or young person to achieve those objectives, and

- (iv) the persons by whom the support should be provided,
 - (b) a nomination of a school to be attended by the child or young person,
 - (c) the name and other appropriate contact details of—
 - (i) the officer of the authority responsible for the discharge of the authority's duty under subsection (5)(d) of section 11, or
 - (ii) if the authority arrange under subsection (6) of that section for that duty to be discharged by another person, that other person, and
 - (d) the name and other appropriate contact details of an officer of the authority from whom—
 - (i) in the case of a plan prepared for a child, the child's parent *can obtain advice and further information*,
 - (ia) *in the case of a plan prepared following a request mentioned in section 6(2), 7(2)(a) or 10(4) for a child who has attained the age of 12 and who the authority is satisfied has capacity in relation to advice or further information from the officer, the child can obtain such advice and information*,
 - (ii) in the case of a plan prepared for a young person, the young person or, where the authority are satisfied that the young person lacks capacity [...] *to seek* advice or information, the young person's parent *can obtain such advice and information*.
- [...]
- (3) The references in subsection (2)(a) to educational objectives are to objectives set to secure that the child or young person benefits from school education (within the meaning of section 1(1)) provided or to be provided for the child or young person.

10 Reviews of co-ordinated support plans

- (1) Every education authority must keep under consideration the adequacy of any co-ordinated support plans prepared (and not discontinued) for any children or young person's for whose school education they are responsible
- (2) The education authority must carry out a review of each such co-ordinated support plan—
 - (a) on the expiry of the period of 12 months beginning with the date on which the plan was prepared, and
 - (b) thereafter, on the expiry of each successive period of 12 months beginning with the date on which the previous review (whether carried out under this subsection or subsection (3) or (4)) of the plan was completed.
- (3) An education authority may carry out a review of such a co-ordinated support plan before the expiry of a period referred to in subsection (2) only—
 - (a) pursuant to a request referred to in subsection (4), or
 - (b) if the authority consider it necessary or expedient to do so because of a significant change in the circumstances of the child or young person for whom the plan was prepared since the plan was prepared or, as the case may be, last reviewed.
- (4) Where the education authority receive from a person specified in subsection (5) a request to carry out a review of any such co-ordinated support plan as is mentioned in subsection (1) before the expiry of a period referred to in subsection (2), the authority must carry out a review of the plan unless the request is unreasonable.
- (5) The persons referred to in subsection (4) are—
 - (a) in the case of a co-ordinated support plan prepared for a child, the child's parent,

(aa) in the case of a co-ordinated support plan prepared for a child who has attained the age of 12 years and who the authority is satisfied has capacity to make the request, the child,

(b) in the case of a co-ordinated support plan prepared for a young person—

(i) the young person, or

(ii) where the education authority are satisfied that the young person lacks capacity to make the request, the young person's parent.

(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.

(6) In reviewing any co-ordinated support plan under this section, the education authority must, in accordance with the arrangements made by them under section 6(1), establish whether the child or young person for whom the plan was prepared still requires such a plan and—

(a) if so, continue the plan for the child or young person and make such amendments of it as the authority consider necessary or appropriate, or

(b) if not, discontinue the plan.

11 Co-ordinated support plans: further provision

(1) Subsection (2) applies where an education authority propose—

(a) in pursuance of any provision of this Act, to establish whether any child or young person requires, or would require, a co-ordinated support plan,

(b) to review under section 10 any such plan prepared for any child or young person.

(2) Where this subsection applies, the education authority must—

(a) before proceeding, inform the persons mentioned in subsection (3) of their proposal, and

(b) on establishing the matter referred to in subsection (1)(a) or, as the case may be, completing the review referred to in subsection (1)(b), inform those persons of—

(i) the outcome, and

(ii) the rights (if any) which they have under section 18(1) to make a reference to a Tribunal in connection with the outcome.

(3) The persons referred to in subsection (2)(a) are—

(a) in the case of a child, the child's parent,

(aa) where the proposal—

(i) arises as a result of a request mentioned in section 6(2), 7(2)(a) or 10(4), and

(ii) relates to a child who has attained the age of 12 years, the child,

(b) in the case of a young person—

(i) the young person, or

(ii) if the authority are satisfied that the young person lacks capacity [...] to understand the information, the young person's parent,

(c) where the proposal arises as a result of a request referred to in section 7(1) made by the managers of an independent school or a grant-aided school, those managers.

(4) Subsection (5) applies where an education authority—

(a) prepare a co-ordinated support plan for any child or young person under this Act, or

- (b) amend any such plan—
 - (i) following a review carried out under section 10, or
 - (ii) pursuant to a requirement made by a Tribunal under subsection (4)(b) or (5)(b)(ii) of section 19.
- (5) Where this subsection applies, the education authority must—
 - (a) give a copy of the plan or amended plan—
 - (i) in the case of a child, to the child's parent,
 - (ia) in the case of a child who has attained the age of 12 years, to the child (but only if the plan was prepared or amended following a request mentioned in section 6(2), 7(2)(a) or 10(4) made by the child),*
 - (ii) in the case of a young person, to that young person or, if the authority are satisfied that the young person lacks capacity [...] *to understand* the plan, to the young person's parent,
 - (b) ensure that additional support is provided by them for the child or young person in accordance with the plan or amended plan so far as they have power to do so,
 - (c) seek to ensure that additional support is provided for the child or young person in accordance with the plan or amended plan by any person (other than the education authority) identified in the plan as a person by whom such support should be provided,
 - (d) co-ordinate, so far as possible, the provision of additional support for the child or young person as mentioned in paragraphs (b) and (c) by the authority and any other persons by whom such support is to be provided, and
 - (e) inform such persons as they consider appropriate, being persons who will be involved in the provision of additional support for the child or young person, of such matters contained in the plan or amended plan as they consider appropriate.
- (6) The education authority may arrange for the discharge of their duty under subsection (5)(d) by another person.
- (7) Subsection (6)—
 - (a) does not affect the responsibility of the education authority for the discharge of their duty under subsection (5)(d), and
 - (b) is without prejudice to any other power of the education authority to arrange for the discharge of any of their functions under this Act by another person.
- (8) The Scottish Ministers may by regulations make further provision as to co-ordinated support plans including, in particular, provision as to—
 - (a) the form of such plans,
 - (b) the information (in addition to that required by section 9(2)) to be contained in them,
 - (c) the preparation, keeping, disclosure, discontinuance and destruction of such plans,
 - (d) the procedures to be followed in carrying out reviews of such plans under section 10,
 - (e) the transfer of such plans [...]1 ,
 - (f) without prejudice to the generality of the other paragraphs in this subsection, the times by which—
 - (i) such plans are to be prepared, and
 - (ii) reviews of them under section 10 are to be completed, and
 - (g) such other matters in relation to co-ordinated support plans as the Scottish Ministers think necessary or expedient.

12 Duties to seek and take account of views, advice and information

- (1) In—
- (a) establishing in pursuance of any provision of this Act whether any child or young person—
 - (i) has additional support needs, or
 - (ii) requires, or would require, a co-ordinated support plan,
 - (b) establishing in pursuance of a review carried out under section 10 whether any child or young person still requires a co-ordinated support plan,
 - (c) preparing such a plan for any child or young person, or
 - (d) determining in pursuance of section 4(1) what provision to make for such additional support as is required by any child or young person having additional support needs, the education authority must comply with the duty described in subsection (2).
- (2) That duty is a duty to—
- (a) seek and take account of relevant advice and information from such appropriate agencies and other persons as the education authority think appropriate,
 - (b) subject to subsection (3), seek and take account of the views of—
 - (i) in the case of a child, the child (unless the authority are satisfied that the child lacks capacity[...] *in relation to* a view) and the child's parent, and
 - (ii) in the case of a young person, that young person or, if the authority are satisfied that the young person lacks capacity [...] *to express* a view, the young person's parent,
 - (c) take account of any relevant advice or information provided to the authority by or on behalf of the child or young person concerned, and
 - (d) take account of any relevant advice and information in the authority's possession or control by virtue of any of their functions other than their functions relating to education.
- (3) In the cases mentioned in subsection (1)(a)(i) and (d), the duty described in subsection (2)(b) applies only in relation to such children and young persons as the authority consider appropriate.
- (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.
- (4) Advice or information is relevant for the purposes of subsection (2)(a), (c) or (d) if it is likely to assist the education authority in doing any of the things referred to in paragraphs (a) to (d) of subsection (1).
- (5) Every education authority must—
- (a) no later than 12 months before the date on which any child or young person—
 - (i) having additional support needs, and
 - (ii) for whose school education the authority are responsible, is expected to cease receiving school education, or
 - (b) where the education authority become aware that the child or young person is to cease receiving school education less than 12 months before that date, as soon as reasonably practicable after they become so aware, comply with the duty in subsection (6).

- (6) That duty is a duty to—
- (a) request from such appropriate agency or agencies as the authority think fit (if any) such information as the authority consider appropriate concerning any provision which the agency is or, as the case may be, the agencies are likely to make for the child or young person on ceasing to receive school education,
 - (b) where the authority make a request under paragraph (a), seek the views of—
 - (i) in the case of a child, that child (unless the authority are satisfied that the child lacks capacity [...] *in relation to* a view) and the child's parent, or
 - (ii) in the case of a young person, that young person or, if the authority are satisfied that the young person lacks capacity [...] *to express* a view, the young person's parent, and
 - (c) take account of—
 - (i) any information provided by any appropriate agency or agencies pursuant to a request under paragraph (a),
 - (ii) any views expressed by the child or young person or the child's or young person's parent pursuant to paragraph (b), and
 - (iii) any provision which the education authority themselves are, in the exercise of any of their functions other than their functions relating to education, likely to make for the child or young person on ceasing to receive school education, in considering the adequacy of the additional support to be provided for the child or young person during the period before the child or young person ceases to receive school education.
- (7) Subsections (5) and (6) are without prejudice to section 4(1)(b).

13 Provision of information etc. on occurrence of certain events

- (1) Every education authority must—
- (a) no later than 6 months before the date on which any child or young person—
 - (i) having additional support needs, and
 - (ii) for whose school education the authority are responsible, is expected to cease receiving school education, or
 - (b) where the education authority become aware that the child or young person is to cease receiving school education less than 6 months before that date, as soon as reasonably practicable after they become so aware, comply with the duty in subsection (2).
- (2) That duty is a duty—
- (a) to provide such appropriate agency or agencies as the authority think fit (if any) with the information specified in subsection (3), and
 - (b) to—
 - (i) consider what (if any) provision the authority are, in the exercise of any of their functions other than their functions relating to education, likely to make for the child or young person on ceasing to receive school education, and
 - (ii) for that purpose, take into account any information specified in subsection (3).
- (3) The information referred to in subsection (2) is—
- (a) information as to the date on which the child or young person is expected to cease receiving school education, and
 - (b) such other information as the authority consider appropriate concerning the child or young person and the additional support needs of the child or young person.

- (4) Every education authority must, when any such child or young person as is referred to in subsection (1) ceases to receive school education, inform such appropriate agency or agencies as the authority think fit of that fact as soon as reasonably practicable.
- (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 [...] *in relation to such* a view).
- (5) Information is to be provided under subsection (2)(a) or (4) only with the consent of—
(za) in the case of a child who has attained the age of 12 years and who the authority is satisfied has capacity to give consent, the child,
(a) in the case of [...] *any other* child, the child's parent,
(b) in the case of a young person—
(i) the young person, or
(ii) where the education authority are satisfied that the young person lacks capacity to give consent, the young person's parent.
- (6) The Scottish Ministers may by regulations make provision for the taking by education authorities of specified action in connection with the occurrence or likely occurrence of specified changes in the school education of children and young persons—
(a) having additional support needs, and
(b) for whose school education the authorities are responsible.
- (7) Regulations under subsection (6) may, in particular, make provision—
(a) for the disclosure by the authorities of specified information about such children or young persons—
(i) to specified persons or persons of specified descriptions,
(ii) subject to specified conditions,
(b) for such information to be disclosed, or any other action taken, by specified times.
- (8) In subsections (6) and (7), “specified” means specified in regulations under subsection (6).

14 Supporters and advocacy

- (1) Where, in connection with the exercise of an education authority's functions under this Act in relation to any child or young person, the relevant person wishes—
(a) to have another person (referred to as a “supporter”) present at any discussions with the authority for the purpose of supporting the relevant person in the course of those discussions, or
(b) another person (referred to as an “advocate”) to—
(i) conduct such discussions or any part of them, or
(ii) make representations to the authority, on the relevant person's behalf, the education authority must comply with the relevant person's wishes, unless the wishes are unreasonable.
- (2) In subsection (1), “the relevant person” means—
(a) in the case of a child, the child's parent,

(aa) in the case of a child who has attained the age of 12 years and who the authority is satisfied has capacity in relation to discussions or representations as mentioned in subsection (1), the child, [...]

(b) in the case of a young person—

(i) the young person, or

(ii) if the authority are satisfied that the young person lacks [...]capacity to participate in discussions or make representations as referred to in subsection (1), the young person's parent.

(3) Nothing in subsection (1) is to be read as requiring an education authority to provide or pay for a supporter or advocate.

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).

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—

(a) the parents of any children,

(b) any young persons,

(c) in relation to any young persons who lack capacity [...] to express a view or make decisions for those purposes, their parents

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

(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 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 a Tribunal.

- (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.

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
 - (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, or
 - (c) in relation to any young person who lacks capacity [...] *to express a view of 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—
- (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.
- (3) However, such regulations, and any provision made in pursuance of such regulations—
- (a) must not require any parent, *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, *child* or young person to refer any matter to a Tribunal.

17 Additional Support Needs Tribunals for Scotland

- (1) Tribunals to be known as Additional Support Needs Tribunals for Scotland (each referred to in this Act as “a Tribunal”) are to be constituted in accordance with this Act.

- (1A) Tribunals are to exercise the functions which are conferred on them by virtue of—
- (a) this Act, and
 - (b) the Equality Act 2010.

- (2) There is to be an officer to be known as the President of the Additional Support Needs Tribunals for Scotland (referred to in this Act as “the President”) who is to be an individual appointed by the Scottish Ministers.
- (3) The President has such functions as are conferred on the President by virtue of this Act.
- (4) Schedule 1 makes further provision about the constitution and procedures of the Tribunals, the appointment and functions of the President and administrative and other matters in connection with the Tribunals and the President.
- (5) The Scottish Ministers may by regulations make such further provision in connection with the Tribunals and the President as they think fit.

18 References to Tribunal

- (1) Any of the persons specified in subsection (2) may refer to a Tribunal any decision, failure or information specified in subsection (3) relating to any child or young person for whose school education an education authority are responsible.
- (2) The persons referred to in subsection (1) are—
 - (a) where the decision, failure or information relates to a child, the parent of the child,
(aa) where the decision, failure or information relates to a child mentioned in subsection (2A), the child, [..]
 - (b) where the decision, failure or information relates to a young person—
 - (i) the young person, or
 - (ii) where the young person lacks capacity to make the reference [], the young person's parent.

(2A) The child is a child who has attained the age of 12 years and—
(a) who the Tribunal is satisfied has capacity to make the reference, and
(b) [..] whose wellbeing would, in the opinion of the Tribunal, not be adversely affected were the child to make the reference.
[...]

- (3) The decisions, failures and information referred to in subsection (1) are—
 - (a) a decision of the education authority that the child or young person—
 - (i) requires a co-ordinated support plan, or
 - (ii) following a review carried out under section 10, still requires such a plan,
 - (b) a decision of the education authority that the child or young person—
 - (i) does not require such a plan, or
 - (ii) following a review carried out under section 10, no longer requires such a plan,
 - (c) where it has been established that the child or young person does require a co-ordinated support plan, failure by the education authority to prepare a plan by the time required by regulations made in pursuance of subsection (8)(f)(i) of section 11,
 - (d) where a co-ordinated support plan has been prepared (and not discontinued) for the child or young person—
 - (i) any of the information contained in the plan by virtue of subsection (2)(a) of section 9,

- (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),
- (ii) failure by the education authority to carry out a review of the plan as required by subsection (2) of section 10,
- (iii) where such a review is carried out, failure by the education authority to complete the review by the time required by regulations made in pursuance of subsection (8)(f)(ii) of section 11, or
- (iv) a decision of the education authority to refuse a request referred to in subsection (4) of section 10,

(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,

(e) where subsection (4) applies, a decision of an education authority refusing a placing request, other than a placing request mentioned in paragraph (da), 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).

(ea) a decision of an education authority in relation to the capacity of—

(i) a child who has attained the age of 12 years to exercise a right under this Act, [...]

(eb) a decision of an education authority that it is satisfied as mentioned in section 3A(4)(b) as respects a matter relating to the [...] wellbeing of such a child [...]

(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.

(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)).

(4) This subsection applies where –

(a) a co-ordinated support plan has been prepared (and not discontinued) for the child or young person,

(b) no such plan has been prepared, but it has been established by the education authority that the child or young person requires such a plan,

(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, or

(c) the education authority have decided that the child or young person does not require such a plan and that decision has been referred to a Tribunal under subsection (1).

(5) A decision of an education authority not to comply with a request referred to in section 6(2)(b) made in relation to any child or young person 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.

- (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.
- (6) Where, in respect of any child or young person for whom a co-ordinated support plan has been prepared (and not discontinued), any of the information referred to in subsection (3)(d)(i) has been referred under subsection (1) to a Tribunal, a further reference under that subsection in respect of the same information is not competent unless, since the last such reference was disposed of, a review of the plan has been carried out under section 10.
- (7) Where a decision referred to in subsection (3)(da) or (e) 13 in respect of a child or young person has been referred under subsection (1) to a Tribunal, a further reference under that subsection of such a decision in respect of the child or young person is not competent during the period of 12 months beginning with the day on which the last such reference of such a decision was made, unless, during that period—
- (a) a review of any co-ordinated support plan prepared for the child or young person has been carried out under section 10,
 - (b) any such plan prepared for the child or young person has been amended pursuant to a requirement made by a Tribunal under section 19(4)(b), or
 - (c) where the last such reference of such a decision was made by virtue of subsection (4)(c), a co-ordinated support plan has been prepared for the child or young person.
- (7A) For the purposes of subsection (7), it is irrelevant whether the further reference, and the last reference, mentioned in that subsection relate to the same or to different specified schools (which expression is to be construed in accordance with paragraph 2(3) of schedule 2).*
- (7B) Nothing in subsection (7) prevents a further reference being made during the period mentioned in that subsection if the last reference so mentioned is, by virtue of rules under paragraph 11 of schedule 1, withdrawn before any hearing by a Tribunal in relation to the last reference is held.*
- (7C) But where a further reference is made in the circumstances mentioned in subsection (7B), the President may, if satisfied that there is good reason to do so, decide that the reference is not to proceed to consideration by a Tribunal.*

(8) Subsection (7) applies in relation to a decision referred to in subsection (3)(ea) or (eb) as it applies in relation to a decision referred to in subsection (3)(da) or (e); but only where any further reference would relate to—

(a) the same right as mentioned subsection (3)(ea) []

(b) the same matter as mentioned in subsection (3)(eb) as the last such reference relates to.

19 Powers of Tribunal in relation to reference

(1) This section specifies the powers of a Tribunal in relation to a reference made under section 18.

(2) Where the reference relates to a decision referred to in subsection (3)(a), (b), [...] *(d)(iv), (ea) or (eb)* of that section, the Tribunal may—

(a) confirm the decision, or

(b) overturn the decision and require the education authority to take such action as the Tribunal considers appropriate by such time as the Tribunal may require.

(3) Where the reference relates to a failure referred to in [subsection (3)(c), (d)(ia), (ii) or (iii) or (g) of that section, the Tribunal may require the education authority to take such action to rectify the failure as the Tribunal considers appropriate by such time as the Tribunal may require.

(4) Where the reference relates to information referred to in subsection (3)(d)(i) of that section, the

Tribunal may—

(a) confirm the information, or

(b) require the education authority to make such amendment of the information as the Tribunal considers appropriate by such time as the Tribunal may require.

(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.

(5) Where the reference relates to a decision referred to in subsection (3)(e) of that section, the Tribunal may—

(a) confirm the decision if satisfied that—

(i) one or more of the 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 the co-ordinated support plan prepared for the child or young person as the Tribunal considers appropriate by such time as the Tribunal may require,
- (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, or
- (c) where—
 - (i) the decision was referred to the Tribunal by virtue of the application of subsection (4)(c) of that section, 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 to an appeal committee set up under section 28D of the 1980 Act.
- (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
 - (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.

(6) Paragraphs 6 and 7 of schedule 2 apply to a reference made to an appeal committee under paragraph (ba) or (c) of subsection (5) as they apply to a reference made to an appeal committee under paragraph 5 of that schedule.

(7) In exercising its powers under this section, a Tribunal must take account, so far as relevant, of any code of practice published by the Scottish Ministers under section 27(1).

20 References to Tribunal and powers of Tribunal: further provision

(1) The Scottish Ministers may by order extend the categories of decision, failure or information in respect of which a reference to the Tribunal under section 18(1) may be made; and without prejudice to the generality such further categories of decision, failure or information may include—

(a) a decision of the education authority—

(i) that the child or young person has, or does not have, additional support needs,

(ii) that a child or young person has additional support needs of a type that the person making the referral considers are not an accurate reflection of the child or young person's additional support needs,

(iii) to refuse an assessment request as referred to in section 8,

(iv) as to the person, or to the means used, or to be used, to carry out the process of assessment or examination referred to in section 8,

(b) failure by—

(i) the education authority,

(ii) any person identified in any co-ordinated support plan prepared for the child or young person as a person by whom additional support should be provided, or

(iii) a combination of these persons, to provide the additional support required by the child or young person.

(2) Any order made under subsection (1) may also include provision to allow the President to reject references to the Tribunal arising from any further category of decision, failure or information referred to in the order without a hearing where the President is satisfied that the reference *prima facie* raises no substantial issue.

(3) Orders made under subsection (1) may also make such consequential provision as the Scottish Ministers consider necessary or expedient, including provision as to the Tribunal's powers in relation to any new category of decision, failure or information that may be referred to it.

21 Appeal to Court of Session against Tribunal decision

- (1) Either of the persons specified in subsection (2) may appeal on a point of law to the Court of Session against a decision of a Tribunal relating to a reference made under section 18.
- (2) The persons referred to in subsection (1) are—
 - (a) the person who made the reference to the Tribunal,
 - (b) the education authority concerned.
- (3) Where the Court of Session allows an appeal under subsection (1) it may—
 - (a) remit the reference back to the Tribunal or to a differently constituted Tribunal to be considered again and give the Tribunal such directions about the consideration of the case as the Court considers appropriate,
 - (b) make such ancillary orders as it considers necessary or appropriate.

22 Placing requests

Schedule 2 makes provision about placing requests in relation to children and young persons having additional support needs.

23 Other agencies etc. to help in exercise of functions under this Act

- (1) Where it appears to an education authority that an appropriate agency could, by doing certain things, help in the exercise of any of the education authority's functions under this Act, the authority may, specifying what those things are, request the help of that agency.
- (2) For the purposes of this Act, each of the following is, in relation to any education authority, an appropriate agency, namely—
 - (a) any other local authority,
 - (b) any Health Board, and
 - (c) any person, or a person of any description, specified for the purposes of this subsection in an order made by the Scottish Ministers.
- (3) An appropriate agency must comply with a request made to it under subsection (1) unless it considers that the request—
 - (a) is incompatible with its own statutory or other duties, or
 - (b) unduly prejudices the discharge of any of its functions.
- (4) The Scottish Ministers may by regulations provide that, where an appropriate agency is under a duty by virtue of subsection (3) to comply with a request made to it under subsection (1), the agency must, subject to such exceptions as may be provided in the regulations, comply with the request within such period as is specified in the regulations.
- (5) Where it appears to an education authority that, by doing certain things in the exercise of any of their other functions (whether relating to education or not), they could help the exercise by them of their functions under this Act, the authority must do those things unless they consider that to do so would—
 - (a) be incompatible with any of their statutory or other duties, or
 - (b) unduly prejudice the discharge by them of any of their functions.

24 Power to prescribe standards etc. for special schools

- (1) The Scottish Ministers may make regulations prescribing standards and requirements relating to the conduct of special schools.
- (2) Subsection (1) is without prejudice to section 2 (power to prescribe standards etc. for education authorities) of the 1980 Act.

25 Attendance at establishments outwith the United Kingdom

- (1) An education authority may make such arrangements as they consider appropriate to enable a child or young person having additional support needs to attend an establishment (whether or not a school) outwith the United Kingdom if that establishment makes provision wholly or mainly for persons having such needs.
- (2) Such arrangements may, in particular, include paying, whether wholly or partly—
 - (a) the fees payable, and any travelling, maintenance and other expenses, in respect of the child or young person's attendance at the establishment,
 - (b) where in the opinion of the authority it would be to the advantage of the child or young person if—
 - (i) one or both of the parents of the child or young person, or
 - (ii) some other person,were present with the child or young person at the establishment during the period of the child or young person's attendance at the establishment, any travelling, maintenance or other expenses of the parent, parents or other person (as the case may be) so present.
- (3) This section is without prejudice to sections 49 (power to assist persons to take advantage of educational facilities) and 50 (education of pupils in exceptional circumstances) of the 1980 Act.

26 Publication of information by education authority

- (1) Every education authority must—
 - (a) publish information with respect to the matters specified in subsection (2),
 - (b) keep that information under review,
 - (c) where necessary or appropriate, revise the information and publish that revised information,
 - (d) provide the persons mentioned in subsection (2A) with any information published under paragraph (a) or (c),
 - (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.
- (2) The information referred to in subsection (1)(a) is information as to—

- (a) the authority's policy in relation to provision for additional support needs,
- (b) the arrangements made by the authority in pursuance of sections 4(1)(b) and 6(1),
- (c) the other opportunities available under this Act for the identification of children and young persons who—
 - (i) have additional support needs,
 - (ii) require, or would require, a co-ordinated support plan,
- (d) the role of parents, children and young persons in the arrangements referred to in paragraph (b),
- (e) the mediation services provided in pursuance of section 15(1) ,
- (ea) any dispute resolution procedures established by the authority in pursuance of section 16,
- (f) the officer or officers of the authority from whom—
 - (i) parents of children having additional support needs, [...]
 - (ia) children having additional support needs and who have attained the age of 12 years, and*
 - (ii) young person's having such needs,can obtain advice and further information about provision for such needs ,
- (g) any Health Board for the area or any part of the area of the authority 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 their additional support needs, and
- (h) any other persons which the authority think appropriate 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, 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.

(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,
 - (aa) in the case of such a child who has attained the age of 12 years, the child, []*
- (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.

(3) The Scottish Ministers may by regulations make further provision as to the publication of information under subsection (1) including, in particular, provision—

- (a) amending subsection (2) so as to add further matters,
- (b) as to—
 - (i) the time or times by which, and
 - (ii) the form and manner in which, the information is to be published.

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.

27 Code of practice and directions

- (1) The Scottish Ministers must publish, and may from time to time revise and re-publish, a code of practice providing guidance as to the exercise by education authorities and appropriate agencies of the functions conferred on them by virtue of this Act.
- (2) Such a code of practice may, in particular, include provision as to—
 - (a) the particular circumstances or factors which may give rise to additional support needs,
 - (b) the identification of complex and multiple factors for the purposes of section 2,
 - (c) the nature of the additional support referred to in section 2(1)(d),
 - (d) the nature of the additional support to be provided in pursuance of a co-ordinated support plan,
(da) the carrying out of assessments under paragraph (a) of subsection (3) of section 3A,
(db) the consideration of whether something would adversely affect the wellbeing of a child as mentioned in paragraph (b) of that subsection,
(dc) the assessment of whether there has been a significant change in the circumstances of a child as mentioned in section 8(2A)(a),
 - (e) the arrangements to be made in pursuance of sections 4(1)(b) and 6(1),
 - (f) the seeking of information, advice and views under section 12,
 - (g) the arrangements to be made under section 15(1),
 - (h) the carrying out of the duties under paragraph 2(1) and (2) of schedule 2,
 - (i) the particular circumstances when those duties do not apply.
- (3) Before publishing a code of practice under subsection (1), the Scottish Ministers must consult—
 - (a) each education authority and appropriate agency, and
 - (b) such other persons as they think fit.
- (4) The Scottish Ministers must lay before the Scottish Parliament a draft of any code of practice they propose to publish under subsection (1).
- (5) The Scottish Ministers must not publish the code until after the expiry of the period of 40 days beginning with the day on which the draft was laid before the Parliament.
- (6) The Scottish Ministers must, in the published code of practice, take account of any comments on the draft expressed by the Parliament within that period.
- (7) In calculating any period of 40 days for the purposes of subsections (5) and (6), no account is to be taken of any time during which the Parliament is dissolved or is in recess for more than 4 days.

- (8) Education authorities and appropriate agencies must, in exercising their functions under this Act, have regard to a code of practice published under this section.
- (9) The Scottish Ministers may give to education authorities directions (whether general or specific) as to the exercise of their functions under this Act.
- (10) Such directions may be given to all education authorities, to a particular authority or to authorities of a particular description.
- (11) Education authorities must comply with any directions given to them under this section.
- (12) References in this Act to a code of practice published under this section include any revised code of practice re-published under this section.

27A Collection of data on additional support needs

[...]

- (1) The Scottish Ministers must each year collect from each education authority such information as is specified in regulations made by the Scottish Ministers relating to children and young persons having additional support needs for whose school education the authority is responsible.*
- (1A) Before making regulations under subsection (1), the Scottish Ministers must consult such persons as they consider appropriate.”.*
- (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.

28 Requests under this Act: further provision

- (1) References in this Act to a “request” are to a request which—
 - (a) is in—
 - (i) writing, or
 - (ii) another form which, by reason of its having some permanence, is capable of being used for subsequent reference (as, for example, an audio or video recording), and
 - (b) contains a statement of the reasons for making the request.
- (2) Where an education authority decide not to comply with any request made to them under this Act, the authority must—
 - (a) inform the person who made the request of that decision,
 - (b) in so doing, give reasons for the decision,
 - (c) except where the request was of the type specified in section 7(2)(b), provide the person who made the request with information as to—
 - (i) the mediation services provided in pursuance of arrangements made by the authority under section 15(1), and

- (ii) any procedures for the resolution of disputes established by the authority in pursuance of any regulations under section 16,
- (d) where the request was made under section 6(2)(b) or 10(4), inform the person who made the request of the right under section 18(1) to refer the decision to a Tribunal, and
- (e) where the request was a placing request, inform the person who made the request of—
 - (i) the right under paragraph 5 of schedule 2 to refer the decision to an appeal committee, or
 - (ii) the right under section 18(1) to refer the decision to a Tribunal, (as appropriate).

29 Interpretation

(1) In this Act—

“the 1980 Act” means the Education (Scotland) Act 1980 (c.44),

“the 2000 Act” means the Standards in Scotland's Schools etc. Act 2000 (asp 6),

“additional support” has the meaning given in section 1(3),

“additional support needs” is to be construed in accordance with section 1(1),

“appropriate agency” is to be construed in accordance with section 23(2),

“co-ordinated support plan” has the meaning given in section 2(1) and, in relation to any such plan which has been amended by virtue of any provision of this Act, references in this

Act to a co-ordinated support plan are (except where the context otherwise requires) to the

plan as amended,

“local authority” means a council constituted under section 2 of the Local Government etc.

(Scotland) Act 1994 (c.39),

“placing request” has the meaning given in paragraph 2(3) of schedule 2,

“prescribed pre-school child” means a child of any description prescribed in an order under

section 1(1A) (children under school age in respect of whom education authorities must make provision for school education) of the 1980 Act,

“President” means the President of the Additional Support Needs Tribunals for Scotland appointed under section 17(2),

“primary education” is to be construed in accordance with section 135(2) of the 1980 Act,

“special school” means—

(a) a school, or

(b) any class or other unit forming part of a public school which is not itself a special school, the sole or main purpose of which is to provide education specially suited to the additional support needs of children or young persons selected for attendance at the school, class or (as the case may be) unit by reason of those needs,

“Tribunal” means an Additional Support Needs Tribunal for Scotland constituted under section 17(1).

“young person” means a person who—

- (a) is aged 16 years or over,
- (b) is a pupil at a school, and
- (c) has, since attaining the age of 16 years or over, remained a pupil at that or another school.”

(2) In this Act, the following expressions have the meanings given in section 135(1) of the 1980 Act—

- “child”,
- “education authority”,
- “grant-aided school”,
- “Health Board”,
- “independent school”,
- “managers”,
- “parent”,
- “public school”,
- “school”,
- “school age”,
- “school education”,

[]

(3) In this Act and subject to subsection (3A), references to a child or young person for whose school education an education authority are responsible are to any child or young person being, or about to be, provided with school education—

- (a) in a school under the management of the education authority, or
- (b) in pursuance of arrangements made or entered into by the authority.

(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.

(4) In this Act, references to a child or young person belonging to an area are to be construed in accordance with section 23(3) of the 1980 Act.

(5) In this Act, references to the doing of anything in writing include references to the doing of that thing by means of a document—

- (a) transmitted by electronic means,
- (b) received in legible form, and
- (c) capable of being used for subsequent reference.

30 Transitional provision: recorded children and young persons

- (1) This section applies to any child or young person—
 - (a) for whose school education an education authority are, at the commencement date, responsible, and
 - (b) who, immediately before that date, was a recorded child or young person within the meaning of the 1980 Act.
- (2) Such a child or young person is, for the purposes of this Act, to be taken to have additional support needs.
- (3) The education authority must, before the end of the period of 2 years beginning with the commencement date, establish, in accordance with the arrangements made by them under section 6(1), whether the child or young person requires a co-ordinated support plan.
- (4) Until the appropriate date, the education authority must ensure that the provision made by them in pursuance of section 4(1)(a) for the additional support required by the child or young person is no less than the provision which was, immediately before the commencement date, made for the child or young person under section 62(3) (duty of education authority to provide for special educational needs of recorded children and young persons) of the 1980 Act.
- (5) In subsection (4), “the appropriate date” means—
 - (a) where the education authority establish in pursuance of subsection (3) that the child or young person requires a co-ordinated support plan, the date on which they so establish that matter,
 - (b) where the authority establish in pursuance of that subsection that the child or young person does not require such a plan, the date of expiry of the period of 2 years beginning with the date on which they so establish that matter, or
 - (c) if there is a significant change in the child's or young person's additional support needs, the date on which the authority establish the occurrence of that change, whichever occurs first.
- (6) In this section—

“the commencement date” means the date on which this section comes into force, and

“the education authority” means the education authority responsible for the child's or young person's school education.

31 Duty to inform in writing or alternative permanent form

Where an education authority are, under this Act, to inform a parent, *child who has attained the age of 12 years* or young person of any matter, they must do so—

- (a) in writing, or
- (b) in such other form as the parent, *child* or young person may reasonably require, being a form which, by reason of its having some permanence, is capable of being used for subsequent reference (as, for example, an audio or video recording).

31A Provision of support service

- (1) *The Scottish Ministers must secure the provision of a support service to be available, on request and free of charge, to children who have attained the age of 12 years and—*
 - (a) who wish to exercise, or are considering exercising, relevant rights, or*
 - (b) whose parents wish to exercise, or are considering exercising, relevant rights.*

- (2) *In this section, “a support service” means a service under which—*
- (a) advice (including legal advice), assistance and information in relation to relevant rights are provided to children mentioned in subsection (1),*
 - (b) a person is provided to be present at any discussions with an education authority in relation to the relevant rights of such a child for the purpose of supporting the child (where the child wishes such a person to be present),*
 - (c) a person is provided to conduct such discussions (or any part of them), or make representations to an education authority, on behalf of such a child (where the child wishes such a person to be provided), and*
 - (d) an advocacy service (within the meaning of section (3) of section 14A) is provided to such children (the reference in that subsection to persons mentioned in subsection (2) being read as if such children were mentioned in that subsection).*
- (3) *Subsection (4) applies where—*
- (a) a child, or parent, as mentioned in subsection (1) wishes to exercise, or is considering exercising, relevant rights, or*
 - (b) some other thing is done, or proposed to be done, under this Act by or in relation to such a child.*
- (4) *Any person providing a support service under this section may seek the views of the child as respects—*
- (a) the exercise of the relevant rights, or*
 - (b) the doing, or proposed doing, of the thing.*
- (5) *In this section, “relevant rights”—*
- (a) in relation to a child who has attained the age of 12 years, means any rights conferred by or under this Act on such children, and includes the right—*
 - (i) to receive any document or information, and*
 - (ii) to give consent in relation to any matter, and*
 - (b) in relation to the parents of such a child, means any rights conferred on the parents by or under this Act.*

32 Ancillary provision

The Scottish Ministers may by order make such incidental, supplemental, consequential, further transitional, transitory or saving provision as they consider necessary or expedient for the purposes or in consequence of this Act.

33 Modification of enactments

Schedule 3 makes modifications of enactments in consequence of this Act.

34 Orders, regulations and rules

- (1) Any power of the Scottish Ministers to make orders, regulations or rules under this Act is exercisable by statutory instrument.
- (2) Any such power includes power to make—
- (a) such incidental, supplemental, consequential, transitional, transitory or saving provision as the Scottish Ministers think necessary or expedient,
 - (b) different provision for different purposes.
- (3) An order under section 32 may modify any enactment, instrument or document.

- (4) A statutory instrument containing an order, regulations or rules under this Act (except section 17(5), section 32 (where subsection (5) applies) and section 35) is subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (5) No—
 - (a) order under sections 20 and 32 containing provisions which add to, replace or omit any part of the text of an Act, or
 - (b) regulations under section 17(5), is or are to be made unless a draft of the statutory instrument containing the order or regulations has been laid before, and approved by a resolution of, the Parliament.

35 Commencement and short title

- (1) The provisions of this Act, other than sections 29, 32 and 34 and this section, come into force on such day as the Scottish Ministers may by order appoint.
- (2) This Act may be cited as the Education (Additional Support for Learning) (Scotland) Act 2004.

SCHEDULE 1
ADDITIONAL SUPPORT NEEDS TRIBUNALS FOR SCOTLAND

1 Interpretation

In this schedule—

- “panel” means a panel referred to in paragraph 3(1),
- “regulations” means regulations made by the Scottish Ministers,
- “Tribunal functions” means the functions which are conferred on a Tribunal by virtue of this Act [or the Equality Act 2010] 1 ,
- “Tribunal member” means a member of a panel,
- “Tribunal staff” means the staff provided or appointed under paragraph 9.

2 The President

- (1) The Scottish Ministers must not appoint an individual under section 17(2) as President unless that individual has such qualifications, training and experience as are prescribed in regulations.
- (2) The President may serve as the convener of a Tribunal.
- (3) The President's functions may, if the office of the President is vacant or the President is for any reason unable to act, be exercised by one of the members of the panel referred to in paragraph 3(1)(a) appointed for that purpose by the Scottish Ministers.
- (4) Regulations may make provision for the delegation by the President of any of the President's functions to any member of that panel or any member of the Tribunal staff.
- (5) Paragraphs 3(2), 5, 6 and 7 of this schedule apply, with any necessary modifications, to the President as they apply to a Tribunal member.

3 The panels

- (1) The Scottish Ministers must appoint—
 - (a) a panel of individuals having such qualifications, training and experience as may be prescribed in regulations each of whom may act as the convener of a Tribunal, and
 - (b) a panel of individuals having such qualifications, training and experience as may be prescribed in regulations each of whom may act as a member of a Tribunal other than the convener.
- (2) An individual is disqualified from appointment as, and from being, a Tribunal member if the individual is—
 - (a) a member of the Scottish Parliament,
 - (b) a member of the Scottish Executive or a junior Scottish Minister, or
 - (c) of such other description as may be prescribed in regulations.

4 Constitution of Tribunals

- (1) The President must from time to time constitute such number of Tribunals as the President thinks necessary to exercise Tribunal functions.
- (2) A Tribunal constituted under sub-paragraph (1) must consist of—
 - (a) either—
 - (i) the President, or

- (ii) one member selected by the President from the panel referred to in paragraph 3(1)(a),
who is to act as the convener of the Tribunal, and
- (b) two other members selected by the President from the panel referred to in paragraph 3(1)(b).

5 Terms of office

- (1) Each Tribunal member—
 - (a) holds office for such period (not exceeding 5 years) as is specified in the member's instrument of appointment,
 - (b) may at any time resign office by giving notice in writing to the Scottish Ministers,
 - (c) vacates office on becoming disqualified from being a Tribunal member under paragraph 3(2),
 - (d) in other respects holds office in accordance with the terms of the member's instrument of appointment.
- (2) A Tribunal member whose period of office (including any period of office following re-appointment under this sub-paragraph) expires under sub-paragraph (1)(a) may be re-appointed by the Scottish Ministers for a further period to the same panel to which the member was last appointed, unless—
 - (a) the member has declined re-appointment,
 - (b) the President has recommended to the Scottish Ministers that the member should not be re-appointed and the Scottish Ministers have accepted that recommendation,
 - (c) since the member was last appointed to the panel, there has been a reduction in the overall number of members of the panel which the Scottish Ministers consider are needed to enable the President to carry out the functions under paragraph 4,
 - (d) the member has, since the member was last appointed to the panel, failed without reasonable excuse to comply with the terms of the member's appointment,
 - (e) the member no longer has the qualifications, training or experience prescribed under paragraph 3(1) for appointment to the panel.

6 Removal from office

The Scottish Ministers may remove a Tribunal member from office if the member is unfit for office by reason of inability, neglect of duty or misbehaviour.

7 Allowances for Tribunal members

The Scottish Ministers may pay to a Tribunal member such allowances as they may determine.

8 Administration of Tribunal functions

- (1) The Tribunals constituted under paragraph 4(1) are to sit at such times and in such places as the President may determine.
- (2) The President must ensure that Tribunal functions are exercised by those Tribunals efficiently and effectively.
- (3) The President may—
 - (a) give such directions, and

(b) issue such guidance, as respects the administration of the Tribunals, or any one of them, as appear to the President to be necessary or expedient for the purpose of ensuring that Tribunal functions are exercised efficiently and effectively.

9 Staff, property and services

- (1) The Scottish Ministers are to provide the President and the Tribunals, or ensure that they are provided, with such property, staff and services as the Scottish Ministers consider are required for the exercise of the functions of the President and Tribunal functions.
- (2) Without prejudice to sub-paragraph (1), the Scottish Ministers may appoint such staff for the President and the Tribunals as the Scottish Ministers may determine and on such terms and conditions as the Scottish Ministers may determine.
- (3) The Scottish Ministers may pay, or make provision for paying, to or in respect of staff appointed under sub-paragraph (2) such pensions, allowances and gratuities (including by way of compensation for loss of employment) as the Scottish Ministers may determine.

10 Finance

The Scottish Ministers are to pay any expenses reasonably incurred by the President or a Tribunal in the exercise of the President's functions or, as the case may be, Tribunal functions.

11 Rules of procedure

- (1) The Scottish Ministers must make rules as to the practice and procedure of the Tribunals.
- (2) Such rules may, in particular, include provision for or in connection with—
 - (a) the form and manner in which references to a Tribunal under section 18(1) are to be made,
 - (b) the time within which such references are to be made,
 - (c) the withdrawal of references,
 - (d) the recovery and inspection of documents,
 - (e) the persons who may appear on behalf of the parties,
 - (f) the persons who may be present at proceedings alongside any party or witness to support the party or witness,
(fa) seeking the views of children whose parents have made references to a Tribunal under section 18(1) in relation to the children,
 - (g) enabling specified persons other than the parties to appear or be represented in specified circumstances,
 - (h) requiring specified persons to give notice to other specified persons of specified matters,
 - (i) the time within which any such notice must be given,
 - (j) enabling Tribunal proceedings to be conducted in the absence of any member of a Tribunal other than the convener,
 - (k) enabling any matters that are preliminary or incidental to the determination of proceedings to be determined by the convener of a Tribunal alone or with such other members of the Tribunal as may be specified,
 - (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,
(kb) enabling a convener of a Tribunal alone and without holding a hearing to determine specified matters relating to the decision of an education authority as respects—

(i) the capacity of a child who has attained the age of 12 years to exercise a right under this Act, or
[]

(iii) whether something [] would adversely affect the wellbeing of a child who has attained the age of 12 years, []

(kc) the practice and procedure relating to matters that may be determined by a convener alone by virtue of paragraph (kb),

(kd) applying (with such modifications as may be specified) section 19(2) to a convener determining a matter by virtue of paragraph (kb) as that section applies to a Tribunal,

(m) enabling a Tribunal to exclude any person from attending all or part of Tribunal proceedings,

(n) enabling a Tribunal to impose reporting restrictions in relation to all or part of Tribunal proceedings,

(o) enabling a Tribunal to determine specified matters without holding a hearing,

(p) the recording and publication of decisions and orders of a Tribunal,

(q) enabling a Tribunal to commission medical and other reports in specified circumstances,

(r) requiring a Tribunal to take specified actions, or to determine specified proceedings, within specified periods,

(s) enabling a Tribunal to make an award of expenses,

(t) the taxation or assessment of such expenses.

(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, *or a convener alone following a determination mentioned in paragraph (kb)* and take such action (including variation and revocation) in respect of those decisions, orders or awards as it thinks fit.

(3) In sub-paragraph (2), “specified” means specified in the rules.

11A Power to monitor implementation of Tribunal decisions

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.

12 Practice directions

The President may give directions as to the practice and procedure to be followed by Tribunals in relation to any matter.

13 Evidence

(1) A Tribunal may by citation require any person—

(a) to attend proceedings of the Tribunal, at such time and place as is specified in the citation, for the purposes of giving evidence,

- (b) to produce any document in the custody, or under the control of, that person.
- (2) A Tribunal may administer oaths to persons giving evidence.
- (3) A person is not obliged by virtue of this paragraph to answer any question or produce any document which that person would be entitled to refuse to answer or produce in civil proceedings before the Court of Session.
- (4) If a person on whom a citation under sub-paragraph (1) has been served—
 - (a) fails to attend the Tribunal proceedings as required by the citation,
 - (b) refuses or fails, whilst attending proceedings as so required, to answer any question,
 - (c) deliberately alters, conceals or destroys any document which that person is required by the citation to produce,
 - (d) refuses or fails to produce any such document, that person is guilty of an offence.
- (5) It is a defence for a person charged with an offence under sub-paragraph (4)(a), (b) or (d) to show that the person had a reasonable excuse for the refusal or failure.
- (6) A person who commits an offence under sub-paragraph (4) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

14 Decisions of a Tribunal

- (1) A decision of a Tribunal—
 - (a) may be reached by majority, and
 - (b) must be recorded in a document which contains a full statement of the facts found by the Tribunal and the reasons for the decision.
- (2) The Tribunal must—
 - (a) inform each party of its decision, and
 - (b) send a copy of the document mentioned in sub-paragraph (1)(b) to each party as soon as reasonably practicable after it is prepared.

15 Annual report

- (1) The President must, in respect of each reporting year, prepare a written report as to the exercise of Tribunal functions during that year.
- (2) The President must submit each report prepared under sub-paragraph (1), as soon as practicable after the end of the reporting year to which it relates, to the Scottish Ministers.
- (3) The Scottish Ministers must lay before the Scottish Parliament a copy of each report submitted to them under sub-paragraph (2).
- (4) A reporting year for the purposes of this paragraph is—

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 - (a) the period beginning with the date on which the first President is appointed and ending with 31st March next following that date, and
 - (b) each successive period of 12 months ending with 31st March.

16 Disclosure of information

The President must, at such times and in respect of such periods as regulations may specify, provide to—

- (a) the Scottish Ministers, and
 - (b) such persons as the regulations may specify,
- such information relating to the exercise of Tribunal functions as is specified in the regulations.

17 Allowances etc. for attendance at hearings and preparation of reports

A Tribunal may pay to any person (other than the President, a Tribunal member or a member of the Tribunal staff)–

- (a) such allowances and expenses as the President may determine for the purposes of or in connection with the person's attendance at hearings of the Tribunal,
- (b) such amounts as the President may determine in connection with any report prepared in pursuance of rules made under paragraph 11(2)(q).

SCHEDULE 2
CHILDREN AND YOUNG PERSONS WITH ADDITIONAL SUPPORT NEEDS:
PLACING REQUESTS

1 Introductory

Sections 28A, 28C, 28E, 28F and 28G of the 1980 Act (which make provision as to the making of placing requests and appeals in relation to the refusal of such requests) do not apply in relation to children and young persons having additional support needs and instead the provisions of this schedule apply in relation to such children and young persons.

2 Duty to comply with placing requests

- (1) Where the parent of a child having additional support needs makes a request to an education authority to place the child in the school specified in the request, being a school under their management, it is the duty of the authority, subject to paragraph 3, to place the child accordingly.
- (2) Where the parent of a child having additional support needs makes a request to the education authority for the area to which the child belongs to place the child in the school specified in the request, not being a public school but being—
 - (a) a special school the managers of which are willing to admit the child,
 - (b) a school in England, Wales or Northern Ireland the managers of which are willing to admit the child and which is a school making provision wholly or mainly for children (or as the case may be young persons) having additional support needs, or
 - (c) a school at which education is provided in pursuance of arrangements entered into under section 35 of the 2000 Act,it is the duty of the authority, subject to paragraph 3, to meet the fees and other necessary costs of the child's attendance at the specified school.
- (3) A request made under sub-paragraph (1) or (2) is referred to in this Act as a “placing request” and the school specified in it is referred to in this schedule as the “specified school”.
- (4) Where a placing request relates to 2 or more schools being—
 - (a) schools under the management of the education authority to whom it is made, or
 - (b) schools mentioned in sub-paragraph (2)(a), (b) or (c) the managers of which are willing to admit the child in respect of whom the request is made,the duty imposed by sub-paragraph (1) or, as the case may be, sub-paragraph (2) applies in relation to the first mentioned such school, which is to be treated for the purposes of this schedule as the specified school.
- (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.] 1

3 Circumstances in which duty does not apply

- (1) The duty imposed by sub-paragraph (1) or, as the case may be, sub-paragraph (2) of paragraph 2 does not apply—
 - (a) if placing the child in the specified school would—

- (i) make it necessary for the authority to take an additional teacher into employment,
 - (ii) give rise to significant expenditure on extending or otherwise altering the accommodation at or facilities provided in connection with the school,
 - (iii) be seriously detrimental to the continuity of the child's education,
 - (iv) be likely to be seriously detrimental to order and discipline in the school,
 - (v) be likely to be seriously detrimental to the educational well-being of pupils attending the school,
 - (vi) assuming that pupil numbers remain constant, make it necessary, at the commencement of a future stage of the child's primary education, for the authority to elect either to create an additional class (or an additional composite class) in the specified school or to take an additional teacher into employment at the school, or
 - (vii) though neither of the tests set out in paragraphs (i) and (ii) is satisfied, have the consequence that the capacity of the school would be exceeded in terms of pupil numbers,
- (b) if the education normally provided at the specified school is not suited to the age, ability or aptitude of the child,
 - (c) if the education authority have already required the child to discontinue attendance at the specified school,
 - (d) if, where the specified school is a school mentioned in paragraph 2(2)(a) or (b), the child does not have additional support needs requiring the education or special facilities normally provided at that school,
 - (e) if the specified school is a single sex school (within the meaning of [paragraph 1(2) of Part 1 of Schedule 11 to the Equality Act 2010)] 1 and the child is not of the sex admitted or taken (under that [paragraph] 2) to be admitted to the school,
 - (f) if all of the following conditions apply, namely—
 - (i) the specified school is not a public school,
 - (ii) the authority are able to make provision for the additional support needs of the child in a school (whether or not a school under their management) other than the specified school,
 - (iii) it is not reasonable, having regard both to the respective suitability and to the respective cost (including necessary incidental expenses) of the provision for the additional support needs of the child in the specified school and in the school referred to in paragraph (ii), to place the child in the specified school, and
 - (iv) the authority have offered to place the child in the school referred to in paragraph (ii), or
 - (g) if, where the specified school is a special school, placing the child in the school would breach the requirement in section 15(1) of the 2000 Act.
- (2) An education authority may place a child in the specified school notwithstanding sub-paragraph (1)(a) to (e).
- (3) The duty imposed by sub-paragraph (1) or, as the case may be, sub-paragraph (2) of paragraph 2 does not apply where the acceptance of a placing request in respect of a child who is resident outwith the catchment area of the specified school would prevent the education authority from retaining reserved places at the specified school or in relation to any particular stage of education at the school.
- (4) Nothing in sub-paragraph (3) prevents an education authority from placing a child in the specified school.
- (5) In sub-paragraph (3), “reserved places” means such number of places (not exceeding such

number or, as the case may be, such percentage of places at the school or relating to the particular stage of education as the Scottish Ministers may by regulations prescribe) 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.

(6) In sub-paragraphs (3) and (5) “catchment area”, in relation to a school, means the area from which pupils resident therein will be admitted to the school in terms of any priority based on residence in accordance with the guidelines formulated by the authority under section 28B(1)(c) of the 1980 Act.

4 Placing requests: further provision

(1) An education authority must inform a parent in writing of their decision on a placing request made by the parent.

(2) On complying with a placing request relating to a child for whom a co-ordinated support plan has been prepared (and not discontinued), an education authority must modify accordingly the nomination in the plan of a school to be attended by the child.

(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.

(3) The Scottish Ministers may, by regulations, make provision for deeming an education authority to have refused a placing request in the event of their not having informed the parent of their decision on it in accordance with sub-paragraph (1) within such period or before such date as may be prescribed in the regulations.

5 Reference to appeal committee of refusal of placing request

(1) A parent who has made a placing request may refer a decision of the education authority refusing the request to an appeal committee set up under section 28D of the 1980 Act.

(2) Sub-paragraph (1) does not apply where the decision of the education authority refusing the request may be referred to a Tribunal under section 18(1).

(3) Where a reference under this paragraph has been made in respect of a child, no further such reference in respect of the child is competent during the period of 12 months beginning with the day on which the immediately preceding such reference was lodged.

(4) A reference under this paragraph must be lodged with the appeal committee within 28 days of the receipt by the parent of the decision of the education authority.

(5) For the purposes of sub-paragraph (4), a decision which is posted is to be presumed to have been received (unless the contrary is proved)—

(a) on the day after the date on which it was posted, or

(b) if posted on a Friday or Saturday, on the Monday next following.

(6) The committee may, on good cause being shown, hear such a reference notwithstanding that it was not lodged within the time mentioned in sub-paragraph (4).

6 References to appeal committees: supplementary provisions

- (1) An appeal committee may, on a reference made to them under paragraph 5 [(including such a reference relating to a decision which has been referred back under section 19(5)(d) or (e))] 1 , confirm the education authority's decision if they are satisfied that—
- (a) in relation to the placing request, one or more of the grounds of refusal specified in paragraph 3(1) or (3) exists or exist, and
 - (b) in all the circumstances it is appropriate to do so, but otherwise must refuse to confirm the authority's decision.
- (2) Where they so refuse, the appeal committee shall require the education authority—
- (a) in the case of a placing request made under paragraph 2(1), to place the child in the specified school,
 - (b) in the case of a placing request made under paragraph 2(2), to meet the fees and other necessary costs of the child's attendance at the specified school, and the authority must comply with that requirement.
- (3) An appeal committee must notify their decision under this paragraph and the reasons for it in writing to the parent who made the reference and to the education authority and, where they confirm the authority's decision, they must inform the parent of the right of appeal to the sheriff under paragraph 7.
- (4) Sub-paragraph (5) applies where—
- (a) after a reference is made to an appeal committee under paragraph 5, but
 - (b) before the committee has disposed of the reference, the things mentioned in any of paragraphs (a), (b), (ba) and (c) of section 18(4) occur.
- (5) Where this sub-paragraph applies—
- (a) the appeal committee must transfer the reference to the Tribunal, and
 - (b) on being so transferred, the reference is to be treated as if made to the Tribunal under section 18(1).
- (6) The Scottish Ministers may by regulations make provision for procedure in relation to references under paragraph 5 and any such regulations may, in particular, include provision—
- (a) requiring an education authority to make information relevant to their decision available to the appeal committee and to the parent referring the decision to the committee,
 - (b) deeming, for the purposes of this Act, an appeal committee to have confirmed the decision of an education authority on a placing request if the committee has not complied with sub-paragraph (3) of this paragraph within such period or before such date as may be prescribed in the regulations.

7 Appeal to sheriff from appeal committee

- (1) A parent who has made a reference to an appeal committee under paragraph 5 [(including such a reference relating to a decision which has been referred back under section 19(5)(d) or (e))] 1 may appeal to the sheriff against the decision of the appeal committee on that reference.
- (1A) Sub-paragraph (1) does not apply where the decision of the appeal committee may be referred to a Tribunal under section 18(1).] 2
- (2) The education authority may, but the appeal committee may not, be a party to an appeal under this paragraph.
- (3) An appeal under this paragraph—

- (a) is to be made by way of summary application,
 - (b) must be lodged with the sheriff clerk within 28 days from the date of receipt of the decision of the appeal committee, and
 - (c) is to be heard in chambers.
- (4) For the purposes of sub-paragraph (3)(b), a decision which is posted is to be presumed to have been received (unless the contrary is proved)—
- (a) on the day after the date on which it was posted, or
 - (b) if posted on a Friday or Saturday, on the Monday next following.
- (5) On good cause being shown, the sheriff may hear an appeal under this paragraph notwithstanding that it was not lodged within the time mentioned in sub-paragraph (3)(b).
- (6) The sheriff may, on an appeal made under this paragraph, confirm the education authority's decision if satisfied that—
- (a) in relation to the placing request, one or more of the grounds of refusal specified in paragraph 3(1) or (3) exists or exist, and
 - (b) in all the circumstances, it is appropriate to do,
- but otherwise must refuse to confirm the authority's decision.
- (7) Where the sheriff so refuses, the sheriff must require the education authority—
- (a) in the case of a placing request made under paragraph 2(1), to place the child in the specified school,
 - (b) in the case of a placing request made under paragraph 2(2), to meet the fees and other necessary costs of the child's attendance at the specified school,
- and the authority must comply with that requirement.
- (8) Sub-paragraph (9) applies where—
- (a) after an appeal is made to the sheriff under this paragraph, but
 - (b) before the sheriff has disposed of the appeal,
- the things mentioned in any of paragraphs (a), (b), (ba) and (c) of section 18(4) occur.
- (9) Where this sub-paragraph applies—
- (a) the sheriff must transfer the appeal to the Tribunal, and
 - (b) on being so transferred, the appeal is to be treated as if it were a reference made to the Tribunal under section 18(1).
- (10) The sheriff may make such order as to the expenses of an appeal under this paragraph as the sheriff thinks fit.
- (11) The judgment of the sheriff on an appeal under this paragraph is final.
- (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).] 4

8 Young persons having additional support needs

- (1) Paragraphs 2 to 7 apply to a young person having additional support needs as they apply to a child having such needs.
- (2) For the purposes of the application of those provisions to a young person having additional support needs references in the provisions to the parent of a child having additional support needs (as well as references to the child) are to be construed as references to the young person.

- (3) Sub-paragraph (2) does not apply in a case where the education authority are satisfied that the young person lacks capacity to do anything which the parent of a child may do under the provision concerned.

SCHEDULE 3 MODIFICATION OF ENACTMENTS

1[...]

2 National Health Service (Scotland) Act 1978 (c.29)

In the National Health Service (Scotland) Act 1978, in section 16A (power to make payments towards expenditure on community services), in subsection (1)–

- (a) in paragraph (b)–
 - (i) sub-paragraph (i) is repealed, and
 - (ii) for “those terms” substitute “that term”,
- (b) after paragraph (b) insert–
 - (ba) any functions under section 4 or 5 of the Education (Additional Support for Learning) (Scotland) Act 2004 (asp 4) in making provision for additional support needs;”.

3 Education (Scotland) Act 1980 (c.44)

- (1) The Education (Scotland) Act 1980 is amended as follows.
- (2) In section 1(5) (definitions of certain terms)–
 - (a) in paragraph (a), sub-paragraph (ii) is repealed,
 - (b) paragraphs (c) and (d) are repealed.
- (3) In section 4 (duty of education authority to provide a psychological service)–
 - (a) the words “in clinics or elsewhere” are repealed,
 - (b) in paragraph (a), for “with special educational needs” substitute “having additional support needs”,
 - (c) in paragraph (c)–
 - (i) for “special educational needs” substitute “additional support needs”,
 - (ii) the words “in clinics” are repealed.
- (4) In section 23 (provision by education authority for education of pupils belonging to areas of other authorities)–
 - (a) in subsection (1), after “Act” insert “or additional support within the meaning of the Education (Additional Support for Learning) (Scotland) Act 2004 (asp 4) (referred to in this section as “the 2004 Act””,
 - (b) in subsection (1A)–
 - (i) after “Act” in the first place where it occurs insert “or any provision of the 2004 Act”,
 - (ii) after “Act” in the second place where it occurs insert “or their functions under sections 4 and 5 of the 2004 Act”,
 - (iii) after “education” in the fourth place where it occurs insert “or additional support within the meaning of the 2004 Act”,
 - (c) in subsection (1B), after “Act” insert “or the 2004 Act”,
 - (d) in subsection (2), after “authority” in the second place where it occurs insert “or have provided additional support within the meaning of the 2004 Act for any such pupil”,
 - (e) in subsection (3)–
 - (i) the words from “1(5)(c)” to “Act)” are repealed,
 - (ii) for the words “51 and 60 to 65F” substitute “and 51”,
 - (iii) after “Act” in the second place where it occurs insert “and for the purposes of

the 2004 Act”.

- (5) In section 28A(3) (circumstances in which the duty to comply with placing requests does not apply), in paragraph (d), for “special educational needs” substitute “additional support needs”.
- (6) In section 28B (information as to placing in schools and other matters), after subsection (1) insert—
- (1A) In the application of subsection (1)(b)(ii) above in relation to a child who has additional support needs—
 - (a) for the reference to section 28A(1) and (2) of this Act there shall be substituted a reference to paragraph 2 of schedule 2 to the Education (Additional Support for Learning) (Scotland) Act 2004 (asp 4), and
 - (b) “placing request” means a placing request within the meaning of that Act.”.
- (7) In section 28D (appeal committees), in subsection (1)—
 - (a) for the words “, 28H and 63” substitute “and 28H”, and
 - (b) after “Act” insert “and paragraph 5 of schedule 2 to the Education (Additional Support for Learning) (Scotland) Act 2004 (asp 4)”.
- (8) In section 28E (reference to appeal committee of refusal of placing request), subsection (2) is repealed.
- (9) In section 38(2) (schools which may be named in attendance orders), in paragraph (b), for “is a recorded child” substitute “has additional support needs requiring the education or special facilities normally provided at the school”.
- (10) In section 40 (period of operation of attendance orders), the proviso is repealed.
- (11) In section 54(4) (provision of clothing for pupils at public schools), for paragraph (b) substitute—
 - (b) a child or young person—
 - (i) having additional support needs, and
 - (ii) who is, for the purposes of the Education (Additional Support for Learning) (Scotland) Act 2004 (asp 4), a child or young person for whose school education an education authority are responsible by virtue of section 29(3)(b) of that Act,shall be deemed to be attending a school under the management of that authority.”.
- (12) Sections 60 to 65G are repealed.
- (13) In section 135 (interpretation)—
 - (a) in subsection (1)—
 - (i) at the appropriate place, in alphabetical order, insert the following definition—

“additional support needs” and references to any child or young person having such needs shall be construed in accordance with section 1(1) of the Education (Additional Support for Learning) (Scotland) Act 2004 (asp 4);”,
 - (ii) the definitions of “psychological examination”, “Record” and “recorded”, and “special educational needs” are repealed,
 - (iii) in the definition of “special school”, for the words from “means” to the end substitute “has the meaning given in section 29(1) of the Education (Additional Support for Learning) (Scotland) Act 2004 (asp 4)”,
 - (b) in subsection (2), in each of paragraphs (a)(ii) and (b)(ii)—
 - (i) for “with special educational needs” substitute “having additional support needs”,
 - (ii) for “his special educational needs” substitute “those needs”.

(14) Schedule A2 is repealed.

4 Education (Scotland) Act 1981 (c.58)

In the Education (Scotland) Act 1981, the following provisions are repealed—

- (a) section 3(1) (special educational needs),
- (b) section 4(1) and (3) (children and young persons with certain special educational needs),
- (c) in Schedule 2—
 - (i) paragraph 4(a)(ii), and
 - (ii) paragraphs 6 to 8, and
- (d) Schedule 3.

5 Disabled Persons (Services, Consultation and Representation) Act 1986 (c.33)

In the Disabled Persons (Services, Consultation and Representation) Act 1986, the following provisions are repealed—

- (a) section 13 (disabled persons leaving special education: Scotland),
- (b) in section 14 (assessment and recording of children and young persons), subsections (3) to (6).

6 Self-Governing Schools etc. (Scotland) Act 1989 (c.39)

In the Self-Governing Schools etc. (Scotland) 1989, the following provisions are repealed—

- (a) section 71,
- (b) section 72, and
- (c) in Schedule 10, paragraph 8(2).

7 Further and Higher Education (Scotland) Act 1992 (c.37)

In the Further and Higher Education (Scotland) Act 1992, the following provisions are repealed—

- (a) section 23 (duties of boards of management as regards recorded children),
- (b) in Schedule 9 (miscellaneous and consequential amendments), paragraph 7(4).

8 Tribunals and Inquiries Act 1992 (c.53)

In Part II of Schedule 1 to the Tribunals and Inquiries Act 1992 (tribunals under the supervision of the Scottish Committee of the Council on Tribunals), in paragraph 50, after sub-paragraph (b) insert—

- (ba) Additional Support Needs Tribunals for Scotland constituted under section 17(1) of the Education (Additional Support for Learning) (Scotland) Act 2004 (asp 4).”.

9 Children (Scotland) Act 1995 (c.36)

In the Children (Scotland) Act 1995, in Schedule 4 (minor and consequential amendments), paragraph 28(4) is repealed.

10 Education (Scotland) Act 1996 (c.43)

In the Education (Scotland) Act 1996–

(a) in section 4 (quality assurance), in paragraph (a), for “with special educational needs” substitute “having additional support needs within the meaning of the Education (Additional Support for Learning) (Scotland) Act 2004 (asp 4)”,

(b) in section 33(1) (placing requests), the words “and that section as substituted for certain purposes by Schedule A2 to that Act” are repealed.

11 Standards in Scotland's Schools etc. Act 2000 (asp 6)

In the Standards in Scotland's Schools etc. Act 2000, sections 43(4) and 44(7) are repealed.

EDUCATION (SCOTLAND) BILL
[AS AMENDED AT STAGE 2]

REVISED EXPLANATORY NOTES

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