



# Education (Additional Support for Learning) (Scotland) Act 2004

2004 asp 4

**The Bill for this Act of the Scottish Parliament was passed by the Parliament on 1st April 2004 and received Royal Assent on 7th May 2004**

An Act of the Scottish Parliament to make provision for additional support in connection with the school education of children and young persons 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.
- (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 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 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 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 Children and young persons who lack capacity**

- (1) For the purposes of this Act, a child or young person lacks capacity to do something if the child or young person is incapable of doing it by reason of mental illness, developmental disorder or learning disability or of inability to communicate because of a physical disability.
- (2) However, a child or young person 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 or mechanical aid (whether of an interpretative nature or otherwise).

#### *General powers and duties*

### **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) Every education authority must, subject to subsection (3), provide such additional support as is appropriate for each child—
  - (a) under school age (other than a prescribed pre-school child),
  - (b) belonging to the authority's area, and
  - (c) who has additional support needs arising from a disability (within the meaning of the Disability Discrimination Act 1995 (c. 50)) which the child has.
- (3) The duty in subsection (2) applies only where the authority has established, in pursuance of section 7(5) of this Act, that the child has the additional support needs referred to in subsection (2)(c) following the child having been brought to the authority's attention as having or appearing to have such needs by a Health Board.
- (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.

### *Establishment of additional support needs and need for co-ordinated support plan*

## **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.
- (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,
  - (b) in the case of a young person—

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- (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 the person who made the request 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 the 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,
  - (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,
  - (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.

## **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,

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- (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.
- (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.

### *Co-ordinated support plans*

## **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,
    - (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 advice and further 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 persons belonging to their area.

- (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,
  - (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.
- (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—

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- (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,
  - (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,
    - (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 when the children and young persons for whom they are prepared move from the area of one education authority to that of another,
  - (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.

#### *Exchange of information*

## **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 to express 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.
- (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 to express 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.
- (5) Information is to be provided under subsection (2)(a) or (4) only with the consent of—
- (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 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).

*Supporters and advocacy*

**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,
  - (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.

*Mediation and dispute resolution*

**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) parents of children belonging to the area of the authority,
  - (b) young persons belonging to that area, or
  - (c) in relation to any such young persons who lack capacity to express a view or make a decision for those purposes, their parents,
- concerning the exercise by the authority of their functions under this Act in relation to such children or young persons.
- (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 under this Act (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 belonging to the area of the authority,
  - (b) any young person belonging to that area, or
  - (c) in relation to any such young person who lacks capacity to express a view or 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—
- (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 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 or young person to refer any matter to a Tribunal.

### *Appeals*

## **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 to exercise the functions which are conferred on a Tribunal by virtue of this Act.
- (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 in relation to co-ordinated support plan**

- (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,
  - (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.
- (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,
    - (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,
  - (e) where subsection (4) applies, a decision of the education authority refusing a placing request made in respect of the child or young person.
- (4) This subsection applies where, at the time the placing request is refused—

- (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, 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.
- (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)(e) 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.

## **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) or (d)(iv) 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) or (d)(ii) or (iii) 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.
- (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, 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, 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.
- (6) Paragraphs 6 and 7 of schedule 2 apply to a reference made to an appeal committee under subsection (5)(c) 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.

### *Placing requests*

## **22 Placing requests**

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

### *Miscellaneous*

## **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,

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- (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, and
  - (c) where necessary or appropriate, revise the information and publish that revised information.
- (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), and
  - (f) the officer or officers of the authority from whom—
    - (i) parents of children having additional support needs, and
    - (ii) young persons having such needs,can obtain advice and further information about provision for such needs.
- (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.

## **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,
  - (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.

### *General*

## **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).

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

- “child”,

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

- (3) In this Act, 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.
- (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 or young person of any matter, they must do so—

- (a) in writing, or
- (b) in such other form as the parent 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).

### **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.

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(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

(introduced by section 17)

### ADDITIONAL SUPPORT NEEDS TRIBUNALS FOR SCOTLAND

#### *Interpretation*

- 1 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,
  - “Tribunal member” means a member of a panel,
  - “Tribunal staff” means the staff provided or appointed under paragraph 9.

#### *The President*

- 2
- (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.

#### *The panels*

- 3
- (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.

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### *Constitution of Tribunals*

- 4 (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).

### *Terms of office*

- 5 (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.

### *Removal from office*

- 6 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.

### *Allowances for Tribunal members*

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

### *Administration of Tribunal functions*

- 8 (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.

### *Staff, property and services*

- 9 (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.

### *Finance*

- 10 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.

### *Rules of procedure*

- 11 (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,

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- (f) the persons who may be present at proceedings alongside any party or witness to support the party or witness,
- (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,
- (l) enabling Tribunal proceedings to be held in private,
- (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.

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

#### *Practice directions*

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

#### *Evidence*

- 13 (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,

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- (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.

#### *Decisions of a Tribunal*

- 14 (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.

#### *Annual report*

- 15 (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—
- (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.

#### *Disclosure of information*

- 16 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.

#### *Allowances etc. for attendance at hearings and preparation of reports*

- 17 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

*(introduced by section 22)*

### CHILDREN AND YOUNG PERSONS WITH ADDITIONAL SUPPORT NEEDS: PLACING REQUESTS

#### *Introductory*

- 1 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.

#### *Duty to comply with placing requests*

- 2 (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.

*Circumstances in which duty does not apply*

- 3 (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 section 26 of the Sex Discrimination Act 1975 (c. 65)) and the child is not of the sex admitted or taken (under that section) 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).

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- (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.

*Placing requests: further provision*

- 4 (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.
- (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.

*Reference to appeal committee of refusal of placing request*

- 5 (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)—



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- (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).

*References to appeal committees: supplementary provisions*

- 6 (1) An appeal committee may, on a reference made to them under paragraph 5, 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,
- there is referred to a Tribunal under section 18(1) a decision of the education authority that the child to whom the reference relates does not require a co-ordinated support plan.
- (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.

*Appeal to sheriff from appeal committee*

- 7 (1) A parent who has made a reference to an appeal committee under paragraph 5 may appeal to the sheriff against the decision of the appeal committee on that reference.
- (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,
- there is referred to a Tribunal under section 18(1) a decision of the education authority that the child to whom the appeal relates does not require a co-ordinated support plan.
- (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.

*Young persons having additional support needs*

- 8 (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

*(introduced by section 33)*

MODIFICATION OF ENACTMENTS

*Teaching Council (Scotland) Act 1965 (c. 19)*

- 1 In the Teaching Council (Scotland) Act 1965, in Part I of Schedule 1 (constitution of the Council), in paragraph 1(9)(c), for the words from “with” to “(c.44)” substitute “having additional support needs within the meaning of the Education (Additional Support for Learning) (Scotland) Act 2004 (asp 4)”.

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

- 2 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;”.

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

- 3 (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)—

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- (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”.

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- (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.

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

- 4 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.

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

- 5 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).

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

- 6 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).

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

- 7 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).

*Tribunals and Inquiries Act 1992 (c. 53)*

- 8 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).”.

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

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

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

- 10 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.

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

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