Status: *Point in time view as at 01/01/2017. This version of this Act contains provisions that are not valid for this point in time.*
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Education (Scotland) Act 2016

2016 asp 8

The Bill for this Act of the Scottish Parliament was passed by the Parliament on 2nd February 2016 and received Royal Assent on 8th March 2016

An Act of the Scottish Parliament to make provision in relation to school education about priorities, objectives and reducing pupils' inequalities of outcome; to modify the Education (Additional Support for Learning) (Scotland) Act 2004 and section 70 of the Education (Scotland) Act 1980; to make provision in relation to Gaelic medium education, the provision of school meals, the appointment of Chief Education Officers, the registration of independent schools and teachers in grant-aided schools and the standards of education and training of persons to be appointed as head teachers; to enable provision to be made requiring a minimum number of hours of school education to be provided; to enable provision to be made about school clothing grants; to extend the duty to provide early learning and childcare to certain children; and for connected purposes.

PART 1

SCHOOL EDUCATION

1 Pupils experiencing inequalities of outcome

After section 3 of the Standards in Scotland's Schools etc. Act 2000 insert—

"**3A Pupils experiencing inequalities of outcome: Scottish Ministers' duty**

(1) The Scottish Ministers must, when exercising their powers relating to school education, have due regard to the need to exercise the powers in the way mentioned in subsection (2).

(2) The way is a way designed to reduce inequalities of outcome for—
- (a) pupils who experience those inequalities as a result of socio-economic disadvantage, and
- (b) pupils who—
  - (i) experience those inequalities other than as a result of socio-economic disadvantage, and
  - (ii) are of such description as may be specified in regulations made by the Scottish Ministers.

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(3) Regulations under subsection (2)(b)(ii) are subject to the affirmative procedure.

3B Pupils experiencing inequalities of outcome: education authority's duties

(1) This section applies where—
- (a) an education authority is making a decision of a strategic nature about the carrying out of its functions relating to school education, or
- (b) an education authority is considering what steps to take to implement such a decision.

(2) The authority must have due regard to the need to carry out its functions relating to school education in the way mentioned in section 3A(2).

(3) The authority must—
- (a) seek and have regard to the views of persons mentioned in subsection (4) in relation to the decision and steps,
- (b) provide any advice and support that the authority thinks appropriate to those persons in relation to its consideration of the decision and steps.

(4) The persons are—
- (a) the headteachers of such schools managed by the authority as the authority thinks appropriate,
- (b) such pupils as the authority thinks appropriate,
- (c) the parents of such pupils as the authority thinks appropriate,
- (d) the representatives of any trade union which appears to the authority to be representative of the teaching staff at such schools managed by the authority as the authority thinks appropriate,
- (e) such voluntary organisations as the authority thinks appropriate,
- (f) any other persons the authority thinks appropriate.”.

Commencement Information

I1 S. 1 in force at 1.8.2016 for specified purposes by S.S.I. 2016/192, reg. 2, **sch.**

2 National Improvement Framework

(1) The Standards in Scotland's Schools etc. Act 2000 is amended as follows.

(2) After section 3B (inserted by section 1) insert—

“**3C National Improvement Framework**

(1) In pursuance of the duty imposed on them by section 3(1), the Scottish Ministers must prepare and publish a statement setting out strategic priorities and objectives in relation to school education (the “National Improvement Framework”).

(2) The Scottish Ministers must review each year the National Improvement Framework.

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(3) In carrying out a review under subsection (2), the Scottish Ministers must—
- (a) give the persons mentioned in subsection (4) an opportunity to express views on the National Improvement Framework, and
- (b) have regard to any such views.

(4) The persons are—
- (a) education authorities,
- (b) persons appearing to the Scottish Ministers to be representative of teachers employed by education authorities for the provision of school education,
- (c) such pupils who are being provided with school education as the Scottish Ministers think appropriate,
- (d) such parents of pupils who are being provided with school education as the Scottish Ministers think appropriate.

(5) The Scottish Ministers must specify, in such manner as they may determine, the way in which they have complied with the duties imposed by subsection (3).

(6) If the Scottish Ministers wish to modify the National Improvement Framework following a review under subsection (2), they must prepare and publish a new National Improvement Framework which takes account of the modifications.

(7) In subsection (1), "school education" means school education directed as is described in section 2.

3D Carrying out of education authority's duty under section 3(2)

(1) Subsection (2) applies where an education authority is carrying out the duty imposed on it by section 3(2) to endeavour to secure improvement in the quality of school education which is provided in the schools managed by it.

(2) The education authority must carry out the duty with a view to achieving the strategic priorities set out in the National Improvement Framework.".

(3) Sections 4 (national priorities in education) and 5 (education authority's annual statement of improvement objectives) are repealed.

(4) In section 58(1) (interpretation)—
- (a) the definitions of "annual statement of education improvement objectives" and "national priorities in education" are repealed, and
- (b) after the definition of "moveable property" insert—

> ""National Improvement Framework" has the meaning given by subsection (1) of section 3C; and includes (except in that subsection) a new National Improvement Framework published under subsection (6) of that section;".

Commencement Information

I2 S. 2(1)(2)(3)(4)(a) in force at 1.8.2016 for specified purposes by S.S.I. 2016/192, reg. 2, **sch.**

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I3 S. 2(4)(b) in force at 1.8.2016 by S.S.I. 2016/192, reg. 2, **sch.**

3 Plans and reports

(1) The Standards in Scotland's Schools etc. Act 2000 is amended as follows.

(2) After section 3D (inserted by section 2) insert—

"3E Annual plan: Scottish Ministers

(1) Before the beginning of the planning period each year, the Scottish Ministers must prepare and publish a plan setting out—
   (a) the steps that they propose to take during the planning period with a view to reducing inequalities of outcome for pupils of a type mentioned in section 3A(2), and
   (b) the educational benefits for those pupils that they consider will result from taking those steps.

(2) In subsection (1), "planning period" means the period of 12 months beginning with such day as the Scottish Ministers may prescribe by regulations.

(3) Regulations under subsection (2) are subject to the negative procedure.

3F Annual plan: education authority

(1) Before the beginning of the planning period each year, each education authority must prepare and publish a plan (an "annual plan") setting out—
   (a) the steps that the authority proposes to take during the planning period with a view to reducing inequalities of outcome for pupils of a type mentioned in section 3A(2),
   (b) the steps that the authority proposes to take during the planning period to comply with the duties imposed on it by section 3B(3),
   (c) the steps that the authority proposes to take during the planning period in pursuance of the National Improvement Framework, and
   (d) any educational benefits for pupils that the authority considers will result from taking those steps.

(2) As soon as reasonably practicable after publishing an annual plan, each education authority must give a copy of the plan to the Scottish Ministers.

(3) If a new National Improvement Framework is published by virtue of section 3C(6), each education authority must—
   (a) review the authority's annual plan,
   (b) make any revisions that are necessary in view of the new National Improvement Framework, and
   (c) if the authority makes any revisions under paragraph (b), publish a revised annual plan and give a copy of it to the Scottish Ministers.

(4) In subsection (1), "planning period" means the period of 12 months beginning with such day as the Scottish Ministers may prescribe by regulations.

(5) Regulations under subsection (4) are subject to the negative procedure.

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3G Annual report: Scottish Ministers

(1) As soon as reasonably practicable after the end of the period to which a plan published under section 3E(1) relates, the Scottish Ministers must prepare and publish a report (an "annual report") setting out for that period—
   (a) the steps they have taken with a view to reducing inequalities of outcome for pupils of a type mentioned in section 3A(2),
   (b) any steps they have taken in pursuance of the National Improvement Framework, and
   (c) any educational benefits for pupils that they consider result from taking those steps.

(2) In preparing an annual report, the Scottish Ministers must take account of information deriving from benchmarking with other countries in so far as they consider it relevant to the matters that are to be included in the report.

(3) As soon as reasonably practicable after publishing an annual report the Scottish Ministers must lay a copy of the report before the Scottish Parliament.

3H Annual report: education authority

(1) As soon as reasonably practicable after the end of the period to which a plan published under section 3F(1) relates, each education authority must prepare and publish a report setting out for that period—
   (a) the steps the authority has taken with a view to reducing inequalities of outcome for pupils of a type mentioned in section 3A(2),
   (b) the steps the authority has taken to comply with the duties imposed on it by section 3B(3),
   (c) any steps the authority has taken in pursuance of the National Improvement Framework, and
   (d) any educational benefits for pupils that the authority considers result from taking those steps.

(2) A report under subsection (1) may also include information on steps taken, with a view to reducing inequalities of outcome for pupils of a type mentioned in section 3A(2), by a person other than the education authority which were included in the children's services plan for the authority's area.

(3) In subsection (2), "children's services plan" has the meaning given by section 8(2) of the Children and Young People (Scotland) Act 2014.

(4) As soon as reasonably practicable after publishing a report, an education authority must give a copy of it to the Scottish Ministers.

3I Equal opportunities

(1) Each education authority must prepare and publish each year a statement (an "annual statement") setting out for the relevant period the ways in which the authority will, in providing school education, encourage equal opportunities and in particular the observance of the equal opportunity requirements.

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(2) As soon as reasonably practicable after the end of each relevant period, each education authority must prepare and publish a report setting out any activities carried out by it in pursuance of its annual statement.

(3) In this section—

"equal opportunities" and "equal opportunity requirements" have the same meanings as in the exceptions to Section L2 of Schedule 5 to the Scotland Act 1998, and

"relevant period", in relation to an annual statement, means the period of 12 months beginning with the day after the day on which the annual statement is published.".

(3) In the title of section 6, for "development" substitute " improvement ".

(4) In section 6 (school improvement plans)—

(a) in subsection (1)(a)—

(i) for "a development" substitute " an improvement ", and

(ii) for the words from "objectives", where it first occurs, to "objectives", where it second occurs, substitute " authority's plan (or revised plan) under section 3F, report under section 3H and strategy for parental involvement ", and

(b) in each of subsections (1)(b) and (3) to (6), for "development", wherever it occurs, substitute " improvement ".

(5) In section 7 (review of school performance), after subsection (1), insert—

"(1A) In defining measures and standards of performance for the purposes of subsection (1), an education authority must take into account—

(a) the National Improvement Framework, and

(b) the plan (or revised plan) published by the authority under section 3F.".

(6) In section 8(2)(a) (preparation of school improvement plan delegated to headteacher), for "development" substitute " improvement ".

(7) In section 58(1) (interpretation), in the definition of "school development plan"—

(a) for "development", where it first occurs, substitute " improvement ", and

(b) for "a development" substitute " an improvement ".

Commencement Information

I4 S. 3(1)(2) in force at 1.12.2016 for specified purposes by S.S.I. 2016/192, reg. 2, **sch.**

4 Guidance

In section 13 of the Standards in Scotland's Schools etc. Act 2000 (guidance to education authorities)—

(a) the existing provision becomes subsection (1),

(b) after that subsection insert—

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"(2) Before issuing any guidance in relation to the duties of education authorities under section 3B or 3D, the Scottish Ministers must consult the following persons about the proposed guidance—

(a) each education authority,

(b) the parents of any pupils that the Scottish Ministers think appropriate,

(c) any voluntary organisations that the Scottish Ministers think appropriate,

(d) any other persons that the Scottish Ministers think appropriate.".

Commencement Information

I5 S. 4 in force at 1.8.2016 by S.S.I. 2016/192, reg. 2, **sch.**

VALID FROM 01/08/2017

5 Duties in relation to promotion of health

In section 2A of the Standards in Scotland's Schools etc. Act 2000 (duties in relation to promotion of health), after subsection (4) insert—

"(4A) Each education authority must prepare and publish each year a statement (an "annual statement") setting out the ways in which the authority proposes to carry out the duty imposed by subsection (2) during the relevant period.

(4B) As soon as reasonably practicable after the end of each relevant period, each education authority must prepare and publish a report setting out the ways in which the authority has carried out the duty imposed by subsection (2) during the relevant period.

(4C) In subsections (4A) and (4B), "relevant period", in relation to an annual statement, means the period of 12 months beginning with the day after the day on which the annual statement is published.".

VALID FROM 01/08/2017

6 Parental involvement

(1) The Scottish Schools (Parental Involvement) Act 2006 is amended as follows.

(2) In section 2 (strategies for parental involvement)—

(a) after subsection (4) insert—

"(4A) Each education authority must publish—

(a) their strategy for parental involvement prepared under subsection (1), and

(b) any strategy for parental involvement revised by the authority under subsection (3)(b).", and

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(b) subsection (5) is repealed.

(3) After section 2 insert—

"**2A Strategy for parental involvement: annual report**

(1) Each education authority must prepare and publish each year a report (an "annual report") on the activities undertaken by the authority during the relevant period in pursuance of the general policies set out in the authority's strategy for parental involvement.

(2) In subsection (1), "relevant period", in relation to an annual report, means the period of 12 months ending with the day on which the report is published.".

PART 2

GAELIC MEDIUM EDUCATION

Assessments: primary education

7 Assessment requests

(1) A person who is the parent of a child who is under school age and has not commenced attendance at a primary school may request the education authority in whose area the child is resident to assess the need for Gaelic medium primary education (in this Part, "GMPE").

(2) A request under subsection (1) must—
(a) relate to only one child (in this Part, the "specified child"), and
(b) set out, or be accompanied by, evidence that there is a demand for GMPE from parents of other children who are—
(i) resident in the area of the authority to which the request is made, and
(ii) in the same year group as the specified child.

(3) A request under subsection (1) may set out, or be accompanied by, evidence that there is a demand for GMPE from parents of other children who are—
(a) resident in the area of the authority to which the request is made, and
(b) in a different year group in relation to the specified child.

(4) In this Part, "year group", in relation to an education authority, means the group of children under school age all of whom, on commencing primary education at a primary school in the area of the authority, will be in the same yearly stage of primary education; and references in this Part to a child being in the same or a different year group as or in relation to other children are to be construed accordingly.

(5) The Scottish Ministers may by regulations make further provision about requests under subsection (1).

(6) Regulations under subsection (5) may in particular include provision for or in connection with—
(a) the form of the request and the manner in which it is to be made,

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(b) information (including evidence in addition to that mentioned in subsection (2)) that is to be set out in, or accompany, the request,

(c) evidence as mentioned in subsections (2) and (3).

Commencement Information

I6 S. 7 in force at 1.8.2016 for specified purposes by S.S.I. 2016/192, reg. 2, **sch.**

VALID FROM 01/02/2017

8 GMPE assessment areas

(1) This section applies where an education authority receives a request under section 7(1).

(2) The authority must designate an area within the area of the authority in respect of which the need for GMPE is to be assessed.

(3) An area designated under subsection (2) is referred to in this Part as a "GMPE assessment area".

(4) In considering what area to designate as a GMPE assessment area, an authority must—

(a) so far as reasonable, seek to accommodate—

(i) demand for GMPE evidenced in the request or contained in evidence accompanying the request, or

(ii) any other demand for GMPE of which the authority is aware in respect of children resident in the area of the authority who are under school age and have not commenced attendance at a primary school, and

(b) take into account factors which affect, or might affect, how any demand for GMPE could reasonably be met in the GMPE assessment area.

(5) In taking those factors into account, the authority must have regard in particular to—

(a) any guidance under section 9 of the Gaelic Language (Scotland) Act 2005,

(b) accessibility in relation to the provision (or potential provision) of GMPE in the GMPE assessment area, and

(c) the residence of children who are under school age and have not commenced attendance at a primary school in respect of whom there is a demand for GMPE as mentioned in subsection (4)(a).

VALID FROM 01/02/2017

9 Initial assessments

(1) This section applies where an education authority receives a request under section 7(1) from the parent of a specified child.

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(2) The authority must make an assessment (an "initial assessment") of the need for GMPE—
- (a) in relation to the GMPE assessment area designated under section 8(2), and
- (b) in the specified child's year group.

(3) In making an initial assessment, the authority must take into account any information it has which—
- (a) relates to the demand for GMPE in the GMPE assessment area from parents of children—
  - (i) who are resident in the GMPE assessment area, and
  - (ii) who are in the same year group as the specified child, and
- (b) indicates that there is a demand for GMPE in the GMPE assessment area from parents of children—
  - (i) who are resident in the GMPE assessment area, and
  - (ii) who are in a different year group in relation to the specified child.

(4) The information mentioned in subsection (3) includes information set out in or accompanying the request.

(5) Where, following an initial assessment in relation to a GMPE assessment area—
- (a) the authority is satisfied that the condition in subsection (6) is met, the authority must determine that there is a potential need for GMPE in the area,
- (b) the authority is not satisfied that that condition is met, the authority must determine that there is no potential need for GMPE in the area.

(6) The condition is that the specified child and the children in respect of whose parents the authority has information as mentioned in subsection (3)(a) number 5 or more.

(7) The Scottish Ministers may by regulations—
- (a) amend subsection (6) so as to substitute for the number of children for the time being specified there a different number,
- (b) provide for the number of children for the time being specified in that subsection to be read as a different number in the application of that subsection to such education authorities as may be specified in the regulations.

(8) This section is subject to section 11.

VALID FROM 01/02/2017

10 Duties of education authority

(1) Where an education authority makes a determination under section 9(5)(a) in relation to a GMPE assessment area, the authority must—
- (a) carry out a full assessment of the need for GMPE in the area in accordance with section 12, or
- (b) take such steps as are necessary to secure the provision of such GMPE in the area as it considers appropriate.

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(2) Where an education authority makes a determination under section 9(5)(b) in relation to a GMPE assessment area, the authority must—
- (a) take no further action to secure the provision of GMPE in the area so far as relating to the request in respect of which the determination is made,
- (b) carry out a full assessment of the need for GMPE in the area in accordance with section 12, or
- (c) take such steps as are necessary to secure the provision of such GMPE in the area as it considers appropriate.

(3) An education authority must, no later than 6 weeks after receiving the request in respect of which a determination mentioned in subsection (1) or (2) is made, send to the persons mentioned in subsection (4) notification of—
- (a) its determination,
- (b) its decision to act as mentioned in subsection (1)(a) or (b) or, as the case may be, subsection (2)(a), (b) or (c), and
- (c) the reasons for its determination and decision.

(4) The persons are—
- (a) the parent who made the request,
- (b) parents of other children as mentioned in section 7(2), and
- (c) where the request set out, or was accompanied by, evidence from parents of other children as mentioned in section 7(3), those parents.

(5) An education authority must, before the expiry of the period mentioned in subsection (3), publish on its website—
- (a) its determination as mentioned in subsection (1) or (2),
- (b) its decision to act as mentioned in subsection (1)(a) or (b) or, as the case may be, subsection (2)(a), (b) or (c),
- (c) the reasons for its determination and decision, and
- (d) information about the GMPE assessment area in respect of which its determination was made.

(6) For the purposes of complying with the duty imposed by subsection (1)(b) or (2)(c), the authority must ensure that the GMPE is provided in the GMPE assessment area within such period after making the determination as is reasonable in all the circumstances.

VALID FROM 01/02/2017

11 Requests that need not be considered

(1) Subsection (2) applies where—
- (a) a request under section 7(1) (the "original request") is made,
- (b) in pursuance of the original request, the education authority that receives the original request carries out an initial assessment under section 9 in relation to a GMPE assessment area,
- (c) the authority receives another request under section 7(1) (a "further request") which would (but for subsection (2)) require the authority to carry out an initial assessment in relation to the GMPE assessment area, and

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(d) the further request is received within the period of 2 years beginning with the day on which the original request is received.

(2) The education authority need not comply with the duty imposed by section 9(2) in relation to the further request (subject to subsection (4)).

(3) For the purposes of this section, it is irrelevant—

(a) whether the further request—

(i) is made by the same person who made the original request or by another person, or

(ii) is made by a parent of a child in the same year group as, or a different year group from, the child whose parent made the original request, or

(b) whether GMPE is being provided in the GMPE assessment area to which the requests relate.

(4) Despite subsection (2), the Scottish Ministers may, in such cases as they consider appropriate, direct an education authority to comply with the duty imposed by section 9(2) in relation to the further request.

VALID FROM 01/02/2017

12 Full assessments

(1) This section applies where an education authority—

(a) receives a request under section 7(1), and

(b) decides, under section 10(1)(a) or (2)(b), to carry out a full assessment of the need for GMPE in a GMPE assessment area.

(2) The authority must—

(a) notify the persons mentioned in subsection (3) of the request,

(b) provide those persons with information about the request,

(c) provide those persons with the information the authority took into account under section 9(3) in making an initial assessment, and

(d) seek the views of those persons on—

(i) the information mentioned in paragraphs (b) and (c), and

(ii) the authority's determination under section 9(5).

(3) The persons are—

(a) Her Majesty's inspectors of schools (that is to say, the inspectors of schools appointed by Her Majesty under the 1980 Act),

(b) Bòrd na Gàidhlig,

(c) the body known as Comann nam Pàrant,

(d) the body known as the National Parent Forum of Scotland.

(4) The persons mentioned in subsection (3)(a) and (b) must—

(a) provide the views sought under subsection (2)(d), and

(b) do so before the end of the period of 4 weeks beginning with the day on which the views are sought.

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(5) Subject to subsection (7), the education authority must decide whether to secure the provision of GMPE in the GMPE assessment area.

(6) In making a decision under subsection (5), the education authority must have regard to—

(a) views provided by virtue of subsection (2)(d) before the end of the period of 4 weeks beginning with the day on which the views are sought,

(b) any guidance under section 9 of the Gaelic Language (Scotland) Act 2005,

(c) information that the education authority took into account in making an initial assessment under section 9(2),

(d) in relation to the demand for GMPE mentioned in section 9(3) from parents of children, where those children reside,

(e) any information the education authority has relating to the demand for GMPE in the area of the authority from parents of children who are under school age and have not commenced attendance at a primary school,

(f) where GMPE is provided in the area of the education authority, or the area of another education authority adjacent to that area, the location of that provision,

(g) the extent to which—

(i) children resident in the area of an education authority adjacent to the area of the education authority mentioned in subsection (5) could access GMPE in the GMPE assessment area,

(ii) children resident in the GMPE assessment area could access GMPE in the area of an education authority adjacent to the area of the education authority mentioned in subsection (5),

(h) the availability and suitability of any premises in the education authority's area in which GMPE is being, or could reasonably be, provided,

(i) the costs of providing GMPE in the GMPE assessment area,

(j) the potential to assign or recruit persons to teach GMPE in the GMPE assessment area,

(k) any Gaelic language plan published by the education authority under section 5(9) of the Gaelic Language (Scotland) Act 2005 in force at the time of making the decision mentioned in subsection (5),

(l) the potential to develop or increase—

(i) the use of the Gaelic language in the education authority's area, and

(ii) the carrying out of activities relating to the Gaelic language in the authority's area.

(7) The education authority must decide to secure the provision of GMPE in the GMPE assessment area unless, having regard to the matters mentioned in subsection (6), it would be unreasonable to do so.

(8) The Scottish Ministers may by regulations—

(a) modify subsection (3),

(b) modify subsection (6) so as to amend, remove or add to the matters for the time being mentioned in that subsection,

(c) make such other modifications of this section as the Scottish Ministers think necessary or expedient in consequence of any modification of subsection (3).

Status: *Point in time view as at 01/01/2017. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Education (Scotland) Act 2016 is up to date with all changes known to be in force on or before 19 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

VALID FROM 01/02/2017

13 Procedure following full assessment

(1) This section applies where an education authority has carried out a full assessment of the need for GMPE in a GMPE assessment area in accordance with section 12.

(2) The authority must prepare a report setting out—
- (a) its decision on whether or not to secure the provision of GMPE in the area,
- (b) the reasons for its decision with reference to—
  - (i) each of the matters mentioned in section 12(6), and
  - (ii) its duty under section 12(7), and
- (c) where the decision is to secure the provision of GMPE in the area, the period within which the authority considers it would be reasonable for GMPE to be provided in the area.

(3) The authority must send a copy of the report to—
- (a) the parent who made the request in relation to which the full assessment was carried out,
- (b) parents of other children as mentioned in section 7(2), and
- (c) where the request contained, or was accompanied by, evidence from parents of other children as mentioned in section 7(3), those parents.

(4) The authority must publish the report on its website.

(5) Publication of the report under subsection (4) must be no later than 10 weeks after the authority decides to carry out the full assessment.

(6) Where the authority decides to secure the provision of GMPE in the GMPE assessment area, it must take such steps as are necessary to secure the provision of such GMPE in the area as it considers appropriate.

(7) In taking those steps, the authority must ensure GMPE is provided in the GMPE assessment area within such period after making the decision mentioned in subsection (6) as is reasonable in all the circumstances.

VALID FROM 01/02/2017

Early learning and childcare

14 Power to extend Part to early learning and childcare

(1) The Scottish Ministers may by regulations make such provision as they consider necessary or expedient for or in connection with the purpose mentioned in subsection (2).

(2) The purpose is to require an education authority in receipt of a request under section 7(1) to treat it as a request to assess the need for Gaelic medium education in its area which, if provision for such education were made, would discharge (wholly or in part) the duty mentioned in subsection (3).

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(3) The duty is the duty under subsection (1) of section 1 of the 1980 Act to the extent it is exercisable as mentioned in subsection (1A) of that section (duty of education authorities to secure provision of early learning and childcare).

(4) Regulations under subsection (1) may in particular—
- (a) modify this Part, the 1980 Act or any other enactment,
- (b) provide for any provision of this Part, the 1980 Act or any other enactment to apply—
  - (i) with such modifications as may be specified in the regulations, or
  - (ii) without modifications.

Promotion, support and guidance

VALID FROM 01/02/2017

15 Duty to promote and support Gaelic medium education and learning

(1) Every education authority must promote the potential provision of school education in the area of the authority—
- (a) by means of Gaelic medium education by publicising, in such manner as it thinks appropriate, the right to make a request under section 7(1) to the authority, and
- (b) by means of Gaelic learner education in such manner as it thinks appropriate.

(2) Where subsection (3) or (4) applies, an education authority must, so far as reasonably practicable, promote and support—
- (a) Gaelic medium education provided in its area,
- (b) Gaelic learner education provided in its area, or
- (c) (as the case may be) both.

(3) This subsection applies where an education authority, in pursuance of its duty under section 1(1) of the 1980 Act (duty of education authorities to secure provision of education) to the extent it relates to school education, secures the provision in its area of—
- (a) Gaelic medium education,
- (b) Gaelic learner education, or
- (c) both.

(4) This subsection applies where an education authority exercises the power in section 1(1C) of the 1980 Act by securing the provision in its area of—
- (a) Gaelic medium education,
- (b) Gaelic learner education, or
- (c) both.

(5) In carrying out its duty of promotion under subsection (2), an education authority must take reasonable steps to ensure that it publicises, in such manner as it thinks appropriate, the provision in its area of—
- (a) Gaelic medium education,
- (b) Gaelic learner education, or

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(c) (as the case may be) both.

(6) In carrying out its duty of support under subsection (2) in relation to education as mentioned in that subsection, an education authority must—

(a) take reasonable steps to ensure that teachers in any class where the education is provided have such resources, training and opportunities as are reasonably necessary to adequately and effectively provide the education,

(b) take reasonable steps to ensure that pupils in any such class have such resources as are reasonably necessary to adequately and effectively receive and benefit from the education, and

(c) have regard to any guidance under section 9 of the Gaelic Language (Scotland) Act 2005.

16 Guidance

(1) Section 9 of the Gaelic Language (Scotland) Act 2005 (guidance on Gaelic education) is amended as follows.

(2) In subsection (1), for “may” substitute “ must ”.

(3) After that subsection insert—

“(1A) Guidance under subsection (1) may, in particular, include provision relating to the provision of Gaelic education in schools.

(1B) In subsection (1A), “schools” has the meaning given by section 135(1) of the Education (Scotland) Act 1980.”.

(4) After subsection (2) insert—

“(2A) Any relevant public authority having functions relating to, or to the provision of, Gaelic education must, to the extent that guidance under subsection (1) relates to the functions, have regard to the guidance in carrying out the functions.”.

Commencement Information

I7 S. 16 in force at 15.7.2016 by S.S.I. 2016/192, reg. 2, **sch.**

Definitions: other Acts

17 Meaning of “Gaelic education” and “Gaelic medium education”

(1) In section 10(1) of the Gaelic Language (Scotland) Act 2005 (interpretation), in the definition of “Gaelic education”, after “means education” insert “ consisting of teaching and learning ”.

(2) In the Schools (Consultation) (Scotland) Act 2010, in schedule 1 (relevant proposals), in the definition of “Gaelic medium education” in paragraph 12, after “teaching” insert “ and learning ”.

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Commencement Information

I8 S. 17 in force at 15.7.2016 by S.S.I. 2016/192, reg. 2, **sch.**

VALID FROM 01/02/2017

Interpretation of Part 2

18 Interpretation of Part 2

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

"early learning and childcare",
"education authority",
"parent",
"pupil",
"school",
"school age",
"school education".

(2) In this Part—

"area", in relation to an education authority, is (except where the context otherwise requires) to be construed in accordance with section 135(1) of the 1980 Act (see the definition of "education authority"),

"full assessment" is to be construed in accordance with section 12,

"Gaelic language" means Gaelic language as spoken in Scotland,

"Gaelic learner education", in relation to the Gaelic language, means the teaching of the language to, and learning of the language by, pupils to whom education is provided primarily by means of the English language,

"Gaelic medium education" means teaching and learning by means of the Gaelic language,

"Gaelic medium primary education" means primary education consisting of teaching and learning by means of the Gaelic language,

"GMPE" means Gaelic medium primary education,

"GMPE assessment area" is to be construed in accordance with section 8,

"initial assessment" is to be construed in accordance with section 9,

"primary education" is to be construed in accordance with section 135(2) of the 1980 Act but does not include—

(a) early learning and childcare the availability of which an education authority is required to secure under section 47(1) of the Children and Young People (Scotland) Act 2014, and

(b) any school education that an education authority is enabled to secure the provision of under section 1(1C) of the 1980 Act,

"primary school" is to be construed in accordance with section 135(2) of the 1980 Act but does not include a nursery school or nursery class (within the meaning of section 135(1) of that Act),

"specified child" is to be construed in accordance with section 7(2),

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"year group" is to be construed in accordance with section 7(4).

PART 3

MISCELLANEOUS

19 Additional support for learning

The schedule to this Act contains modifications of the Education (Additional Support for Learning) (Scotland) Act 2004.

Commencement Information
I9 S. 19 in force at 1.1.2017 for specified purposes by S.S.I. 2016/386, reg. 2, **sch.**

20 Children unable to attend early learning and childcare

In section 14 of the 1980 Act (education for children unable to attend school etc.), after subsection (3) insert—

"(4) Subsection (1) applies to a pupil who receives school education under arrangements entered into by an education authority under section 35 of the Standards in Scotland's Schools etc. Act 2000 (provision of school education by persons other than education authorities) as it applies to a pupil mentioned in that subsection, but as if—

(a) in paragraph (a), the reference to a suitable educational establishment for the purpose of receiving education were a reference to a place where early learning and childcare is provided for the purpose of receiving early learning and childcare,

(b) in paragraph (b), the reference to an establishment were a reference to a place, and

(c) the reference to education elsewhere than at an educational establishment were a reference to early learning and childcare at a place other than a place where such learning and childcare is normally provided.".

Commencement Information
I10 S. 20 in force at 1.1.2017 by S.S.I. 2016/386, reg. 2, **sch.**

21 Learning hours

(1) The 1980 Act is amended as follows.

(2) After section 2 insert—

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"**2ZA Learning hours**

(1) An education authority and the managers of a grant-aided school must secure that no fewer than the prescribed number of learning hours (the "prescribed hours") are made available during each school year to each pupil for whose school education the authority is, or the managers are, responsible (but subject to subsection (3)).

(2) For the purposes of subsection (1)—
- (a) an education authority is "responsible" for the school education of a pupil if the pupil belongs to the authority's area and the pupil is, or is about to be, provided with school education—
  - (i) in a school which is under the management of the authority, or
  - (ii) by virtue of arrangements made or entered into by the authority,
- (b) the managers of a grant-aided school are "responsible" for the school education of a pupil if the pupil is provided with school education in a grant-aided school which is under the management of the managers of the school (except where the education is provided for the pupil in the school by virtue of arrangements as mentioned in paragraph (a)(ii)).

(3) Where any of the circumstances mentioned in subsection (4) (the "relevant circumstances") apply to a pupil during a school year (the "relevant year"), an education authority may secure that fewer than the prescribed hours are made available to the pupil during the relevant year.

(4) The relevant circumstances are—
- (a) that the authority is satisfied that the pupil's wellbeing would be adversely affected if the prescribed hours were to be made available to the pupil during the relevant year,
- (b) that, because of matters outwith the control of the authority, it is impracticable for the authority to secure that the prescribed hours are made available to the pupil during the relevant year,
- (c) that other prescribed circumstances apply.

(5) Where an education authority exercises the power conferred by subsection (3) in relation to a pupil, the authority must secure that no fewer than the reduced hours are made available to the pupil during the relevant year.

(6) In subsection (5), "reduced hours", in relation to a pupil, means the prescribed hours less the number of learning hours that were not, by virtue of the application of the relevant circumstances in relation to the pupil, made available during the relevant year to the pupil.

(7) For the purposes of subsection (4)(a), the education authority is to determine whether it is satisfied that a pupil's wellbeing would be adversely affected by reference to the extent to which the pupil is or would be—

safe,
healthy,
achieving,
nurtured,
active,

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respected,

responsible, and

included.

(8) Subsections (3) to (7) apply in relation to the managers of a grant-aided school as they apply in relation to an education authority.

(9) Regulations under subsection (1) or (4)(c), or under the definition of "learning hours" in subsection (12), may—

(a) include transitional or transitory provision,

(b) make different provision for different purposes,

(c) make different provision for different types of pupil.

(10) The Scottish Ministers may by regulations modify the list in subsection (7) so as to amend, remove or add to the matters for the time being mentioned in the list.

(11) Before making any regulations under subsection (1), (4)(c) or (10) or under the definition of "learning hours" in subsection (12), the Scottish Ministers must consult such persons as they consider appropriate.

(12) In this section—

"learning hours" means hours of school education of such type as may be prescribed,

"prescribed" means prescribed by the Scottish Ministers by regulations,

"school education" does not include early learning and childcare,

"school year" means the period of 12 months beginning on 1 August.".

(3) In section 133 (regulations etc.)—

(a) in subsection (2), for "(2YA)" substitute " (2XA) ",

(b) after subsection (2) insert—

"(2XA) Subsection (2) does not apply to any regulations under section 2ZA(1), (4)(c) or (10), or under the definition of "learning hours" in section 2ZA(12); and such regulations are subject to the affirmative procedure.",

(c) in subsection (4)—

(i) after paragraph (a) insert—

"(aa) in relation to regulations made under section 2ZA(1), by an education authority or the managers of a grant-aided school;", and

(ii) for the words "that authority", in each place where they occur, substitute " the authority, managers ", and

(d) in subsection (5)(c), after "authority" insert " , managers ".

Commencement Information

I11 S. 21(1)(2) in force at 1.8.2016 for specified purposes by S.S.I. 2016/192, reg. 2, **sch.**

Status: *Point in time view as at 01/01/2017. This version of this Act contains provisions that are not valid for this point in time.*
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VALID FROM 01/04/2018

22 Provision of school meals

(1) The 1980 Act is amended as follows.

(2) For section 53 (provision of school meals) substitute—

"**53 Provision of school meals**

(1) This section applies to—
- (a) pupils in attendance at public schools and other educational establishments under the management of an education authority, and
- (b) pupils who receive school education under arrangements entered into by an education authority under section 35 of the Standards in Scotland's Schools etc. Act 2000 (provision of school education by persons other than education authorities).

(2) The authority must provide or secure the provision of a school lunch, free of charge, to pupils falling within subsection (7).

(3) The authority may provide or secure the provision of—
- (a) other food or drink to pupils falling within subsection (7),
- (b) food or drink to other pupils.

(4) Where the authority provides or secures the provision of food or drink under subsection (3)(a) or (b) to pupils, it may—
- (a) do so free of charge, or
- (b) charge the pupils.

(5) The authority may exercise the power under subsection (4) to provide or secure the provision of food or drink free of charge—
- (a) in relation to pupils who satisfy such conditions as the authority thinks fit,
- (b) at such times of the day as the authority thinks fit.

(6) Any charge under subsection (4) must be the same for the same quantity of the food or drink provided.

(7) A pupil falls within this subsection if—
- (a) the pupil is, or the parents of the pupil are, in receipt of—
  - (i) income support,
  - (ii) an income-based jobseeker's allowance (payable under the Jobseekers Act 1995),
  - (iii) an income-related allowance under Part 1 of the Welfare Reform Act 2007 (employment and support allowance),
- (b) the parents of the pupil are in receipt of support provided under Part 6 of the Immigration and Asylum Act 1999.

(8) The Scottish Ministers may by regulations modify subsection (7) by—
- (a) adding a description of pupil by reference to—

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(i) any benefit or allowance received by the pupil, or the parents of the pupil, in such circumstances as may be prescribed in the regulations,

(ii) any tax credit, or element of a tax credit, within the meaning of the Tax Credits Act 2002 received by the pupil, or the parents of the pupil, in such circumstances as may be so prescribed,

(iii) the yearly stage of primary or secondary education of the pupil,

(b) adding such other description of pupil as may be prescribed in the regulations.

(9) An education authority must provide such facilities as the authority considers appropriate for the consumption of food or drink brought by pupils to schools or other educational establishments as mentioned in subsection (1)(a) under the management of the authority.

(10) An education authority may provide or secure the provision of food or drink (including a school lunch) under this section—

(a) on the premises of the schools or other establishments as mentioned in subsection (1)(a) where education is provided,

(b) at any place where school education is provided under arrangements mentioned in subsection (1)(b), or

(c) at any other place.

(11) For the purposes of this section, a pupil for whom an education authority has made special arrangements under section 14 may, at the discretion of the authority, be deemed to be in attendance at a public school.

(12) In this section and sections 53A and 53B, "school lunch" means anything provided, or the provision of which is secured, by an education authority under subsection (2) in the middle of the day which the education authority considers is appropriate for consumption as a meal at that time of the day.".

(3) After section 53 insert—

"**53ZA Power to require provision of meals other than school lunches**

(1) The Scottish Ministers may by regulations make provision for or in connection with imposing a duty on education authorities to provide, or secure the provision of, a free meal (other than a school lunch) of a prescribed description at prescribed times of the day to each pupil mentioned in subsection (2).

(2) The pupil is an eligible pre-school child who falls within section 53(7).

(3) Regulations under subsection (1) may in particular—

(a) make such modifications of section 53 as the Scottish Ministers consider necessary or expedient,

(b) apply any of the provisions of section 53 (with or without prescribed modifications),

(c) modify sections 53A and 53B in consequence of any provision made by the regulations.

Status: *Point in time view as at 01/01/2017. This version of this Act contains provisions that are not valid for this point in time.*
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(4) In this section—

"eligible pre-school child" has the same meaning as in section 47(2) of the Children and Young People (Scotland) Act 2014,

"prescribed" means prescribed by the Scottish Ministers by regulations,

"school lunch" has the same meaning as in section 53(12).".

(4) In section 56A (food and drink: nutritional requirements), in subsection (2)—

(a) in paragraph (a), for "53(1)(a)" substitute " 53(2) or (3) ", and

(b) in paragraph (b)(i), for "53(1)(a)" substitute " 53(2) or (3) ".

(5) In section 56E (food and drink: guidance about sustainable development), in subsection (1)—

(a) in paragraph (a), for "section 53(1)(a)" substitute " subsection (2) or (3) of section 53 to pupils mentioned in subsection (1)(a) of that section ",

(b) in paragraph (b), for "that section" substitute " section 53(2) or (3) to such pupils ", and

(c) in paragraph (c)(i), for "that section" substitute " section 53(2) or (3) to such pupils ".

(6) In section 133 (regulations, etc.), in subsection (2YA), for "section 53(3)(c) of this Act" substitute " subsection (8) of section 53 that modify subsection (7) of that section as mentioned in subsection (8)(a)(iii) or (b) of that section, nor to any regulations under section 53ZA(1) or 54A(1) ".

PROSPECTIVE

23 Clothing grants

After section 54 of the 1980 Act insert—

"**54A Power to require education authorities to make clothing grants**

(1) The Scottish Ministers may by regulations make provision requiring an education authority to pay a grant of a specified amount to or in respect of a pupil of a specified description for the provision of clothing for the pupil.

(2) Regulations under subsection (1) may make the payment of a grant subject to specified conditions (including conditions as to repayment).

(3) Regulations under subsection (1) may make different provision for different purposes.

(4) In this section, "specified" means specified in the regulations.".

24 Enforcement of statutory duties

In section 70 of the 1980 Act (powers to enforce duty of education authorities and other persons), after subsection (2) insert—

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"(3) Despite subsection (2), no order under subsection (1) may be made in respect of a failure by an education authority that is of a type mentioned in subsection (4).

(4) The types of failure are—

(a) a failure mentioned in section 18(3) of the Education (Additional Support for Learning) (Scotland) Act 2004 ("the 2004 Act") (references to an Additional Support Needs Tribunal for Scotland),

(b) a failure in relation to a decision or information mentioned in section 18(3) of the 2004 Act,

(c) a failure mentioned in section 18(5A) or (5B) of the 2004 Act,

(d) where a failure mentioned in paragraph (a), (b) or (c) also constitutes a failure to discharge the duty imposed by section 4 of the 2004 Act, a failure under that section that is so constituted.

(5) The Scottish Ministers may by regulations make provision for or in connection with the procedure to be followed in relation to—

(a) the investigation of an alleged failure by an education authority, the managers of a school or educational establishment or other person to discharge a duty mentioned in subsection (1),

(b) the determination of whether to make an order under that subsection.

(6) Regulations under subsection (5) may—

(a) include transitional, transitory or saving provision,

(b) make different provision for different purposes.

(7) Before making any regulations under subsection (5), the Scottish Ministers must consult such persons as they consider appropriate.".

Commencement Information

I12 S. 24 in force at 1.1.2017 for specified purposes by S.S.I. 2016/386, reg. 2, **sch.**

PROSPECTIVE

25 Appointment of Chief Education Officer

After section 77 of the 1980 Act insert—

"Appointment of Chief Education Officer

78 Appointment of Chief Education Officer

(1) An education authority must appoint an officer to advise the authority on the carrying out of the authority's functions under this Act and any other enactment.

(2) An officer appointed under subsection (1) is to be known as the Chief Education Officer.

(3) An officer appointed under subsection (1) must have—

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(a) such qualifications as may be prescribed by regulations made by the Scottish Ministers, and

(b) such experience as the authority considers appropriate in relation to the carrying out of the advisory function mentioned in that subsection.

(4) In subsection (1), "enactment" includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.".

26 Registration of independent schools

In section 133 of the 1980 Act (regulations, etc.), after subsection (2C) insert—

"(2D) Regulations under section 98A(6) of this Act defining "prescribed person" may—

(a) make different provision for different purposes,

(b) make supplementary, incidental, consequential, transitional, transitory or saving provision,

(c) modify any enactment.

(2E) In subsection (2D), "enactment" includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.".

Commencement Information

I13 S. 26 in force at 1.1.2017 by S.S.I. 2016/386, reg. 2, **sch.**

27 Employment of teachers in grant-aided schools

In section 90(1) of the 1980 Act (employment of teachers), after "authorities" insert " , or managers of grant-aided schools, ".

Commencement Information

I14 S. 27 in force at 1.1.2017 by S.S.I. 2016/386, reg. 2, **sch.**

28 Head teachers: education and training standards

(1) After section 90 of the 1980 Act insert—

"**90A Head teachers: education and training standards**

(1) The Scottish Ministers may by regulations under section 2 or 74(1) prescribe that only persons falling within subsection (2) may be appointed by education authorities or managers of grant-aided schools as head teachers of schools.

(2) A person falls within this subsection if the person has achieved such standards of education and training as may be specified in regulations mentioned in subsection (1).

(3) Regulations made by virtue of subsections (1) and (2) may—

(a) provide for exemptions or exceptions,

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(b) make different provision for different purposes,

(c) make consequential, transitional or transitory provision or savings.”.

(2) After section 98D of the 1980 Act insert—

“**98DA Head teachers of independent schools: education and training standards**

(1) The Scottish Ministers may by regulations make provision for or in connection with the standards of education and training to be achieved by persons who are to be appointed as head teachers of independent schools.

(2) Regulations under subsection (1) may make provision in relation to—

(a) a registered school,

(b) a school in respect of which an application under section 98A is made.

(3) Regulations under subsection (1) may—

(a) provide for exemptions or exceptions,

(b) make different provision for different purposes,

(c) make consequential, transitional or transitory provision or savings.”.

(3) In section 133 of the 1980 Act (regulations, etc.), after subsection (2B) insert—

“(2BA) Subsection (2) above shall not apply to any regulations under—

(a) section 2 or 74(1) that make provision such as is mentioned in section 90A, or

(b) section 98DA(1);

and such regulations shall be subject to the affirmative procedure.”.

Commencement Information

I15 S. 28(1) in force at 1.1.2017 by S.S.I. 2016/386, reg. 2, **sch.**

29 Provision of early learning and childcare: children with guardians

(1) The Children and Young People (Scotland) Act 2014 is amended as follows.

(2) In section 47 (duty to secure provision of early learning and childcare), in subsection (3)—

(a) the words from “is”, where it second occurs, to “order” become paragraph (a) of that subsection (and accordingly paragraphs (a) and (b) become sub-paragraphs (i) and (ii) respectively of paragraph (a) as so created), and

(b) for the words “or a child falling within section 71(3)(f)” substitute “, or

(b) has, or had, a guardian by virtue of an appointment under section 7 of the 1995 Act.”.

(3) In section 49 (looked after 2 year olds: alternative arrangements to meet wellbeing needs), in subsection (1)(a), for “47(3)(a)” substitute “ 47(3)(a)(i) ”.

Status: *Point in time view as at 01/01/2017. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Education (Scotland) Act 2016 is up to date with all changes known to be in force on or before 19 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information
I16 S. 29 in force at 1.8.2016 by S.S.I. 2016/192, reg. 2, **sch.**

PART 4

GENERAL

30 Meaning of "the 1980 Act"

In this Act, "the 1980 Act" means the Education (Scotland) Act 1980.

Commencement Information
I17 S. 30 in force at 1.8.2016 by S.S.I. 2016/192, reg. 2, **sch.**

31 Regulations

(1) Any power of the Scottish Ministers to make regulations under this Act includes power to make—
  (a) different provision for different purposes,
  (b) such supplementary, incidental, consequential, transitional or transitory provision, or savings, as they consider appropriate.

(2) Regulations under section 9(7) or 14(1) are subject to the affirmative procedure.

(3) Regulations under section 32(1) containing provisions which add to, replace, or omit any part of the text of this or any other Act are subject to the affirmative procedure.

(4) Otherwise, regulations under this Act are subject to the negative procedure.

(5) This section does not apply to regulations under section 33(2).

Commencement Information
I18 S. 31 in force 9.3.2016 by s. 33

32 Ancillary provision

(1) The Scottish Ministers may by regulations make such supplementary, incidental, consequential, transitional or transitory provision, or savings, as they consider appropriate for the purposes of, in consequence of, or for giving full effect to, any provision of this Act.

(2) Regulations under subsection (1) may modify any enactment (including this Act).

Commencement Information
I19 S. 32 in force 9.3.2016 by s. 33

Status: *Point in time view as at 01/01/2017. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Education (Scotland) Act 2016 is up to date with all changes known to be in force on or before 19 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

33 Commencement

(1) This Part (other than section 30) comes into force on the day after Royal Assent.

(2) The other provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.

(3) Different days may be appointed for different purposes.

(4) Regulations under this section may include transitional or transitory provision or savings.

Commencement Information
I20 S. 33 in force 9.3.2016 by s. 33

34 Short title

The short title of this Act is the Education (Scotland) Act 2016.

Commencement Information
I21 S. 34 in force 9.3.2016 by s. 33

Status: *Point in time view as at 01/01/2017. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Education (Scotland) Act 2016 is up to date with all changes known to be in force on or before 19 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

SCHEDULE

(introduced by section 19)

MODIFICATIONS OF THE EDUCATION (ADDITIONAL SUPPORT FOR LEARNING) (SCOTLAND) ACT 2004

VALID FROM 10/01/2018

1 The Education (Additional Support for Learning) (Scotland) Act 2004 is amended as follows.

VALID FROM 10/01/2018

2 For section 3 (children and young persons who lack capacity) substitute—

"**3 Children and young persons: capacity**

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

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

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

(i) to make the decision,

(ii) to communicate the decision,

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

(iv) to retain the memory of the decision,

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

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

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

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

(3) But a child 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, electronic or mechanical aid (whether of an interpretive nature or otherwise).".

Status: *Point in time view as at 01/01/2017. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Education (Scotland) Act 2016 is up to date with all changes known to be in force on or before 19 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

VALID FROM 10/01/2018

3 After section 3 insert—

"**3A Children: assessment of capacity, etc.**

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

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

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

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

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

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

(3) Before the child or (as the case may be) education authority does the thing, the education authority must—

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

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

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

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

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

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

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

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

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

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

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

(i) the result of the assessment, and

Status: *Point in time view as at 01/01/2017. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Education (Scotland) Act 2016 is up to date with all changes known to be in force on or before 19 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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

3B Assessment of wellbeing

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

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

safe,
healthy,
achieving,
nurtured,
active,
respected,
responsible, and
included.

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

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

3C Rights of parents of children aged 12 or over

(1) Subsection (2) applies where—

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

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

(c) the child—

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

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

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

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

VALID FROM 10/01/2018

4 In section 6 (children and young persons for whom education authority is responsible)—

(a) after subsection (3)(a) insert—

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

(b) in subsection (4)—

Status: *Point in time view as at 01/01/2017. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Education (Scotland) Act 2016 is up to date with all changes known to be in force on or before 19 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(i) the words "the person who made the request of that fact" become paragraph (a) of that subsection, and

(ii) after that paragraph insert ", and

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

VALID FROM 10/01/2018

5 In section 7 (children and young persons for whose school education an education authority is not responsible)—

(a) after subsection (3)(a) insert—

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

(b) in subsection (8), after paragraph (a) insert—

"(aa) in the case of a child falling within subsection (3)(aa) who the authority is satisfied has capacity in relation to the information or advice, the child,", and

(c) after subsection (8) insert—

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

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

VALID FROM 10/01/2018

6 In section 8 (assessments and examinations)—

(a) after subsection (2)(b)(i) insert—

"(ia) where the proposal relates to a child who has attained the age of 12 years, the child,", and

(b) after subsection (2) insert—

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

(a) in a case where paragraph (a) of that subsection applies—

(i) the authority is satisfied that there has been no significant change in the circumstances of the child since the request mentioned in that paragraph was made, or

(ii) where the authority is not so satisfied, the authority is satisfied that the child has capacity to make the request referred to in subsection (1)(b) at the time that request is made,

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Changes to legislation: *Education (Scotland) Act 2016 is up to date with all changes known to be in force on or before 19 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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

VALID FROM 10/01/2018

7 In section 8A (assessments and examinations: further provision), after subsection (3)(a) insert—

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

VALID FROM 10/01/2018

8 In section 9 (duty to prepare co-ordinated support plans), in subsection (2)(d)—

(a) in sub-paragraph (i), after “parent” insert “ can obtain advice and further information ”,

(b) after that sub-paragraph insert—

“(ia) in the case of a plan prepared following a request mentioned in section 6(2), 7(2)(a) or 10(4) for a child who has attained the age of 12 and who the authority is satisfied has capacity in relation to advice or further information from the officer, the child can obtain such advice and information,”,

(c) in sub-paragraph (ii), after “parent” insert “ can obtain such advice and information ”, and

(d) the words “can obtain advice and further information” are repealed.

VALID FROM 10/01/2018

9 In section 10 (reviews of co-ordinated support plans), after subsection (5)(a) insert—

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

VALID FROM 10/01/2018

10 In section 11 (co-ordinated support plans: further provision)—

(a) in subsection (3), after paragraph (a) insert—

“(aa) where the proposal—

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

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

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the child,", and

(b) in subsection (5), after paragraph (a)(i) insert—

"(ia) in the case of a child who has attained the age of 12 years, to the child (but only if the plan was prepared or amended following a request mentioned in section 6(2), 7(2)(a) or 10(4) made by the child),".

VALID FROM 10/01/2018

11 In section 12 (duties to seek and take account of information)—

(a) in subsection (2)(b)(i), for "to express" substitute " in relation to ", and

(b) in subsection (6)(b)(i), for "to express" substitute " in relation to ".

VALID FROM 10/01/2018

12 In section 13 (provision of information etc. on occurrence of certain events)—

(a) in subsection (4A), for "to express" substitute " in relation to such ", and

(b) in subsection (5)—

(i) before paragraph (a) insert—

"(za) in the case of a child who has attained the age of 12 years and who the authority is satisfied has capacity to give consent, the child,", and

(ii) in paragraph (a), for "a" substitute " any other ".

VALID FROM 10/01/2018

13 In section 14 (supporters and advocacy), in subsection (2), after paragraph (a) insert—

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

VALID FROM 10/01/2018

14 In section 15 (mediation services), after subsection (1) insert—

"(1A) In making arrangements under subsection (1) for the provision of mediation services in respect of a matter that is the subject of a disagreement (or potential disagreement) between an education authority and the parents of a child, the authority must seek and take account of the views of the child in respect of the matter.".

Status: *Point in time view as at 01/01/2017. This version of this Act contains provisions that are not valid for this point in time.*
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VALID FROM 01/08/2017

15 In section 16 (dispute resolution)—

(a) in subsection (1), after paragraph (a) insert—

"(aa) any child who has attained the age of 12 years and who the authority is satisfied has capacity as respects views or decisions relating to the purposes of resolving such disputes,", and

(b) in subsection (3), after the word "parent", where it occurs in each of paragraphs (a) and (b), insert " , child ".

VALID FROM 10/01/2018

16 In section 18 (references to Tribunal)—

(a) in subsection (2), after paragraph (a) insert—

"(aa) where the decision, failure or information relates to a child mentioned in subsection (2A), the child,",

(b) after subsection (2) insert—

"(2A) The child is a child who has attained the age of 12 years and—

(a) who the Tribunal is satisfied has capacity to make the reference, and

(b) whose wellbeing would, in the opinion of the Tribunal, not be adversely affected were the child to make the reference.",

(c) after subsection (3)(e) insert——

"(ea) a decision of an education authority in relation to the capacity of a child who has attained the age of 12 years to exercise a right under this Act,

(eb) a decision of an education authority that it is, or is not, satisfied as respects a matter relating to the wellbeing of such a child,", and

(d) after subsection (7) insert—

"(8) For the purposes of subsection (7), it is irrelevant whether the further reference, and the last reference, mentioned in that subsection relate to the same or to different specified schools (which expression is to be construed in accordance with paragraph 2(3) of schedule 2).

(9) Nothing in subsection (7) prevents a further reference being made during the period mentioned in that subsection if the last reference so mentioned is, by virtue of rules under paragraph 11 of schedule 1, withdrawn before any hearing by a Tribunal in relation to the last reference is held.

(10) But where a further reference is made in the circumstances mentioned in subsection (9), the President may, if satisfied that there is good reason to do so, decide that the reference is not to proceed to consideration by a Tribunal.

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

(a) the same right as mentioned in subsection (3)(ea) as the last such reference relates to, or

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

VALID FROM 10/01/2018

17 In section 19 (powers of Tribunal in relation to reference), in subsection (2), for “or (d)(iv)” substitute “ , (d)(iv), (ea) or (eb) ”.

VALID FROM 10/01/2018

18 In section 26 (publication of information by education authority)—

(a) in subsection (2)(f)—

(i) the word “and” immediately following sub-paragraph (i) is repealed, and

(ii) after that sub-paragraph insert—

“(ia) children having additional support needs and who have attained the age of 12 years, and”, and

(b) in subsection (2A), after paragraph (a) insert—

“(aa) in the case of such a child who has attained the age of 12 years, the child,”.

VALID FROM 10/01/2018

19 In section 27 (code of practice and directions), in subsection (2), after paragraph (d) insert—

“(da) the carrying out of assessments under paragraph (a) of subsection (3) of section 3A,

(db) the consideration of whether something would adversely affect the wellbeing of a child as mentioned in paragraph (b) of that subsection,

(dc) the assessment of whether there has been a significant change in the circumstances of a child as mentioned in section 8(2A)(a),”.

20 In section 27A (collection of data on additional support needs), for subsection (1) substitute—

“(1) The Scottish Ministers must each year collect from each education authority such information as is specified in regulations made by the Scottish Ministers relating to children and young persons having additional support needs for whose school education the authority is responsible.

Status: *Point in time view as at 01/01/2017. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Education (Scotland) Act 2016 is up to date with all changes known to be in force on or before 19 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(1A) Before making regulations under subsection (1), the Scottish Ministers must consult such persons as they consider appropriate.”.

Commencement Information

I22 Sch. para. 20 in force at 1.1.2017 for specified purposes by S.S.I. 2016/386, reg. 2, **sch.**

VALID FROM 10/01/2018

21 In section 29 (interpretation)—

(a) in subsection (1), after the definition of “Tribunal” insert—

““young person” means a person who—

(a) is aged 16 years or over,

(b) is a pupil at a school, and

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

(b) in subsection (2), the words “ “young person”” are repealed.

VALID FROM 10/01/2018

22 In section 31 (duty to inform in writing or alternative permanent form), after the word “parent”—

(a) where it first occurs, insert “ , child who has attained the age of 12 years ”, and

(b) where it second occurs, insert “ , child ”.

VALID FROM 10/01/2018

23 After section 31 insert—

“**31A Provision of support service**

(1) The Scottish Ministers must secure the provision of a support service to be available, on request and free of charge, to children who have attained the age of 12 years and—

(a) who wish to exercise, or are considering exercising, relevant rights, or

(b) whose parents wish to exercise, or are considering exercising, relevant rights.

(2) In this section, “a support service” means a service under which—

(a) advice (including legal advice), assistance and information in relation to relevant rights are provided to children mentioned in subsection (1),

(b) a person is provided to be present at any discussions with an education authority in relation to the relevant rights of such a

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child for the purpose of supporting the child (where the child wishes such a person to be present),

(c) a person is provided to conduct such discussions (or any part of them), or make representations to an education authority, on behalf of such a child (where the child wishes such a person to be provided), and

(d) an advocacy service (within the meaning of subsection (3) of section 14A) is provided to such children (the reference in that subsection to persons mentioned in subsection (2) being read as if such children were mentioned in that subsection).

(3) Subsection (4) applies where—

(a) a child, or parent, as mentioned in subsection (1) wishes to exercise, or is considering exercising, relevant rights, or

(b) some other thing is done, or proposed to be done, under this Act by or in relation to such a child.

(4) Any person providing a support service under this section may seek the views of the child as respects—

(a) the exercise of the relevant rights, or

(b) the doing, or proposed doing, of the thing.

(5) In this section, "relevant rights"—

(a) in relation to a child who has attained the age of 12 years, means any rights conferred by or under this Act on such children, and includes the right—

(i) to receive any document or information, and

(ii) to give consent in relation to any matter, and

(b) in relation to the parents of such a child, means any rights conferred on the parents by or under this Act.".

VALID FROM 10/01/2018

24 In section 34 (orders, regulations and rules)—

(a) in subsection (4), after "except" insert " section 3B(3), ", and

(b) in subsection (5)(b), after "section" insert " 3B(3) or ".

VALID FROM 10/01/2018

25 In schedule 1 (Additional Support Needs Tribunal for Scotland), in paragraph 11(2)—

(a) after paragraph (f) insert—

"(fa) seeking the views of children whose parents have made references to a Tribunal under section 18(1) in relation to the children,",

(b) after paragraph (ka) insert—

"(kb) enabling a convener of a Tribunal and without holding a hearing to determine specified matters relating to the decision of an education authority as respects—

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Changes to legislation: *Education (Scotland) Act 2016 is up to date with all changes known to be in force on or before 19 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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

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

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

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

(c) in paragraph (v), after "Tribunal" where it second occurs, insert " , or a convener alone following a determination mentioned in paragraph (kb). ".

Status:
Point in time view as at 01/01/2017. This version of this Act contains provisions that are not valid for this point in time.

Changes to legislation:
Education (Scotland) Act 2016 is up to date with all changes known to be in force on or before 19 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.