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**Changes to legislation:** Education (Scotland) Act 2016, Paragraph 2 is up to date with all changes known to be in force on or before 23 July 2023. 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) View outstanding changes

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

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).”.

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**Commencement Information**

**II** Sch. para. 2 in force at 10.1.2018 by S.S.I. 2017/354, reg. 2(a)

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**Changes and effects yet to be applied to :**

- specified provision(s) amendment to earlier commencing S.S.I.2017/164, sch. by [S.S.I. 2017/352 reg. 2](#)