

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

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: This is the original version (as it was originally enacted).

- (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.”.