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SCOTTISH STATUTORY INSTRUMENTS

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**2016 No. 386 (C. 38)**

**EDUCATION**

**The Education (Scotland) Act 2016  
(Commencement No. 2) Regulations 2016**

		<i>22nd November</i>
<i>Made</i>	- - - -	<i>2016</i>
<i>Laid before the Scottish</i>		
<i>Parliament</i>	- - - -	<i>24th November 2016</i>
<i>Coming into force</i>	- -	<i>1st January 2017</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 33(2) and (3) of the Education (Scotland) Act 2016<sup>(1)</sup>.

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Education (Scotland) Act 2016 (Commencement No. 2) Regulations 2016 and come into force on 1st January 2017.

(2) In these Regulations—

“the 1980 Act” means the Education (Scotland) Act 1980<sup>(2)</sup>;

“the 2004 Act” means the Education (Additional Support for Learning) (Scotland) Act 2004<sup>(3)</sup>; and

“the 2016 Act” means the Education (Scotland) Act 2016.

**Appointed days**

2.—(1) Subject to paragraph (2), the day appointed for the coming into force of the provisions of the 2016 Act specified in column 1 of the schedule (the subject matter of which is described in column 2 of the schedule), is specified in column 3 of the schedule.

(2) Where a purpose is specified in column 4 of the schedule, a provision specified in column 1 comes into force in accordance with paragraph (1) only for that purpose.

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(1) 2016 asp 8.  
(2) 1980 c.44.  
(3) 2004 asp 4.

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St Andrew's House,  
Edinburgh  
22nd November 2016

*JOHN SWINNEY*  
A member of the Scottish Government

## SCHEDULE

Regulation 2

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>
<i>Provisions of the 2016 Act</i>	<i>Subject matter</i>	<i>Appointed day</i>	<i>Purpose</i>
Section 7	Assessment requests	1stFebruary 2017	In so far as not already in force.
Section 8	GMPE assessment areas	1stFebruary 2017	
Section 9	Initial assessments	1stFebruary 2017	
Section 10	Duties of education authority	1stFebruary 2017	
Section 11	Requests that need not be considered	1stFebruary 2017	
Section 12	Full assessments	1stFebruary 2017	
Section 13	Procedure following full assessment	1stFebruary 2017	
Section 14	Power to extend Part 2 to early learning and childcare	1stFebruary 2017	
Section 15	Duty to promote and support Gaelic medium education and learning	1stFebruary 2017	
Section 18	Interpretation of Part 2	1stFebruary 2017	
Section 19	Additional support for learning	1st January 2017	For the purpose of commencing paragraph 20 of the schedule of the 2016 Act, so far as is necessary to enable the Scottish Ministers to make regulations under section 27A(1) of the 2004 Act and for the purpose of consulting under section 27A(1A) of the 2004 Act.
Section 20	Children unable to attend early learning and childcare	1st January 2017	
Section 24	Enforcement of statutory duties	1st January 2017	So far as is necessary to enable the Scottish Ministers to make regulations under section 70(5) and (6) of the 1980 Act and for the purpose of consulting

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<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>
<i>Provisions of the 2016 Act</i>	<i>Subject matter</i>	<i>Appointed day</i>	<i>Purpose</i>
			under section 70(7) of the 1980 Act.
Section 26	Registration of independent schools	1st January 2017	
Section 27	Employment of teachers in grant-aided schools	1st January 2017	
Section 28(1)	Head teachers: education and training standards	1st January 2017	
Schedule, paragraph 20	Modifications of the 2004 Act	1st January 2017	So far as is necessary to enable the Scottish Ministers to make regulations under section 27A(1) of the 2004 Act and for the purpose of consulting under section 27A(1A) of the 2004 Act.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations bring into force the following provisions of the Education (Scotland) Act 2016 (“the 2016 Act”) for all purposes, unless otherwise stated.

Section 7 (assessment requests), in so far as it is not already in force, and sections 8 to 13 (assessments: primary education) are commenced on 1st February 2017. These sections set out the assessment process to be followed by an education authority upon receipt of a parental request under section 7(1) to assess the need for Gaelic medium primary education.

Section 14 (power to extend Part to early learning and childcare) is commenced on 1st February 2017. This section gives the Scottish Ministers the power, by regulations, to require an education authority to treat a parental request made under section 7(1) as a request to assess the need for Gaelic medium education at the level of early learning and childcare.

Section 15 (duty to promote and support Gaelic medium education and learning) is commenced on 1st February 2017. This section imposes duties on an education authority to promote and support Gaelic medium education and learning.

Section 18 (interpretation of Part 2) is commenced on 1st February 2017. This section contains definitions relevant to Part 2 of the 2016 Act.

Section 19 (additional support for learning), introduces the schedule of the 2016 Act:- the schedule contains modifications of the Education (Additional Support for Learning) (Scotland) Act 2004 (“the 2004 Act”). Section 19 is commenced on 1st January 2017, for the purpose of commencing paragraph 20 of the schedule of the 2016 Act, so far as is necessary to enable the Scottish Ministers to make regulations under section 27A(1) of the 2004 Act and for the purpose of consulting under section 27A(1A) of the 2004 Act (collection of data on additional support needs). Section 27A(1A) requires the Scottish Ministers to consult such persons as they consider appropriate before they make regulations under section 27A(1) which specify the information which the Scottish Ministers must collect from each education authority relating to children and young persons having additional support needs for whose school education the authority is responsible.

Section 20 (children unable to attend early learning and childcare) which amends section 14 of the Education (Scotland) Act 1980 (“the 1980 Act”) (education for children unable to attend school etc.) is commenced on 1st January 2017. Section 20 inserts new subsection (4) into section 14, which extends the duty on education authorities to provide education for children unable to attend school to children receiving education under arrangements entered into by an education authority under section 35 of the Standards in Scotland’s Schools etc. Act 2000 (asp 6) (provision of school education by persons other than education authorities).

Section 24 (enforcement of statutory duties) is commenced on 1st January 2017, so far as is necessary to enable the Scottish Ministers to make regulations under section 70(5) and (6) of the 1980 Act, and for the purpose of consulting under section 70(7) of the 1980 Act. Section 70(5) allows the Scottish Ministers to make regulations which make provision for or in connection with the procedure to be followed in relation to the investigation and determination of complaints made under section 70. Section 70(6) provides that regulations under subsection (5) may include transitional, transitory or saving provision and make different provision for different purposes. Section 70(7) requires the Scottish Ministers to consult such persons as they consider appropriate before making any such regulations.

Section 26 (registration of independent schools) is commenced on 1st January 2017. Section 26 inserts new subsections (2D) and (2E) into section 133 of the 1980 Act (regulations, etc.). New subsection (2D) allows the Scottish Ministers, when making regulations under section 98A(6) of the 1980 Act, to make different provision for different purposes and to make supplementary, incidental, consequential, transitional, transitory or savings provisions and to modify any enactment. New subsection (2E) makes it clear that enactment includes an Act of the Scottish Parliament or any instrument made under an Act of the Scottish Parliament. Without this, the Interpretation Act 1978 (c. 30) (which covers the 1980 Act) would have the effect that enactment would exclude an Act of the Scottish Parliament.

Section 98 (registration of independent schools) of the 1980 Act provides for the Scottish Ministers to consider applications from persons proposing to carry on independent schools and allows them to grant applications for registration if satisfied in relation to the matters specified in section 98A(3). Section 98A(5) sets out the grounds upon which the Scottish Ministers may not be satisfied in relation to certain matters. These grounds include that a teacher (or proposed teacher) is not a proper person to be a teacher in any school if the person is disqualified in terms of Part 5 of the 1980 Act, is barred from regulated work with children in accordance with the Protection of Vulnerable Groups (Scotland) Act 2007 or is a “prescribed person”. Section 98A(6) enables the Scottish Ministers by regulations (subject to affirmative procedure in accordance with section 133(2C) of the 1980 Act) to set out what a prescribed person is.

The Scottish Ministers intend to exercise this power to require that all teachers in independent schools should be General Teaching Council for Scotland (GTCS) registered. Inserting new subsections (2D) and (2E) into section 133 of the 1980 Act enables a phased implementation of this policy. In that in exercising the power in section 98A(6) to specify that a prescribed person is a GTCS registered teacher, the Scottish Ministers will be able to make exceptions in respect of the current teacher workforce, should that be necessary to secure an effective transition to the new arrangements.

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Section 27 (employment of teachers in grant-aided schools) is commenced on 1st January 2017. Section 27 amends section 90(1) of the 1980 Act (employment of teachers) to allow the Scottish Ministers, in regulations under section 2 or 74(1) of the 1980 Act to prescribe that only GTCS registered teachers shall be employed as teachers by managers of grant-aided schools.

Section 28(1) (head teachers: education and training standards) is commenced on 1st January 2017. It inserts section 90A into the 1980 Act. Section 90A(1) allows the Scottish Ministers by regulations under section 2 or 74(1) of the 1980 Act to prescribe that only persons falling within subsection (2) of section 90A of the 1980 Act may be appointed by education authorities or managers of grant-aided schools as head teachers of schools.

### **NOTE AS TO EARLIER COMMENCEMENT REGULATIONS**

*(This note is not part of the Regulations)*

The Bill for the 2016 Act received Royal Assent on 8th March 2016. Section 33(1) brought Part 4 of the 2016 Act into force on the day after Royal Assent (apart from section 30). The provisions of the 2016 Act commenced by earlier commencement regulations are detailed in the table below.

<i>Provision</i>	<i>Date of Commencement</i>	<i>Instrument</i>
Section 1 (partially)	1st August 2016	<a href="#">S.S.I. 2016/192</a>
Section 2(1) and (2) (partially)	1st August 2016	<a href="#">S.S.I. 2016/192</a>
Section 2(3) (partially)	1st August 2016	<a href="#">S.S.I. 2016/192</a>
Section 2(4)(a) (partially)	1st August 2016	<a href="#">S.S.I. 2016/192</a>
Section 2(4)(b)	1st August 2016	<a href="#">S.S.I. 2016/192</a>
Section 3(1) and (2) (partially)	1st August 2016	<a href="#">S.S.I. 2016/192</a>
Section 3(1) and (2) (partially)	1st December 2016	<a href="#">S.S.I. 2016/192</a>
Section 3(1) and (2) (partially)	1st August 2016	<a href="#">S.S.I. 2016/192</a>
Section 3(1) and (2) (partially)	1st December 2016	<a href="#">S.S.I. 2016/192</a>
Section 4	1st August 2016	<a href="#">S.S.I. 2016/192</a>
Section 7 (partially)	1st August 2016	<a href="#">S.S.I. 2016/192</a>
Section 16	15th July 2016	<a href="#">S.S.I. 2016/192</a>
Section 17	15th July 2016	<a href="#">S.S.I. 2016/192</a>
Section 21(1) and (2) (partially)	1st August 2016	<a href="#">S.S.I. 2016/192</a>
Section 29	1st August 2016	<a href="#">S.S.I. 2016/192</a>
Section 30	1st August 2016	<a href="#">S.S.I. 2016/192</a>