

Education (Additional Support for Learning) (Scotland) Bill

[CONSULTATION DRAFT]

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Education (Additional Support for Learning) (Scotland) Bill

[CONSULTATION DRAFT]

An Act of the Scottish Parliament to make provision for additional support in connection with the school education of children and young persons having additional support needs; and for connected purposes.

Main definitions

1 Additional support needs

- (1) A child or young person has additional support needs for the purposes of this Act where, for whatever reason, the child or young person is, or is likely to be, unable without the provision of additional support to benefit from school education provided or to be provided for the child or young person.
- (2) In subsection (1), the reference to school education includes, in particular, such education directed to the development of the personality, talents and mental and physical abilities of the child or young person to their fullest potential.
- (3) In this Act, “additional support” means—
 - (a) in relation to a prescribed pre-school child, a child of school age or a young person receiving school education, provision which is additional to, or otherwise different from, the educational provision made generally for children or, as the case may be, young persons of the same age in schools (other than special schools) under the management of the education authority for the area to which the child or young person belongs,
 - (b) in relation to a child under school age other than a prescribed pre-school child, such educational provision as is appropriate in the circumstances.

2 Co-ordinated support plans

- (1) For the purposes of this Act, a child or young person requires a plan (referred to in this Act as a “co-ordinated support plan”) for the provision of additional support if—
 - (a) an education authority are responsible for the school education of the child or young person,
 - (b) the child or young person has additional support needs arising from—
 - (i) one or more complex factors, or
 - (ii) multiple factors,

which are likely to continue for more than a year, and

- (c) those needs require significant additional support to be provided by one or more appropriate agencies (within the meaning of section 17(2)) as well as the education authority.
- (2) For the purposes of subsection (1)—
- (a) a factor is a complex factor if it has or is likely to have a significant adverse effect on the school education of the child or young person,
 - (b) multiple factors are factors which—
 - (i) are not by themselves complex factors, but
 - (ii) taken together, have or are likely to have a significant adverse effect on the school education of the child or young person.

General powers and duties

3 General functions of education authority in relation to additional support needs

- (1) Every education authority must—
- (a) in exercising any of their functions in connection with the provision of school education, take account of the additional support needs of children and young persons having such needs, and
 - (b) subject to subsection (2), make adequate and efficient provision for such additional support as is required by children and young persons—
 - (i) having additional support needs, and
 - (ii) for whose school education the authority are responsible.
- (2) Subsection (1)(b) does not require an education authority to do anything which—
- (a) they do not otherwise have power to do, or
 - (b) is not practicable at a reasonable cost.
- (3) Every education authority must, in relation to each child and young person having additional support needs for whose school education the authority are responsible, keep under consideration—
- (a) the additional support needs of, and
 - (b) the adequacy of the additional support provided for,
- the child or young person.
- (4) An education authority may, so far as they have power to do so apart from this subsection, make such provision as they consider appropriate for the additional support needs of children and young persons belonging to the area of the authority—
- (a) having additional support needs, but
 - (b) for whose school education the authority are not responsible.

*Establishment of additional support needs and need for co-ordinated support plan***4 Children and young persons for whom education authority are responsible**

- (1) Every education authority must make such arrangements as they consider appropriate for identifying, from among the children and young persons for whose school education they are responsible—
 - (a) those who have additional support needs, and
 - (b) those having additional support needs who require a co-ordinated support plan.
- (2) Where an education authority receive from a person specified in subsection (3) a written request to establish whether any child or young person for whose school education the authority are responsible—
 - (a) has additional support needs, or
 - (b) requires a co-ordinated support plan,the authority must, in accordance with the arrangements made by them under subsection (1), comply with the request unless they consider the request to be unreasonable.
- (3) The persons referred to in subsection (2) are—
 - (a) in the case of a child, the child's parent,
 - (b) in the case of a young person—
 - (i) the young person, or
 - (ii) if the authority are satisfied that the young person is incapable, the young person's parent.
- (4) If an education authority decide not to comply with a request referred to in subsection (2) they must—
 - (a) inform the person who made the request of that decision, and
 - (b) in so doing, give the reasons for the decision.
- (5) Subsection (6) applies where a child or young person for whose school education an education authority are responsible comes to the attention of the authority as—
 - (a) having, or appearing to have, additional support needs, or
 - (b) having such needs and requiring, or appearing to require, a co-ordinated support plan.
- (6) Where this subsection applies, the education authority must, in accordance with the arrangements made by them under subsection (1), establish whether the child or young person does have additional support needs or, as the case may be, require a co-ordinated support plan, unless the authority consider it unreasonable to do so.
- (7) Subsections (2) and (6) are without prejudice to subsection (1).

5 Other children and young persons

- (1) Where an education authority receive a request of a type specified in subsection (2) in relation to any child or young person—
 - (a) belonging to the area of the authority, but
 - (b) for whose school education the authority are not responsible,

the authority may, in accordance with the arrangements made by them under section 4(1), comply with the request.

- (2) The types of request referred to in subsection (1) are—
 - (a) a request from a person specified in subsection (3) to establish whether the child or young person in relation to whom the request is made—
 - (i) has additional support needs, or
 - (ii) would, if the education authority were responsible for the school education of the child or young person, require a co-ordinated support plan,
 - (b) in the case of a child or young person being provided with school education at an independent school or a grant-aided school, a request from the managers of the school to establish whether the child or young person would, if the education authority were responsible for the school education of the child or young person, require such a plan.
- (3) The persons referred to in subsection (2)(a) are—
 - (a) in the case of a child, the child's parent,
 - (b) in the case of a young person—
 - (i) the young person, or
 - (ii) if the authority are satisfied that the young person is incapable, the young person's parent.
- (4) If an education authority decide not to comply with a request referred to in subsection (1) they must—
 - (a) inform the person who made the request of that decision, and
 - (b) in so doing, give the reasons for the decision.
- (5) Subsection (6) applies where a child or young person—
 - (a) belonging to the area of an education authority, but
 - (b) for whose school education an education authority are not responsible,comes to the attention of the authority (otherwise than as a result of a request referred to in subsection (1)) as having, or appearing to have, additional support needs.
- (6) Where this subsection applies, the education authority may, in accordance with the arrangements made by them under section 4(1), establish whether the child or young person does have additional support needs.
- (7) Where an education authority establish—
 - (a) pursuant to a request referred to in subsection (1), or
 - (b) under subsection (6),that a child or young person has additional support needs, the authority must provide the persons mentioned in subsection (8) with such information and advice as to the additional support required by the child or young person as they consider appropriate.
- (8) The persons referred to in subsection (7) are—
 - (a) in the case of a child, the child's parent,
 - (b) in the case of a young person—

- (i) the young person, or
 - (ii) if the authority are satisfied that the young person is incapable, the young person's parent,
- (c) where the authority establish the matter referred to in that subsection pursuant to a request made by the managers of an independent school or a grant-aided school, those managers.

Co-ordinated support plans

6 Duty to prepare co-ordinated support plans

- (1) Where an education authority establish in pursuance of any provision of this Act that a child or young person for whose school education they are responsible requires a co-ordinated support plan, they must prepare such a plan for the child or young person.
- (2) A co-ordinated support plan prepared under subsection (1) must contain—
- (a) a statement of the education authority's conclusions as to—
 - (i) the factor or factors from which the additional support needs of the child or young person arise,
 - (ii) the educational objectives sought to be achieved taking account of that factor or those factors,
 - (iii) the additional support required by the child or young person to achieve those objectives, and
 - (iv) the appropriate agency or agencies, and any other persons, by whom the support should be provided,
 - (b) a nomination of a school to be attended by the child or young person, and
 - (c) the name and other appropriate contact details of an officer of the authority from whom—
 - (i) in the case of a plan prepared for a child, the child's parent,
 - (ii) in the case of a plan prepared for a young person, the young person or, where the authority are satisfied that the young person is incapable, the young person's parent,can obtain advice and further information.
- (3) The references in subsection (2)(a) to educational objectives are to objectives set to secure that the child or young person benefits from school education (within the meaning of section 1(1)) provided or to be provided for the child or young person.
- (4) The Scottish Ministers may by regulations make further provision as to co-ordinated support plans including, in particular, provision as to—
- (a) the form of such plans,
 - (b) the information (in addition to that required by subsection (2)) to be contained in them,
 - (c) the times by which they are to be prepared and by which reviews carried out under section 8 are to be completed,
 - (d) the procedures to be followed in relation to the keeping, preparation, discontinuance and destruction of such plans,

- (e) the transfer of such plans when the children and young persons for whom they are prepared move from the area of one education authority to that of another,
- (f) the disclosure of such plans, and
- (g) such other matters in relation to such plans as they think necessary or expedient.

7 Co-ordinated support plans: further provision

- (1) Subsection (2) applies where an education authority propose—
 - (a) in pursuance of any provision of this Act, to establish whether any child or young person requires, or would require, a co-ordinated support plan,
 - (b) to review under section 8 any such plan prepared for any child or young person.
- (2) Where this subsection applies, the education authority must—
 - (a) before proceeding, inform the persons mentioned in subsection (3) of their proposal, and
 - (b) on establishing the matter referred to in subsection (1)(a) or, as the case may be, completing the review referred to in subsection (1)(b), inform those persons of—
 - (i) the outcome, and
 - (ii) the rights (if any) which they have under section 12(1) to make a reference to a Tribunal in connection with the outcome.
- (3) The persons referred to in subsection (2)(a) are—
 - (a) in the case of a child, the child's parent,
 - (b) in the case of a young person—
 - (i) the young person, or
 - (ii) if the authority are satisfied that the young person is incapable, the young person's parent,
 - (c) where the proposal arises as a result of a request referred to in section 5(1) made by the managers of an independent school or a grant-aided school, those managers.
- (4) Subsection (5) applies where an education authority—
 - (a) prepare a co-ordinated support plan for any child or young person under section 6(1), or
 - (b) amend any such plan following a review carried out under section 8.
- (5) Where this subsection applies, the education authority must—
 - (a) give a copy of the plan or amended plan—
 - (i) in the case of a child, to the child's parent,
 - (ii) in the case of a young person, to that young person or, if the authority were satisfied for the purposes of subsection (3) that the young person is incapable, to the young person's parent,
 - (b) ensure that additional support is provided by them for the child or young person in accordance with the plan or amended plan so far as they have power to do so,

- (c) seek to ensure that additional support is provided for the child or young person in accordance with the plan or amended plan by any appropriate agency or other person identified in the plan as one by whom such support should be provided,
 - (d) inform such persons as they consider appropriate, being persons who will be involved in the provision of additional support for the child or young person, of such matters contained in the plan or amended plan as they consider appropriate.
- (6) Where, under section 5, an education authority establish that a child or young person—
- (a) belonging to the area of the authority, but
 - (b) for whose school education the authority are not responsible,
- would require a co-ordinated support plan if the authority were so responsible, the authority must provide the persons mentioned in subsection (7) with such information and advice as to the additional support required by the child or young person as they consider appropriate.
- (7) The persons referred to in subsection (6) are—
- (a) in the case of a child, the child's parent,
 - (b) in the case of a young person, that young person or, if the authority were satisfied for the purposes of subsection (3) that the young person is incapable, the young person's parent,
 - (c) where the authority establish the matter referred to in subsection (6) pursuant to a request referred to in section 5(1) made by the managers of an independent school or a grant-aided school, those managers.

8 Reviews of co-ordinated support plans

- (1) Every education authority must keep under consideration the adequacy of any co-ordinated support plans prepared (and not discontinued) for any children or young persons belonging to their area.
- (2) The education authority must carry out a review of each such co-ordinated support plan—
 - (a) on the expiry of the period of 12 months beginning with date on which the plan was prepared, and
 - (b) thereafter, on the expiry of each successive period of 12 months beginning with the date on which the previous review (whether carried out under this subsection or subsection (3) or (4)) of the plan was completed.
- (3) An education authority may carry out a review of such a co-ordinated support plan before the expiry of a period referred to in subsection (2) only—
 - (a) pursuant to a request referred to in subsection (4), or
 - (b) if the authority consider it necessary or expedient to do so because of a significant change in the circumstances of the child or young person for whom the plan was prepared since the plan was prepared or, as the case may be, last reviewed.
- (4) Where the education authority receive from a person specified in subsection (5) a written request to carry out a review of any such co-ordinated support plan as is mentioned in subsection (1) before the expiry of a period referred to in subsection (2), the authority must carry out a review of the plan unless they consider the request to be unreasonable.

- (5) The persons referred to in subsection (4) are—
 - (a) in the case of a co-ordinated support plan prepared for a child, the child’s parent,
 - (b) in the case of a co-ordinated support plan prepared for a young person—
 - (i) that young person, or
 - (ii) where the education authority are satisfied that the young person is incapable, the young person’s parent.
- (6) A person making a request referred to in subsection (4) must give reasons for doing so.
- (7) In reviewing any co-ordinated support plan under this section, the education authority must, in accordance with the arrangements made by them under section 4(1), establish whether the child or young person for whom the plan was prepared still requires such a plan and—
 - (a) if so, continue the plan for the child or young person and make such amendments of it as the authority consider necessary or appropriate,
 - (b) if not, discontinue the plan.

Exchange of information

9 Duty to seek relevant advice and information

- (1) In establishing—
 - (a) in pursuance of any provision of this Act whether any child or young person—
 - (i) has additional support needs, or
 - (ii) requires, or would require, a co-ordinated support plan,
 - (b) in pursuance of a review carried out under section 8 whether any child or young person still requires a co-ordinated support plan,
 the education authority must comply with the duty described in subsection (2).
- (2) That duty is a duty to—
 - (a) seek and take account of relevant advice and information from such appropriate agencies and other persons as the education authority think appropriate,
 - (b) seek and take account of the views of—
 - (i) in the case of a child, the child (unless the authority are satisfied that the child is incapable) and the child’s parent, and
 - (ii) in the case of a young person, that young person or, if the authority are satisfied that the young person is incapable, the young person’s parent, and
 - (c) take account of any relevant advice or information provided to the authority by or on behalf of the child or young person concerned.
- (3) Advice or information is relevant for the purposes of subsection (2)(a) or (c) if it is likely to assist in establishing whether the child or young person concerned—
 - (a) has additional support needs,
 - (b) requires, or would require, a co-ordinated support plan, or
 - (c) still requires such a plan,
 (as the case may be).

10 Notification of appropriate agencies etc. on occurrence of certain events

- (1) Every education authority must—
 - (a) no later than 6 months before the date on which any child or young person—
 - (i) having additional support needs, and
 - (ii) for whose school education the authority are responsible,is expected to cease receiving school education, or
 - (b) where the education authority become aware that the child or young person is to cease receiving school education less than 6 months before that date, as soon as reasonably practicable after they become so aware,provide the persons mentioned in subsection (2) with such information as the authority consider appropriate concerning the child or young person and the additional support needs of the child or young person.
- (2) The persons referred to in subsection (1) are—
 - (a) such appropriate agencies as the authority think fit, and
 - (b) where the child or young person is expected to receive further education on ceasing to receive school education, the person responsible for providing that further education.
- (3) Information is to be provided under subsection (1) only with the consent of—
 - (a) in the case of a child, the child's parent,
 - (b) in the case of a young person—
 - (i) the young person, or
 - (ii) where the education authority are satisfied that the young person is incapable, the young person's parent.
- (4) The Scottish Ministers may by regulations make provision for the taking by education authorities of specified action in connection with the occurrence or likely occurrence of specified changes in the school education of children and young persons—
 - (a) having additional support needs, and
 - (b) for whose school education the authorities are responsible.
- (5) Regulations under subsection (4) may, in particular, make provision—
 - (a) for the disclosure by the authorities of specified information about such children or young persons—
 - (i) to specified persons or persons of specified descriptions,
 - (ii) subject to specified conditions,
 - (b) for such information to be disclosed, or any other action taken, by specified times.
- (6) In subsections (4) and (5), “specified” means specified in regulations under subsection (4).

*Appeals***11 Additional Support Needs Tribunals for Scotland**

- (1) Tribunals to be known as Additional Support Needs Tribunals for Scotland (each referred to in this Act as “a Tribunal”) are to be constituted in accordance with this Act to exercise the functions which are conferred on a Tribunal by virtue of this Act.
- (2) There is to be an officer to be known as the President of the Additional Support Needs Tribunals for Scotland (referred to in this Act as “the President”) who is to be an individual appointed by the Scottish Ministers.
- (3) The President has such functions as are conferred on the President by virtue of this Act.
- (4) Schedule 1 makes further provision about the constitution and procedures of the Tribunals, the appointment and functions of the President and administrative and other matters in connection with the Tribunals and the President.
- (5) The Scottish Ministers may by regulations make such further provision in connection with the Tribunals and the President as they think fit.

12 Appeal to Tribunal in relation to co-ordinated support plan

- (1) Any of the persons specified in subsection (2) may refer to a Tribunal any matter specified in subsection (3).
- (2) The persons referred to in subsection (1) are—
 - (a) the parent of a child for whose school education an education authority are responsible,
 - (b) a young person for whose school education an education authority are responsible,
 - (c) where the education authority were, for the purposes of section 7(3), satisfied that such a young person is incapable, the parent of the young person.
- (3) The matters referred to in subsection (1) are—
 - (a) a decision of the education authority that the child or young person concerned—
 - (i) requires a co-ordinated support plan, or
 - (ii) following a review carried out under section 8, still requires such a plan,
 - (b) a decision of the education authority that the child or young person concerned—
 - (i) does not require such a plan, or
 - (ii) following a review carried out under section 8, no longer requires such a plan,
 - (c) where it has been established that the child or young person concerned does require a co-ordinated support plan—
 - (i) failure by the education authority to prepare a plan by the time required by regulations made in pursuance of subsection (4)(c) of section 6,
 - (ii) any of the information contained in the plan by virtue of subsection (2)(a) or (b) of that section,
 - (iii) failure by the education authority to carry out a review of the plan by the time required by subsection (2) of section 8,
 - (iv) a decision of the education authority to refuse a request referred to in subsection (4) of that section,

13 Powers of Tribunal in relation to appeal

- (1) This section specifies the powers of a Tribunal in relation to a reference made under section 12.
- (2) Where the reference relates to a decision referred to in subsection (3)(a), (b) or (c)(iv) of that section, the Tribunal may—
 - (a) confirm the decision, or
 - (b) overturn the decision and direct the education authority to take such action as the Tribunal considers appropriate by such time as the Tribunal may direct.
- (3) Where the reference relates to a failure referred to in subsection (3)(c)(i) or (iii) of that section, the Tribunal may direct the education authority to take such action to rectify the failure as the Tribunal considers appropriate by such time as the Tribunal may direct.
- (4) Where the reference relates to information referred to in subsection (3)(c)(ii) of that section, the Tribunal may—
 - (a) confirm the information, or
 - (b) direct the education authority to make such amendment of the information as the Tribunal considers appropriate.
- (5) In exercising its powers under this section, a Tribunal must take account, so far as relevant, of any guidance issued by the Scottish Ministers under section 19(1).

14 Appeal to Court of Session against Tribunal decision

- (1) Either of the persons specified in subsection (2) may appeal on a point of law to the Court of Session against a decision of a Tribunal relating to a reference made under section 12.
- (2) The persons referred to in subsection (1) are—
 - (a) the person who made the reference to the Tribunal,
 - (b) the education authority concerned.
- (3) Where the Court of Session allows an appeal under subsection (1) it may—
 - (a) remit the reference back to the Tribunal or to a differently constituted Tribunal to be considered again and give the Tribunal such directions about the consideration of the case as the Court considers appropriate,
 - (b) make such ancillary orders as it considers necessary or appropriate.

*Mediation***15 Mediation services**

- (1) Every education authority must make such arrangements as they consider appropriate for the provision of independent mediation services for the purposes of seeking to avoid or resolve disagreements between the authority and—
 - (a) parents of children or young persons belonging to the area of the authority, or
 - (b) young persons belonging to that area,concerning the exercise by the authority of their functions under this Act in relation to such children or young persons.

- (2) Mediation services are independent for the purposes of subsection (1) if the person providing the services has no involvement in the exercise by or on behalf of the authority of their functions under this Act (apart from this section).
- (3) Arrangements made in pursuance of subsection (1) must not—
 - (a) require any parent or young person to refer any disagreement with the authority to the mediation services provided in accordance with the arrangements, or
 - (b) affect the entitlement of any parent or young person to appeal any matter to a Tribunal.

Placing requests

16 Placing requests

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

Miscellaneous

17 Other agencies to help education authority

- (1) Where it appears to an education authority that an appropriate agency could, by doing certain things, help in the exercise of any of the education authority's functions under this Act, the authority may, specifying what those things are, request the help of that agency.
- (2) For the purposes of this Act, each of the following is an appropriate agency, namely—
 - (a) any other education authority,
 - (b) any local authority,
 - (c) any Health Board,
 - (d) any National Health Service trust established under section 12A of the National Health Service (Scotland) Act 1978 (c.29),
 - (e) any person, or a person of any description, specified for the purposes of this subsection in an order made by the Scottish Ministers.
- (3) An appropriate agency must comply with a request made to it under subsection (1) unless it considers that the request—
 - (a) is incompatible with its own statutory or other duties, or
 - (b) unduly prejudices the discharge of any of its functions.
- (4) The Scottish Ministers may by regulations provide that, where an appropriate agency is under a duty by virtue of subsection (3) to comply with a request to help an education authority in establishing whether any child or young person—
 - (a) has additional support needs,
 - (b) requires, or would require, a co-ordinated support plan, or
 - (c) still requires such a plan,

the agency must, subject to such exceptions as may be provided in the regulations, comply with the request within such period as is specified in the regulations.

18 Publication of information by education authority

- (1) Every education authority must—
 - (a) publish information with respect to the matters specified in subsection (2),
 - (b) keep that information under review, and
 - (c) where necessary or appropriate, revise the information and publish that revised information.
- (2) The information referred to in subsection (1)(a) is information as to—
 - (a) the authority's policy in relation to provision for additional support needs,
 - (b) the arrangements made by the authority in pursuance of section 4(1),
 - (c) the other opportunities available under this Act for the identification of children and young persons who—
 - (i) have additional support needs,
 - (ii) require, or would require, a co-ordinated support plan,
 - (d) the role of parents, children and young persons in the arrangements referred to in paragraph (b),
 - (e) the mediation services provided in pursuance of section 15(1),
 - (f) the officer or officers of the authority from whom—
 - (i) parents of children having additional support needs, and
 - (ii) young persons having such needs,can obtain advice and further information about provision for such needs.
- (3) The Scottish Ministers may by regulations make further provision as to the publication of information under subsection (1) including, in particular—
 - (a) provision amending subsection (2) so as to add further matters,
 - (b) provision as to—
 - (i) the time or times by which, and
 - (ii) the form and manner in which,the information is to be published.

19 Guidance and directions

- (1) The Scottish Ministers may issue guidance as to the exercise by education authorities of their functions under this Act.
- (2) Education authorities must, in exercising their functions under this Act, have regard to any guidance issued under this section.
- (3) The Scottish Ministers may give to education authorities directions (whether general or specific) as to the exercise of their functions under this Act.
- (4) Such directions may be given to all education authorities, to a particular authority or to authorities of a particular description.

*General***20 Interpretation**

(1) In this Act—

“the 1980 Act” means the Education (Scotland) Act 1980 (c.44),

“the 2000 Act” means the Standards in Scotland’s Schools etc. Act 2000 (asp 6),

“additional support” has the meaning given in section 1(3),

“additional support needs” is to be construed in accordance with section 1(1),

“appropriate agency” is to be construed in accordance with section 17(2),

“co-ordinated support plan” has the meaning given in section 2(1) and, in relation to any such plan which has been amended by virtue of any provision of this Act, references in this Act to a co-ordinated support plan are (except where the context otherwise requires) to the plan as amended,

“incapable” means incapable of forming or communicating any views by reason of mental illness or learning disability or of inability to communicate because of a physical disability, but a person is not to be treated as incapable by reason only of a lack or deficiency in a faculty of communication if that lack or deficiency can be made good by human or mechanical aid (whether of an interpretative nature or otherwise),

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39),

“placing request” has the meaning given in paragraph 2(3) of schedule 2,

“prescribed pre-school child” means a child of any description prescribed in an order under section 1(1A) (children under school age in respect of whom education authorities must make provision for school education) of the 1980 Act,

“President” means the President of the Additional Support Needs Tribunals for Scotland appointed under section 11(2),

“primary education” and “secondary education” are to be construed in accordance with section 135(2) of the 1980 Act,

“Tribunal” means an Additional Support Needs Tribunal for Scotland constituted under section 11(1).

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

“child”,

“education authority”,

“further education”,

“grant-aided school”,

“Health Board”,

“independent school”,

“managers”,

“parent”,

“public school”,

“school”,
“school age”,
“school education”,
“special school”,
“young person”.

- (3) In this Act, references to a child or young person for whose school education an education authority are responsible are to any child or young person being, or about to be, provided with school education—
- (a) in a school under the management of the education authority, or
 - (b) in pursuance of arrangements made or entered into by the authority.
- (4) In this Act, references to a child or young person belonging to an area are to be construed in accordance with section 23(3) of the 1980 Act.

21 Ancillary provision

The Scottish Ministers may by order make such incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes or in consequence of this Act.

22 Orders and regulations

- (1) Any power of the Scottish Ministers to make orders or regulations under this Act is exercisable by statutory instrument.
- (2) Any such power includes power to make—
- (a) such incidental, supplemental, consequential, transitional, transitory or saving provision as the Scottish Ministers think necessary or expedient,
 - (b) different provision for different purposes.
- (3) An order under section 21 may modify any enactment, instrument or document.
- (4) A statutory instrument containing an order or regulations under this Act (except section 21 (where subsection (5) applies) and section 23) is subject to annulment in pursuance of a resolution of the Parliament.
- (5) No order under section 21 containing provisions which add to, replace or omit any part of the text of an Act is to be made unless a draft of the statutory instrument containing the order has been laid before, and approved by a resolution of, the Parliament.

23 Commencement and short title

- (1) The provisions of this Act, other than sections 21 and 22 and this section, come into force on such day as the Scottish Ministers may by order appoint.
- (2) This Act may be cited as the Education (Additional Support for Learning) (Scotland) Act 2003.

SCHEDULE 1
(introduced by section 11)

ADDITIONAL SUPPORT NEEDS TRIBUNALS FOR SCOTLAND

Interpretation

- 1 In this schedule—
- “panel” means a panel referred to in paragraph 3(1),
 - “regulations” means regulations under section 11(5),
 - “Tribunal functions” means the functions which are conferred on a Tribunal by virtue of this Act,
 - “Tribunal member” means a member of a panel.

The President

- 2 (1) The Scottish Ministers must not appoint an individual under section 11(2) as President unless that individual has such qualifications, training and experience as are prescribed in regulations.
- (2) The President may serve as the convener of a Tribunal.
- (3) The President’s functions may, if the office of the President is vacant or the President is for any reason unable to act, be exercised by one of the members of the panel referred to in paragraph 3(1)(a) appointed for that purpose by the Scottish Ministers.
- (4) Regulations may make provision for the delegation by the President of any of the President’s functions to any member of that panel or any member of the staff provided under paragraph 9.
- (5) Paragraphs 3(2), 5, 6 and 7 of this schedule apply, with any necessary modifications, to the President as they apply to a Tribunal member.

The panels

- 3 (1) The Scottish Ministers must appoint—
- (a) a panel of individuals having such qualifications, training and experience as may be prescribed in regulations each of whom may act as the convener of a Tribunal, and
 - (b) a panel of individuals having such qualifications, training and experience as may be prescribed in regulations each of whom may act as a member of a Tribunal other than the convener.
- (2) An individual is disqualified from appointment, and from being, a Tribunal member if the individual is—
- (a) a member of the Scottish Parliament,
 - (b) a member of the Scottish Executive or a junior Scottish Minister, or
 - (c) of such other description as may be prescribed in regulations.

Constitution of Tribunals

- 4 (1) The President must from time to time constitute such number of Tribunals as the President thinks necessary to exercise Tribunal functions.
- (2) A Tribunal constituted under sub-paragraph (1) must consist of—
- (a) either—
 - (i) the President, or
 - (ii) one member selected by the President from the panel referred to in paragraph 3(1)(a),who is to act as the convener of the Tribunal, and
 - (b) two other members selected by the President from the panel referred to in paragraph 3(1)(b).

Terms of office

- 5 Each Tribunal member—
- (a) holds office for such period (not exceeding 5 years) as is specified in the member's instrument of appointment,
 - (b) may at any time resign office by giving notice in writing to the Scottish Ministers,
 - (c) vacates office on the day on which the member attains the age of 70,
 - (d) vacates office on becoming disqualified from being a Tribunal member under paragraph 3(2),
 - (e) in other respects holds office in accordance with the terms of the member's instrument of appointment.

Removal from office and re-appointment

- 6 Regulations may make provision as to—
- (a) the removal from office of a Tribunal member,
 - (b) the re-appointment of any Tribunal member whose period of office expires under paragraph 5(a).

Allowances for Tribunal members

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

Administration of Tribunal functions

- 8 (1) The Tribunals constituted under paragraph 4(1) are to sit at such times and in such places as the President may determine.
- (2) The President must ensure that Tribunal functions are exercised by those Tribunals efficiently and effectively.
- (3) The President may—
- (a) give such directions, and

(b) issue such guidance,
as respects the administration of the Tribunals, or any one of them, as appear to the President to be necessary or expedient for the purpose of ensuring that Tribunal functions are exercised efficiently and effectively.

Staff, property and services

9 The Scottish Ministers are to provide the President and the Tribunals, or ensure that they are provided, with such property, staff and services as the Scottish Ministers consider are required for the exercise of the functions of the President and Tribunal functions.

Finance

10 The Scottish Ministers are to pay any expenses reasonably incurred by the President or a Tribunal in the exercise of the President's functions or, as the case may be, Tribunal functions.

Rules of procedure

11 The Scottish Ministers may make rules as to the practice and procedure of the Tribunals.

Practice directions

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

Evidence

- 13 (1) A Tribunal may by citation require any person—
- (a) to attend proceedings of the Tribunal, at such time and place as is specified in the citation, for the purposes of giving evidence,
 - (b) to produce any document in the custody, or under the control of, that person.
- (2) A Tribunal may administer oaths to persons giving evidence.
- (3) A person is not obliged by virtue of this paragraph to answer any question or produce any document which that person would be entitled to refuse to answer or produce in civil proceedings before the Court of Session.
- (4) If a person on whom a citation under sub-paragraph (1) has been served—
- (a) fails to attend the Tribunal proceedings as required by the citation,
 - (b) refuses or fails, whilst attending proceedings as so required, to answer any question,
 - (c) deliberately alters, conceals or destroys any document which that person is required by the citation to produce,
 - (d) refuses or fails to produce any such document,
- that person is guilty of an offence.
- (5) It is a defence for a person charged with an offence under sub-paragraph (4)(a), (b) or (d) to show that the person had a reasonable excuse for the refusal or failure.

- (6) A person who commits an offence under sub-paragraph (4) is liable—
 - (a) on summary conviction to a fine not exceeding level 5 on the standard scale,
 - (b) on conviction on indictment to imprisonment for a term not exceeding 2 years or a fine or both.

Decisions of a Tribunal

- 14 (1) A decision of a Tribunal—
- (a) may be reached by majority, and
 - (b) must be recorded in a document which contains a full statement of the facts found by the Tribunal and the reasons for the decision.
- (2) The Tribunal must—
- (a) inform each party of its decision, and
 - (b) send a copy of the document mentioned in sub-paragraph (1)(b) to each party as soon as reasonably practicable after it is prepared.

Annual report

- 15 (1) The President must, in respect of each reporting year, prepare a written report as to the exercise of Tribunal functions during that year.
- (2) The President must submit each report prepared under sub-paragraph (1), as soon as practicable after the end of the reporting year to which it relates, to the Scottish Ministers.
- (3) The Scottish Ministers must lay before the Scottish Parliament a copy of each report submitted to them under sub-paragraph (2).
- (4) A reporting year for the purposes of this paragraph is—
- (a) the period beginning with the date on which the first President is appointed and ending with 31st March next following that date, and
 - (b) each successive period of 12 months ending with 31st March.

Disclosure of information

- 16 The President must, at such times and in respect of such periods as regulations may specify, provide to—
- (a) the Scottish Ministers, and
 - (b) such persons as the regulations may specify,
- such information relating to the exercise of Tribunal functions as is specified in the regulations.

SCHEDULE 2
(introduced by section 16)

CHILDREN AND YOUNG PERSONS WITH ADDITIONAL SUPPORT NEEDS: PLACING REQUESTS

Introductory

- 1 Sections 28A, 28C, 28E, 28F and 28G of the 1980 Act (which make provision as to the making of placing requests and appeals in relation to the refusal of such requests) do not apply in relation to children and young persons having additional support needs and instead the provisions of this schedule apply in relation to such children and young persons.

Duty to comply with placing requests

- 2 (1) Where the parent of a child having additional support needs makes a written request to an education authority to place the child in the school specified in the request, being a school under their management, it is the duty of the authority, subject to paragraph 3, to place the child accordingly.
- (2) Where the parent of a child having additional support needs makes a written request to the education authority for the area to which the child belongs to place the child in the school specified in the request, not being a public school but being—
- (a) a special school the managers of which are willing to admit the child,
 - (b) a school in England and Wales or in Northern Ireland the managers of which are willing to admit the child and which is a school making provision wholly or mainly for children (or as the case may be young persons) having additional support needs, or
 - (c) a school at which education is provided in pursuance of arrangements entered into under section 35 of the 2000 Act,
- it is the duty of the authority, subject to paragraph 3, to meet the fees and other necessary costs of the child's attendance at the specified school.
- (3) A request made under sub-paragraph (1) or (2) is referred to in this Act as a "placing request" and the school specified in it is referred to in this schedule as the "specified school".
- (4) Where a placing request relates to 2 or more schools being—
- (a) schools under the management of the education authority to whom it is made, or
 - (b) schools mentioned in sub-paragraph (2)(a), (b) or (c) the managers of which are willing to admit the child in respect of whom the request is made,
- the duty imposed by sub-paragraph (1) or, as the case may be, sub-paragraph (2) applies in relation to the first mentioned such school, which is to be treated for the purposes of this schedule as the specified school.

Circumstances in which duty does not apply

- 3 (1) The duty imposed by sub-paragraph (1) or, as the case may be, sub-paragraph (2) of paragraph 2 does not apply—
- (a) if placing the child in the specified school would—

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- (i) make it necessary for the authority to take an additional teacher into employment,
 - (ii) give rise to significant expenditure on extending or otherwise altering the accommodation at or facilities provided in connection with the school,
 - (iii) be seriously detrimental to the continuity of the child's education,
 - (iv) be likely to be seriously detrimental to order and discipline in the school,
 - (v) be likely to be seriously detrimental to the educational well-being of pupils attending the school,
 - (vi) assuming that pupil numbers remain constant, make it necessary, at the commencement of a future stage of the child's primary education, for the authority to elect either to create an additional class (or an additional composite class) in the specified school or to take an additional teacher into employment at the school, or
 - (vii) though neither of the tests set out in paragraphs (i) and (ii) is satisfied, have the consequence that the capacity of the school would be exceeded in terms of pupil numbers,
- (b) if the education normally provided at the specified school is not suited to the age, ability or aptitude of the child,
 - (c) if the education authority have already required the child to discontinue attendance at the specified school,
 - (d) if, where the specified school is a school mentioned in paragraph 2(2)(a) or (b), the child does not have additional support needs requiring the education or special facilities normally provided at that school,
 - (e) if the specified school is a single sex school (within the meaning of section 26 of the Sex Discrimination Act 1975 (c.65)) and the child is not of the sex admitted or taken (under that section) to be admitted to the school, or
 - (f) if all of the following conditions apply, namely—
 - (i) the specified school is not a public school,
 - (ii) the authority are able to make provision for the additional support needs of the child in a school (whether or not a school under their management) other than the specified school,
 - (iii) it is not reasonable, having regard both to the respective suitability and to the respective cost (including necessary incidental expenses) of the provision for the additional support needs of the child in the specified school and in the school referred to in paragraph (ii), to place the child in the specified school, and
 - (iv) the authority have offered to place the child in the school referred to in paragraph (ii).
- (2) An education authority may place a child in the specified school notwithstanding sub-paragraph (1)(a) to (e).
 - (3) The duty imposed by sub-paragraph (1) or, as the case may be, sub-paragraph (2) of paragraph 2 does not apply where the acceptance of a placing request in respect of a child who is resident outwith the catchment area of the specified school would prevent the education authority from retaining reserved places at the specified school or in relation to any particular stage of education at the school.

- (4) Nothing in sub-paragraph (3) prevents an education authority from placing a child in the specified school.
- (5) In sub-paragraph (3), “reserved places” means such number of places (not exceeding such number or, as the case may be, such percentage of places at the school or relating to the particular stage of education as the Scottish Ministers may by regulations prescribe) as are in the opinion of the education authority reasonably required to accommodate pupils likely to become resident in the catchment area of the school in the period from the time of consideration of the placing request up to and during the year from 1st August to which the placing request relates.
- (6) In sub-paragraphs (3) and (5) “catchment area”, in relation to a school, means the area from which pupils resident therein will be admitted to the school in terms of any priority based on residence in accordance with the guidelines formulated by the authority under section 28B(1)(c) of the 1980 Act.

Placing requests: further provision

- 4 (1) An education authority must inform a parent in writing of their decision on a placing request made by the parent and, where they decide to refuse it, must give the parent written reasons for their decision and inform the parent of the parent’s right under paragraph 5 to refer the decision to an appeal committee.
- (2) On complying with a placing request relating to a child for whom a co-ordinated support plan has been prepared (and not discontinued), an education authority must modify accordingly the nomination in the plan of a school to be attended by the child.
- (3) The Scottish Ministers may, by regulations, make provision for deeming an education authority to have refused a placing request in the event of their not having informed the parent in writing of their decision on it in accordance with sub-paragraph (1) within such period or before such date as may be prescribed in the regulations.

Reference to appeal committee of refusal of placing request

- 5 (1) A parent who has made a placing request may refer a decision of the education authority refusing the request to an appeal committee set up under section 28D of the 1980 Act.
- (2) Sub-paragraph (1) does not apply in relation to a placing request made in respect of a child or young person for whom a co-ordinated support plan has been prepared (and not discontinued).
- (3) Where a reference under this paragraph has been made in respect of a child, no further such reference in respect of the child is competent during the period of 12 months beginning with the day on which the immediately preceding such reference was lodged.
- (4) A reference under this paragraph must be lodged with the appeal committee within 28 days of the receipt by the parent of the decision of the education authority.
- (5) For the purposes of sub-paragraph (4), a decision which is posted is to be presumed to have been received (unless the contrary is proved)—
 - (a) on the day after the date on which it was posted, or
 - (b) if posted on a Friday or Saturday, on the Monday next following.
- (6) The committee may, on good cause being shown, hear such a reference notwithstanding that it was not lodged within the time mentioned in sub-paragraph (4).

References to appeal committees: supplementary provisions

- 6 (1) An appeal committee may, on a reference made to them under paragraph 5, confirm the education authority's decision if they are satisfied that—
- (a) in relation to the placing request, one or more of the grounds of refusal specified in paragraph 3(1) or (3) exists or exist, and
 - (b) in all the circumstances it is appropriate to do so,
- but otherwise must refuse to confirm the authority's decision.
- (2) Where they so refuse, the appeal committee shall require the education authority—
- (a) in the case of a placing request made under paragraph 2(1), to place the child in the specified school,
 - (b) in the case of a placing request made under paragraph 2(2), to meet the fees and other necessary costs of the child's attendance at the specified school,
- and the authority must comply with that requirement.
- (3) An appeal committee must notify their decision under this paragraph and the reasons for it in writing to the parent who made the reference and to the education authority and, where they confirm the authority's decision, they must inform the parent of the right of appeal to the sheriff under paragraph 7.

Appeal to sheriff from appeal committee

- 7 (1) A parent who has made a reference to an appeal committee under paragraph 5 may appeal to the sheriff against the decision of the appeal committee on that reference.
- (2) The education authority may, but the appeal committee may not, be a party to an appeal under this paragraph.
- (3) An appeal under this paragraph—
- (a) is to be made by way of summary application,
 - (b) must be lodged with the sheriff clerk within 28 days from the date of receipt of the decision of the appeal committee, and
 - (c) is to be heard in chambers.
- (4) For the purposes of sub-paragraph (3)(b), a decision which is posted is to be presumed to have been received (unless the contrary is proved)—
- (a) on the day after the date on which it was posted, or
 - (b) if posted on a Friday or Saturday, on the Monday next following.
- (5) On good cause being shown, the sheriff may hear an appeal under this paragraph notwithstanding that it was not lodged within the time mentioned in sub-paragraph (3)(b).
- (6) The sheriff may, on an appeal made under this paragraph, confirm the education authority's decision if satisfied that—
- (a) in relation to the placing request, one or more of the grounds of refusal specified in paragraph 3(1) or (3) exists or exist, and
 - (b) in all the circumstances, it is appropriate to do,
- but otherwise must refuse to confirm the authority's decision.

- (7) Where the sheriff so refuses, the sheriff must require the education authority—
- (a) in the case of a placing request made under paragraph 2(1), to place the child in the specified school,
 - (b) in the case of a placing request made under paragraph 2(2), to meet the fees and other necessary costs of the child’s attendance at the specified school,
- and the authority must comply with that requirement.
- (8) The sheriff may make such order as to the expenses of an appeal under this paragraph as the sheriff thinks fit.
- (9) The judgment of the sheriff on an appeal under this paragraph is final.

Young persons having additional support needs

- 8 (1) Paragraphs 2 to 7 apply to a young person having additional support needs as they apply to a child having such needs.
- (2) For the purposes of the application of those provisions to a young person having additional support needs references in the provisions to the parent of a child having additional support needs (as well as references to the child) are to be construed as references to the young person.
- (3) Sub-paragraph (2) does not apply in a case where the education authority are satisfied that the young person is incapable.

Consequential modifications

- 9 In section 28D(1) of the 1980 Act—
- (a) the words “and 63” are omitted, and
 - (b) after “Act” insert “and paragraph 5 of schedule 2 to the Education (Additional Support for Learning) (Scotland) Act 2003 (asp 00)”.