

Status: Point in time view as at 18/05/2005.

Changes to legislation: There are currently no known outstanding effects for the Education (Additional Support for Learning) (Scotland) Act 2004. (See end of Document for details)

SCHEDULE 1 **S**

(introduced by section 17)

ADDITIONAL SUPPORT NEEDS TRIBUNALS FOR SCOTLAND

Interpretation

- 1 In this schedule—
- “panel” means a panel referred to in paragraph 3(1),
 - “regulations” means regulations made by the Scottish Ministers,
 - “Tribunal functions” means the functions which are conferred on a Tribunal by virtue of this Act,
 - “Tribunal member” means a member of a panel,
 - “Tribunal staff” means the staff provided or appointed under paragraph 9.

Commencement Information

- II** Sch. 1 para. 1 in force at 3.5.2005 by [S.S.I. 2005/154](#), [art. 2](#)

The President

- 2 (1) The Scottish Ministers must not appoint an individual under section 17(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 Tribunal staff.
- (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.

Commencement Information

- I2** Sch. 1 para. 2 in force at 3.5.2005 by [S.S.I. 2005/154](#), [art. 2](#)

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.

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- (2) An individual is disqualified from appointment as, 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.

Commencement Information

I3 Sch. 1 para. 3 in force at 3.5.2005 by S.S.I. 2005/154, art. 2

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).

Commencement Information

I4 Sch. 1 para. 4 in force at 3.5.2005 by S.S.I. 2005/154, art. 2

Terms of Office

- 5 (1) 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 becoming disqualified from being a Tribunal member under paragraph 3(2),
 - (d) in other respects holds office in accordance with the terms of the member's instrument of appointment.
- (2) A Tribunal member whose period of office (including any period of office following re-appointment under this sub-paragraph) expires under sub-paragraph (1)(a) may be re-appointed by the Scottish Ministers for a further period to the same panel to which the member was last appointed, unless—
- (a) the member has declined re-appointment,
 - (b) the President has recommended to the Scottish Ministers that the member should not be re-appointed and the Scottish Ministers have accepted that recommendation,

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- (c) since the member was last appointed to the panel, there has been a reduction in the overall number of members of the panel which the Scottish Ministers consider are needed to enable the President to carry out the functions under paragraph 4,
- (d) the member has, since the member was last appointed to the panel, failed without reasonable excuse to comply with the terms of the member's appointment,
- (e) the member no longer has the qualifications, training or experience prescribed under paragraph 3(1) for appointment to the panel.

Commencement Information

I5 Sch. 1 para. 5 in force at 3.5.2005 by S.S.I. 2005/154, art. 2

Removal from office

- 6 The Scottish Ministers may remove a Tribunal member from office if the member is unfit for office by reason of inability, neglect of duty or misbehaviour.

Commencement Information

I6 Sch. 1 para. 6 in force at 3.5.2005 by S.S.I. 2005/154, art. 2

Allowances for Tribunal members

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

Commencement Information

I7 Sch. 1 para. 7 in force at 3.5.2005 by S.S.I. 2005/154, art. 2

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.

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Commencement Information

18 Sch. 1 para. 8 in force at 3.5.2005 by S.S.I. 2005/154, art. 2

Staff, property and services

- 9 (1) 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.
- (2) Without prejudice to sub-paragraph (1), the Scottish Ministers may appoint such staff for the President and the Tribunals as the Scottish Ministers may determine and on such terms and conditions as the Scottish Ministers may determine.
- (3) The Scottish Ministers may pay, or make provision for paying, to or in respect of staff appointed under sub-paragraph (2) such pensions, allowances and gratuities (including by way of compensation for loss of employment) as the Scottish Ministers may determine.

Commencement Information

19 Sch. 1 para. 9 in force at 3.5.2005 by S.S.I. 2005/154, art. 2

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.

Commencement Information

110 Sch. 1 para. 10 in force at 3.5.2005 by S.S.I. 2005/154, art. 2

Rules of procedure

- 11 (1) The Scottish Ministers must make rules as to the practice and procedure of the Tribunals.
- (2) Such rules may, in particular, include provision for or in connection with—
- (a) the form and manner in which references to a Tribunal under section 18(1) are to be made,
 - (b) the time within which such references are to be made,
 - (c) the withdrawal of references,
 - (d) the recovery and inspection of documents,
 - (e) the persons who may appear on behalf of the parties,
 - (f) the persons who may be present at proceedings alongside any party or witness to support the party or witness,
 - (g) enabling specified persons other than the parties to appear or be represented in specified circumstances,

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- (h) requiring specified persons to give notice to other specified persons of specified matters,
- (i) the time within which any such notice must be given,
- (j) enabling Tribunal proceedings to be conducted in the absence of any member of a Tribunal other than the convener,
- (k) enabling any matters that are preliminary or incidental to the determination of proceedings to be determined by the convener of a Tribunal alone or with such other members of the Tribunal as may be specified,
- (l) enabling Tribunal proceedings to be held in private,
- (m) enabling a Tribunal to exclude any person from attending all or part of Tribunal proceedings,
- (n) enabling a Tribunal to impose reporting restrictions in relation to all or part of Tribunal proceedings,
- (o) enabling a Tribunal to determine specified matters without holding a hearing,
- (p) the recording and publication of decisions and orders of a Tribunal,
- (q) enabling a Tribunal to commission medical and other reports in specified circumstances,
- (r) requiring a Tribunal to take specified actions, or to determine specified proceedings, within specified periods,
- (s) enabling a Tribunal to make an award of expenses,
- (t) the taxation or assessment of such expenses.

(3) In sub-paragraph (2), “specified” means specified in the rules.

Commencement Information

I11 Sch. 1 para. 11 in force at 3.5.2005 by S.S.I. 2005/154, art. 2

Practice directions

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

Commencement Information

I12 Sch. 1 para. 12 in force at 3.5.2005 by S.S.I. 2005/154, art. 2

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.

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- (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 on summary conviction to a fine not exceeding level 5 on the standard scale.

Commencement Information

I13 Sch. 1 para. 13 in force at 3.5.2005 by S.S.I. 2005/154, art. 2

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.

Commencement Information

I14 Sch. 1 para. 14 in force at 3.5.2005 by S.S.I. 2005/154, art. 2

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.

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Commencement Information

I15 Sch. 1 para. 15 in force at 3.5.2005 by S.S.I. 2005/154, art. 2

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.

Commencement Information

I16 Sch. 1 para. 16 in force at 3.5.2005 by S.S.I. 2005/154, art. 2

Allowances etc. for attendance at hearings and preparation of reports

- 17 A Tribunal may pay to any person (other than the President, a Tribunal member or a member of the Tribunal staff)—
- (a) such allowances and expenses as the President may determine for the purposes of or in connection with the person's attendance at hearings of the Tribunal,
 - (b) such amounts as the President may determine in connection with any report prepared in pursuance of rules made under paragraph 11(2)(q).

Commencement Information

I17 Sch. 1 para. 17 in force at 3.5.2005 by S.S.I. 2005/154, art. 2

SCHEDULE 2 **S**

(introduced by section 22)

CHILDREN AND YOUNG PERSONS WITH ADDITIONAL SUPPORT NEEDS: PLACING REQUESTS

VALID FROM 14/11/2005

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.

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VALID FROM 14/11/2005

Duty to comply with placing requests

- 2 (1) Where the parent of a child having additional support needs makes a 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 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, Wales or 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.

VALID FROM 14/11/2005

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—
 - (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,

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- (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,
 - (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), or
 - (g) if, where the specified school is a special school, placing the child in the school would breach the requirement in section 15(1) of the 2000 Act.
- (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

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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.
- (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 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.

Commencement Information

I18 Sch. 2 para. 4(3) in force at 18.5.2005 for specified purposes by S.S.I. 2005/263, art. 2, Sch.

VALID FROM 14/11/2005

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 where the decision of the education authority refusing the request may be referred to a Tribunal under section 18(1).
- (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.

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Changes to legislation: There are currently no known outstanding effects for the Education (Additional Support for Learning) (Scotland) Act 2004. (See end of Document for details)

- (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.
- (4) Sub-paragraph (5) applies where—
- (a) after a reference is made to an appeal committee under paragraph 5, but
 - (b) before the committee has disposed of the reference,
- there is referred to a Tribunal under section 18(1) a decision of the education authority that the child to whom the reference relates does not require a co-ordinated support plan.
- (5) Where this sub-paragraph applies—
- (a) the appeal committee must transfer the reference to the Tribunal, and
 - (b) on being so transferred, the reference is to be treated as if made to the Tribunal under section 18(1).
- (6) The Scottish Ministers may by regulations make provision for procedure in relation to references under paragraph 5 and any such regulations may, in particular, include provision—
- (a) requiring an education authority to make information relevant to their decision available to the appeal committee and to the parent referring the decision to the committee,
 - (b) deeming, for the purposes of this Act, an appeal committee to have confirmed the decision of an education authority on a placing request if the committee has not complied with sub-paragraph (3) of this paragraph within such period or before such date as may be prescribed in the regulations.

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Changes to legislation: There are currently no known outstanding effects for the Education (Additional Support for Learning) (Scotland) Act 2004. (See end of Document for details)

Commencement Information

I19 Sch. 2 para. 6(6) in force at 18.5.2005 for specified purposes by [S.S.I. 2005/263](#), [art. 2](#), [Sch.](#)

VALID FROM 14/11/2005

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) Sub-paragraph (9) applies where—
 - (a) after an appeal is made to the sheriff under this paragraph, but
 - (b) before the sheriff has disposed of the appeal,
 there is referred to a Tribunal under section 18(1) a decision of the education authority that the child to whom the appeal relates does not require a co-ordinated support plan.
 - (9) Where this sub-paragraph applies—

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- (a) the sheriff must transfer the appeal to the Tribunal, and
 - (b) on being so transferred, the appeal is to be treated as if it were a reference made to the Tribunal under section 18(1).
- (10) The sheriff may make such order as to the expenses of an appeal under this paragraph as the sheriff thinks fit.
- (11) The judgment of the sheriff on an appeal under this paragraph is final.

VALID FROM 14/11/2005

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 lacks capacity to do anything which the parent of a child may do under the provision concerned.

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SCHEDULE 3 **S**
(introduced by section 33)

MODIFICATION OF ENACTMENTS

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Status:

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Changes to legislation:

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