



# Education (Scotland) Act 2016

## 2016 asp 8

### PART 3 **S**

#### MISCELLANEOUS

#### 19 Additional support for learning **S**

The schedule to this Act contains modifications of the Education (Additional Support for Learning) (Scotland) Act 2004.

##### Commencement Information

- I1** [S. 19](#) in force at 1.1.2017 for specified purposes by [S.S.I. 2016/386, reg. 2, sch.](#)  
**I2** [S. 19](#) in force at 1.8.2017 for specified purposes by [S.S.I. 2017/164, reg. 2, sch.](#)

#### 20 Children unable to attend early learning and childcare **S**

In section 14 of the 1980 Act (education for children unable to attend school etc.), after subsection (3) insert—

“(4) Subsection (1) applies to a pupil who receives school education under arrangements entered into by an education authority under section 35 of the Standards in Scotland's Schools etc. Act 2000 (provision of school education by persons other than education authorities) as it applies to a pupil mentioned in that subsection, but as if—

- (a) in paragraph (a), the reference to a suitable educational establishment for the purpose of receiving education were a reference to a place where early learning and childcare is provided for the purpose of receiving early learning and childcare,
- (b) in paragraph (b), the reference to an establishment were a reference to a place, and
- (c) the reference to education elsewhere than at an educational establishment were a reference to early learning and childcare at a place other than a place where such learning and childcare is normally provided.”.

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### Commencement Information

**I3** S. 20 in force at 1.1.2017 by S.S.I. 2016/386, reg. 2, sch.

## 21 Learning hours **S**

- (1) The 1980 Act is amended as follows.
- (2) After section 2 insert—

### “2ZA Learning hours

- (1) An education authority and the managers of a grant-aided school must secure that no fewer than the prescribed number of learning hours (the “prescribed hours”) are made available during each school year to each pupil for whose school education the authority is, or the managers are, responsible (but subject to subsection (3)).
- (2) For the purposes of subsection (1)—
  - (a) an education authority is “responsible” for the school education of a pupil if the pupil belongs to the authority's area and the pupil is, or is about to be, provided with school education—
    - (i) in a school which is under the management of the authority, or
    - (ii) by virtue of arrangements made or entered into by the authority,
  - (b) the managers of a grant-aided school are “responsible” for the school education of a pupil if the pupil is provided with school education in a grant-aided school which is under the management of the managers of the school (except where the education is provided for the pupil in the school by virtue of arrangements as mentioned in paragraph (a)(ii)).
- (3) Where any of the circumstances mentioned in subsection (4) (the “relevant circumstances”) apply to a pupil during a school year (the “relevant year”), an education authority may secure that fewer than the prescribed hours are made available to the pupil during the relevant year.
- (4) The relevant circumstances are—
  - (a) that the authority is satisfied that the pupil's wellbeing would be adversely affected if the prescribed hours were to be made available to the pupil during the relevant year,
  - (b) that, because of matters outwith the control of the authority, it is impracticable for the authority to secure that the prescribed hours are made available to the pupil during the relevant year,
  - (c) that other prescribed circumstances apply.
- (5) Where an education authority exercises the power conferred by subsection (3) in relation to a pupil, the authority must secure that no fewer than the reduced hours are made available to the pupil during the relevant year.
- (6) In subsection (5), “reduced hours”, in relation to a pupil, means the prescribed hours less the number of learning hours that were not, by virtue of the

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application of the relevant circumstances in relation to the pupil, made available during the relevant year to the pupil.

(7) For the purposes of subsection (4)(a), the education authority is to determine whether it is satisfied that a pupil's wellbeing would be adversely affected by reference to the extent to which the pupil is or would be—

safe,  
healthy,  
achieving,  
nurtured,  
active,  
respected,  
responsible, and  
included.

(8) Subsections (3) to (7) apply in relation to the managers of a grant-aided school as they apply in relation to an education authority.

(9) Regulations under subsection (1) or (4)(c), or under the definition of “learning hours” in subsection (12), may—

- (a) include transitional or transitory provision,
- (b) make different provision for different purposes,
- (c) make different provision for different types of pupil.

(10) The Scottish Ministers may by regulations modify the list in subsection (7) so as to amend, remove or add to the matters for the time being mentioned in the list.

(11) Before making any regulations under subsection (1), (4)(c) or (10) or under the definition of “learning hours” in subsection (12), the Scottish Ministers must consult such persons as they consider appropriate.

(12) In this section—

“learning hours” means hours of school education of such type as may be prescribed,

“prescribed” means prescribed by the Scottish Ministers by regulations,

“school education” does not include early learning and childcare,

“school year” means the period of 12 months beginning on 1 August.”.

(3) In section 133 (regulations etc.)—

- (a) in subsection (2), for “(2YA)” substitute “ (2XA) ”,
- (b) after subsection (2) insert—

“(2XA) Subsection (2) does not apply to any regulations under section 2ZA(1), (4)(c) or (10), or under the definition of “learning hours” in section 2ZA(12); and such regulations are subject to the affirmative procedure.”,

(c) in subsection (4)—

(i) after paragraph (a) insert—

“(aa) in relation to regulations made under section 2ZA(1), by an education authority or the managers of a grant-aided school;”, and

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- (ii) for the words “that authority”, in each place where they occur, substitute “ the authority, managers ”, and
- (d) in subsection (5)(c), after “authority” insert “ , managers ”.

#### Commencement Information

**I4** S. 21(1)(2) in force at 1.8.2016 for specified purposes by S.S.I. 2016/192, reg. 2, sch.

VALID FROM 01/04/2018

## 22 Provision of school meals **S**

- (1) The 1980 Act is amended as follows.
- (2) For section 53 (provision of school meals) substitute—

### “53 Provision of school meals

- (1) This section applies to—
  - (a) pupils in attendance at public schools and other educational establishments under the management of an education authority, and
  - (b) pupils who receive school education under arrangements entered into by an education authority under section 35 of the Standards in Scotland's Schools etc. Act 2000 (provision of school education by persons other than education authorities).
- (2) The authority must provide or secure the provision of a school lunch, free of charge, to pupils falling within subsection (7).
- (3) The authority may provide or secure the provision of—
  - (a) other food or drink to pupils falling within subsection (7),
  - (b) food or drink to other pupils.
- (4) Where the authority provides or secures the provision of food or drink under subsection (3)(a) or (b) to pupils, it may—
  - (a) do so free of charge, or
  - (b) charge the pupils.
- (5) The authority may exercise the power under subsection (4) to provide or secure the provision of food or drink free of charge—
  - (a) in relation to pupils who satisfy such conditions as the authority thinks fit,
  - (b) at such times of the day as the authority thinks fit.
- (6) Any charge under subsection (4) must be the same for the same quantity of the food or drink provided.
- (7) A pupil falls within this subsection if—
  - (a) the pupil is, or the parents of the pupil are, in receipt of—
    - (i) income support,

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- (ii) an income-based jobseeker's allowance (payable under the Jobseekers Act 1995),
      - (iii) an income-related allowance under Part 1 of the Welfare Reform Act 2007 (employment and support allowance),
    - (b) the parents of the pupil are in receipt of support provided under Part 6 of the Immigration and Asylum Act 1999.
  - (8) The Scottish Ministers may by regulations modify subsection (7) by—
    - (a) adding a description of pupil by reference to—
      - (i) any benefit or allowance received by the pupil, or the parents of the pupil, in such circumstances as may be prescribed in the regulations,
      - (ii) any tax credit, or element of a tax credit, within the meaning of the Tax Credits Act 2002 received by the pupil, or the parents of the pupil, in such circumstances as may be so prescribed,
      - (iii) the yearly stage of primary or secondary education of the pupil,
    - (b) adding such other description of pupil as may be prescribed in the regulations.
  - (9) An education authority must provide such facilities as the authority considers appropriate for the consumption of food or drink brought by pupils to schools or other educational establishments as mentioned in subsection (1)(a) under the management of the authority.
  - (10) An education authority may provide or secure the provision of food or drink (including a school lunch) under this section—
    - (a) on the premises of the schools or other establishments as mentioned in subsection (1)(a) where education is provided,
    - (b) at any place where school education is provided under arrangements mentioned in subsection (1)(b), or
    - (c) at any other place.
  - (11) For the purposes of this section, a pupil for whom an education authority has made special arrangements under section 14 may, at the discretion of the authority, be deemed to be in attendance at a public school.
  - (12) In this section and sections 53A and 53B, “school lunch” means anything provided, or the provision of which is secured, by an education authority under subsection (2) in the middle of the day which the education authority considers is appropriate for consumption as a meal at that time of the day.”.
- (3) After section 53 insert—

**“53ZA Power to require provision of meals other than school lunches**

- (1) The Scottish Ministers may by regulations make provision for or in connection with imposing a duty on education authorities to provide, or secure the provision of, a free meal (other than a school lunch) of a prescribed description at prescribed times of the day to each pupil mentioned in subsection (2).

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- (2) The pupil is an eligible pre-school child who falls within section 53(7).
- (3) Regulations under subsection (1) may in particular—
- (a) make such modifications of section 53 as the Scottish Ministers consider necessary or expedient,
  - (b) apply any of the provisions of section 53 (with or without prescribed modifications),
  - (c) modify sections 53A and 53B in consequence of any provision made by the regulations.
- (4) In this section—
- “eligible pre-school child” has the same meaning as in section 47(2) of the Children and Young People (Scotland) Act 2014,
- “prescribed” means prescribed by the Scottish Ministers by regulations,
- “school lunch” has the same meaning as in section 53(12).”.
- (4) In section 56A (food and drink: nutritional requirements), in subsection (2)—
- (a) in paragraph (a), for “53(1)(a)” substitute “ 53(2) or (3) ”, and
  - (b) in paragraph (b)(i), for “53(1)(a)” substitute “ 53(2) or (3) ”.
- (5) In section 56E (food and drink: guidance about sustainable development), in subsection (1)—
- (a) in paragraph (a), for “section 53(1)(a)” substitute “ subsection (2) or (3) of section 53 to pupils mentioned in subsection (1)(a) of that section ”,
  - (b) in paragraph (b), for “that section” substitute “ section 53(2) or (3) to such pupils ”, and
  - (c) in paragraph (c)(i), for “that section” substitute “ section 53(2) or (3) to such pupils ”.
- (6) In section 133 (regulations, etc.), in subsection (2YA), for “section 53(3)(c) of this Act” substitute “ subsection (8) of section 53 that modify subsection (7) of that section as mentioned in subsection (8)(a)(iii) or (b) of that section, nor to any regulations under section 53ZA(1) or 54A(1) ”.

PROSPECTIVE

## 23 Clothing grants **S**

After section 54 of the 1980 Act insert—

### “54A Power to require education authorities to make clothing grants

- (1) The Scottish Ministers may by regulations make provision requiring an education authority to pay a grant of a specified amount to or in respect of a pupil of a specified description for the provision of clothing for the pupil.
- (2) Regulations under subsection (1) may make the payment of a grant subject to specified conditions (including conditions as to repayment).

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(3) Regulations under subsection (1) may make different provision for different purposes.

(4) In this section, “specified” means specified in the regulations.”.

## 24 Enforcement of statutory duties **S**

In section 70 of the 1980 Act (powers to enforce duty of education authorities and other persons), after subsection (2) insert—

“(3) Despite subsection (2), no order under subsection (1) may be made in respect of a failure by an education authority that is of a type mentioned in subsection (4).

(4) The types of failure are—

- (a) a failure mentioned in section 18(3) of the Education (Additional Support for Learning) (Scotland) Act 2004 (“the 2004 Act”) (references to an Additional Support Needs Tribunal for Scotland),
- (b) a failure in relation to a decision or information mentioned in section 18(3) of the 2004 Act,
- (c) a failure mentioned in section 18(5A) or (5B) of the 2004 Act,
- (d) where a failure mentioned in paragraph (a), (b) or (c) also constitutes a failure to discharge the duty imposed by section 4 of the 2004 Act, a failure under that section that is so constituted.

(5) The Scottish Ministers may by regulations make provision for or in connection with the procedure to be followed in relation to—

- (a) the investigation of an alleged failure by an education authority, the managers of a school or educational establishment or other person to discharge a duty mentioned in subsection (1),
- (b) the determination of whether to make an order under that subsection.

(6) Regulations under subsection (5) may—

- (a) include transitional, transitory or saving provision,
- (b) make different provision for different purposes.

(7) Before making any regulations under subsection (5), the Scottish Ministers must consult such persons as they consider appropriate.”.

### Commencement Information

**I5** S. 24 in force at 1.1.2017 for specified purposes by [S.S.I. 2016/386, reg. 2, sch.](#)

PROSPECTIVE

## 25 Appointment of Chief Education Officer **S**

After section 77 of the 1980 Act insert—

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### “Appointment of Chief Education Officer

#### 78 Appointment of Chief Education Officer

- (1) An education authority must appoint an officer to advise the authority on the carrying out of the authority's functions under this Act and any other enactment.
- (2) An officer appointed under subsection (1) is to be known as the Chief Education Officer.
- (3) An officer appointed under subsection (1) must have—
  - (a) such qualifications as may be prescribed by regulations made by the Scottish Ministers, and
  - (b) such experience as the authority considers appropriate in relation to the carrying out of the advisory function mentioned in that subsection.
- (4) In subsection (1), “enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.”.

#### 26 Registration of independent schools **S**

In section 133 of the 1980 Act (regulations, etc.), after subsection (2C) insert—

“(2D) Regulations under section 98A(6) of this Act defining “prescribed person” may—

- (a) make different provision for different purposes,
- (b) make supplementary, incidental, consequential, transitional, transitory or saving provision,
- (c) modify any enactment.

(2E) In subsection (2D), “enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.”.

#### Commencement Information

**I6** [S. 26](#) in force at 1.1.2017 by [S.S.I. 2016/386](#), [reg. 2](#), [sch.](#)

#### 27 Employment of teachers in grant-aided schools **S**

In section 90(1) of the 1980 Act (employment of teachers), after “authorities” insert “ , or managers of grant-aided schools, ”.

#### Commencement Information

**I7** [S. 27](#) in force at 1.1.2017 by [S.S.I. 2016/386](#), [reg. 2](#), [sch.](#)



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## 28 Head teachers: education and training standards **S**

(1) After section 90 of the 1980 Act insert—

### “90A Head teachers: education and training standards

- (1) The Scottish Ministers may by regulations under section 2 or 74(1) prescribe that only persons falling within subsection (2) may be appointed by education authorities or managers of grant-aided schools as head teachers of schools.
- (2) A person falls within this subsection if the person has achieved such standards of education and training as may be specified in regulations mentioned in subsection (1).
- (3) Regulations made by virtue of subsections (1) and (2) may—
  - (a) provide for exemptions or exceptions,
  - (b) make different provision for different purposes,
  - (c) make consequential, transitional or transitory provision or savings.”.

(2) After section 98D of the 1980 Act insert—

### “98DA Head teachers of independent schools: education and training standards

- (1) The Scottish Ministers may by regulations make provision for or in connection with the standards of education and training to be achieved by persons who are to be appointed as head teachers of independent schools.
  - (2) Regulations under subsection (1) may make provision in relation to—
    - (a) a registered school,
    - (b) a school in respect of which an application under section 98A is made.
  - (3) Regulations under subsection (1) may—
    - (a) provide for exemptions or exceptions,
    - (b) make different provision for different purposes,
    - (c) make consequential, transitional or transitory provision or savings.”.
- (3) In section 133 of the 1980 Act (regulations, etc.), after subsection (2B) insert—

“(2BA) Subsection (2) above shall not apply to any regulations under—

- (a) section 2 or 74(1) that make provision such as is mentioned in section 90A, or
- (b) section 98DA(1);

and such regulations shall be subject to the affirmative procedure.”.

#### Commencement Information

**18** S. 28(1) in force at 1.1.2017 by S.S.I. 2016/386, reg. 2, sch.

## 29 Provision of early learning and childcare: children with guardians **S**

(1) The Children and Young People (Scotland) Act 2014 is amended as follows.

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- (2) In section 47 (duty to secure provision of early learning and childcare), in subsection (3)—
- (a) the words from “is”, where it second occurs, to “order” become paragraph (a) of that subsection (and accordingly paragraphs (a) and (b) become subparagraphs (i) and (ii) respectively of paragraph (a) as so created), and
  - (b) for the words “or a child falling within section 71(3)(f)” substitute “, or
    - (b) has, or had, a guardian by virtue of an appointment under section 7 of the 1995 Act.”.
- (3) In section 49 (looked after 2 year olds: alternative arrangements to meet wellbeing needs), in subsection (1)(a), for “47(3)(a)” substitute “ 47(3)(a)(i) ”.

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**Commencement Information**

**19** [S. 29](#) in force at 1.8.2016 by [S.S.I. 2016/192](#), reg. 2, [sch.](#)

**Status:**

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