



Additional Learning Needs and Education Tribunal (Wales) Act 2018

2018 anaw 2

PART 2

ADDITIONAL LEARNING NEEDS

CHAPTER 5

GENERAL

Capacity

83 Parents and young people lacking capacity

- (1) The Welsh Ministers must make regulations for the purpose of giving effect to this Part in a case where a parent of a child, or a young person, lacks capacity at the relevant time.
- (2) Regulations under subsection (1) may include provision applying any enactment with modifications, including (for example) provision for—
 - (a) references to a child's parent to be interpreted as references to, or as including references to, a representative of the parent;
 - (b) references to a young person to be interpreted as references to, or as including references to, a representative of the young person, the young person's parent, or a representative of the young person's parent;
 - (c) modifications to have effect despite section 27(1)(g) of the Mental Capacity Act 2005 (c. 9) (which does not permit decisions on discharging parental responsibilities in matters not relating to a child's property to be made on a person's behalf).

Status: Point in time view as at 01/09/2021.

Changes to legislation: Additional Learning Needs and Education Tribunal (Wales) Act 2018, Section 83 is up to date with all changes known to be in force on or before 20 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (3) In subsection (1) “the relevant time” means the time at which, under the enactment in question, something is required or permitted to be done by or in relation to the parent or young person.
- (4) The reference in subsection (1) to lacking capacity is to lacking capacity within the meaning of the Mental Capacity Act 2005.
- (5) “Representative”, in relation to a parent or young person, means—
- (a) a deputy appointed by the Court of Protection under section 16(2)(b) of the Mental Capacity Act 2005 to make decisions on the parent's or young person's behalf in relation to matters within this Part;
 - (b) the donee of a lasting power of attorney (within the meaning of section 9 of that Act) appointed by the parent or young person to make decisions on his or her behalf in relation to matters within this Part;
 - (c) an attorney in whom an enduring power of attorney (within the meaning of Schedule 4 to that Act) created by the parent or young person is vested, where the power of attorney is registered in accordance with paragraphs 4 and 13 of that Schedule or an application for registration of the power of attorney has been made.

Commencement Information

- I1** S. 83 in force at 2.11.2020 for specified purposes by [S.I. 2020/1182](#), [reg. 3\(1\)\(j\)](#)
- I2** S. 83 in force at 1.9.2021 in so far as not already in force by [S.I. 2021/373](#), [art. 8\(h\)](#)

Status:

Point in time view as at 01/09/2021.

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