



Additional Learning Needs and Education Tribunal (Wales) Act 2018

2018 anaw 2

PART 2

ADDITIONAL LEARNING NEEDS

CHAPTER 5

GENERAL

Capacity

84 Capacity of children

- (1) Subsections (2) to (7) apply to—
- (a) the duty to notify or inform a child under section 11(4), 13(3), 18(3), 22(2), 23(10), 24(9), 27(4), 28(4), 28(7), 31(7), 31(8), 31(9), 32(3), 40(4) or 42(6);
 - (b) the duty to give a copy of a plan or a revised plan to a child under section 22(1), 23(11), 24(10) or 40(5);
 - (c) the conditions in paragraphs (a) and (b) of section 20(3) as they apply to a child;
 - (d) the duty to review a plan following a request by a child under section 23(8) or 24(7);
 - (e) the duty to reconsider following a request by a child under section 26(1), 27(1) or 32(1)(b);
 - (f) the duty to decide following a request by a child under section 28(1).
- (2) The condition or duty does not apply if the governing body, local authority or NHS body (as the case may be) considers that the child does not have the capacity to understand the subject matter, unless subsection (3) applies.

- (3) This subsection applies if—
- (a) in the case of a decision by a governing body of a maintained school, the local authority responsible for the child informs the governing body that it considers that the child does have the capacity to understand the subject matter,
 - (b) a case friend has been appointed for the child under section 85 by order of the Education Tribunal for Wales, subject to provision in or under that section, or
 - (c) a declaration is made by the Education Tribunal for Wales under section 71(2) that the child does have the capacity to understand the subject matter.
- (4) The condition or duty does not apply to a governing body of a maintained school if the local authority responsible for the child informs the governing body that the authority considers that the child does not have the capacity to understand the subject matter.
- (5) Subsection (6) applies where—
- (a) a governing body of a maintained school considers that a child either does or does not have the capacity to understand the subject matter relating to the exercise of a function to which this section applies, and
 - (b) the child or the child’s parent requests the local authority responsible for the child to reconsider the matter.
- (6) The local authority must decide whether the child has the capacity to understand the subject matter.
- (7) The condition or duty does not apply if the Education Tribunal for Wales declares under section 71(2) that the child does not have the capacity to understand.
- (8) In this section “the capacity to understand the subject matter” means the capacity to understand—
- (a) information or documents that must be given to a child under this Part, or
 - (b) what it means to exercise the rights conferred on a child by this Part.