



Additional Learning Needs and Education Tribunal (Wales) Act 2018

2018 anaw 2

PART 2

ADDITIONAL LEARNING NEEDS

CHAPTER 5

GENERAL

Capacity

85 Case friends for children who lack capacity

- (1) This section applies to a child who lacks 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.
- (2) The Education Tribunal for Wales may by order—
 - (a) appoint a person to be a case friend for a child to whom this section applies, or
 - (b) remove the person from being a case friend for the child,on the application of any person or on its own initiative, subject to provision in regulations under subsection (8).
- (3) A case friend appointed for a child under this section may—
 - (a) represent and support the child, and
 - (b) take decisions and act on behalf of the child,in respect of matters arising under or by virtue of this Part, subject to provision in regulations under subsection (8).

Changes to legislation: Additional Learning Needs and Education Tribunal (Wales) Act 2018, Section 85 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) View outstanding changes

- (4) Where a person is appointed to be a case friend by order of the Tribunal under this section, the rights of a child under the provisions in subsection (5) are to be exercised by the case friend on behalf of the child and the provisions are to be interpreted accordingly.
- (5) The provisions are—
- (a) sections 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) and 42(6) (duties to notify or inform);
 - (b) sections 22(1), 23(11), 24(10) and 40(5) (duties to give a copy of a plan or a revised plan);
 - (c) section 20(3) (duty to inform and give an opportunity to discuss);
 - (d) sections 23(8) and 24 (7) (duty to review a plan following a request);
 - (e) sections 26(1), 27(1) and 32(1)(b) (duties to reconsider following a request);
 - (f) section 28(1) (duty to decide following a request);
 - (g) section 70(2) (right of appeal);
 - (h) section 72 (right of appeal: detained persons).
- (6) A case friend appointed under this section must—
- (a) act fairly and competently,
 - (b) not have any interest adverse to that of the child,
 - (c) ensure that all steps and decisions taken by the case friend are for the benefit of the child, and
 - (d) take account of the child's views, so far as possible.
- (7) In deciding whether to appoint a person to be a case friend, or to remove a person from being a case friend, the Tribunal must have regard, in particular, to whether the person is likely to comply (in the case of appointment) or has complied (in the case of removal) with the duty in subsection (6).
- (8) Regulations may make further provision about case friends, including (among other things) provision—
- (a) conferring functions on the Education Tribunal for Wales;
 - (b) conferring functions on case friends;
 - (c) for procedures in relation to case friends;
 - (d) specifying the circumstances in which a person may or may not act as a case friend;
 - (e) specifying the circumstances in which a child must have a case friend;
 - (f) specifying requirements in respect of the conduct of case friends;
 - (g) applying any enactment with or without modifications for the purpose of enabling a case friend to make decisions or act on behalf of a child in respect of matters arising under or by virtue of this Part.

Commencement Information

11 S. 85 in force at 2.11.2020 for specified purposes by [S.I. 2020/1182, reg. 3\(1\)\(k\)](#)

12 S. 85 in force at 1.9.2021 by [S.I. 2021/373, art. 8\(h\)](#)

Changes to legislation:

Additional Learning Needs and Education Tribunal (Wales) Act 2018, Section 85 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.

[View outstanding changes](#)

Changes and effects yet to be applied to :

- specified provision(s) coming into force by [S.I. 2021/381 art. 23](#) (This commencement not applied to legislation.gov.uk. S.I. 2021/381 revoked (12.8.2021) by S.I. 2021/938, art. 3)
- specified provision(s) coming into force by [S.I. 2021/383 art. 23](#) (This commencement not applied to legislation.gov.uk. S.I. 2021/383 revoked (12.8.20210) by S.I. 2021/938, art. 4)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 4(3)(ca)(cb) inserted by [2022 asc 1 Sch. 4 para. 39\(2\)](#)
- s. 5(1)(da) inserted by [2022 asc 1 Sch. 4 para. 39\(3\)](#)
- s. 65(4)(da)(db) inserted by [2022 asc 1 Sch. 4 para. 39\(5\)](#)
- Sch. 1 para. 4(32)(a)(i)para. 4(32)(a)(ii)(b) coming into force by [S.I. 2022/893 art. 2\(o\)\(xi\)](#)