
Changes to legislation: Education (Scotland) Act 2016, Paragraph 3 is up to date with all changes known to be in force on or before 17 September 2023. 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

SCHEDULE
MODIFICATIONS OF THE EDUCATION (ADDITIONAL
SUPPORT FOR LEARNING) (SCOTLAND) ACT 2004

3 After section 3 insert—

“3A Children: assessment of capacity, etc.

- (1) Subsection (3) applies where, under a provision of this Act—
 - (a) a child who has attained the age of 12 years may do something only if an education authority is satisfied that the child has capacity in relation to the thing,
 - (b) an education authority may or must do something in relation to such a child only if the authority is satisfied that the child has capacity for the thing to be done in relation to the child,
 - (c) a child may do something in relation to an education authority only if the authority is satisfied that the child does not lack capacity in relation to the thing, or
 - (d) an education authority may or must do something in relation to a child only if the authority is satisfied that the child does not lack capacity in relation to the thing.
- (2) Before a child does a thing as mentioned in subsection (1)(a) or (c), the child must notify the education authority that he or she proposes to do the thing.
- (3) Before the child or (as the case may be) education authority does the thing, the education authority must—
 - (a) carry out an assessment of the capacity of the child to do the thing, or have the thing done in relation to the child, and
 - (b) consider whether it would adversely affect the wellbeing of the child to do the thing or have the thing done in relation to the child.
- (4) Subsection (5) applies where an education authority, having complied with its duties under subsection (3), is satisfied that—
 - (a) the child lacks capacity to do the thing or have the thing done in relation to the child, or
 - (b) it would adversely affect the wellbeing of the child to do the thing or have the thing done in relation to the child.
- (5) The child or (as the case may be) education authority may not do the thing in question.
- (6) Where an education authority is notified by a child under subsection (2) that the child proposes to do the thing mentioned in that subsection, the education authority must—
 - (a) notify the child's parents that the authority intends to—
 - (i) carry out an assessment of the child's capacity to do the thing, and
 - (ii) consider whether it would adversely affect the wellbeing of the child to do the thing, and
 - (b) notify the child and the child's parents of—
 - (i) the result of the assessment, and

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- (ii) the authority's determination as to whether it would adversely affect the wellbeing of the child to do the thing.

3B Assessment of wellbeing

- (1) Subsection (2) applies where, by virtue of this Act, an education authority or Tribunal is required to consider whether the wellbeing of a child who has attained the age of 12 years would, or would not, be adversely affected.
- (2) The authority or, as the case may be, Tribunal is to consider the matter by reference to the extent to which the child is or would be—
- safe,
 - healthy,
 - achieving,
 - nurtured,
 - active,
 - respected,
 - responsible, and
 - included.
- (3) The Scottish Ministers may by regulations modify the list in subsection (2) so as to amend, remove or add to the matters for the time being mentioned in the list.
- (4) Before making any regulations under subsection (3), the Scottish Ministers must consult such persons as they consider appropriate.

3C Rights of parents of children aged 12 or over

- (1) Subsection (2) applies where—
- (a) a right is conferred under this Act on a child who has attained the age of 12 years,
 - (b) the right is one that is also exercisable by the parents of the child,
 - (c) the child—
 - (i) does not wish to exercise the right, and
 - (ii) does not wish the child's parents to exercise it, and
 - (d) the parents of the child do wish to exercise the right.
- (2) The parents of the child may exercise the right.”.

Commencement Information

II Sch. para. 3 in force at 10.1.2018 by S.S.I. 2017/354, reg. 2(a)

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Changes and effects yet to be applied to :

- specified provision(s) amendment to earlier commencing S.S.I.2017/164, sch. by [S.S.I. 2017/352 reg. 2](#)