



Education (Additional Support for Learning) (Scotland) Act 2004

2004 asp 4

Main definitions

[^{F1}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

Changes to legislation: There are currently no known outstanding effects for the Education (Additional Support for Learning) (Scotland) Act 2004, Section 3A. (See end of Document for details)

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

Textual Amendments

F1 Ss. 3A-3C inserted (10.1.2018) by [Education \(Scotland\) Act 2016 \(asp 8\)](#), s. 33(2), [sch. para. 3](#); S.S.I. 2017/354, reg. 2(a)

Changes to legislation:

There are currently no known outstanding effects for the Education (Additional Support for Learning) (Scotland) Act 2004, Section 3A.