



# Additional Learning Needs and Education Tribunal (Wales) Act 2018

2018 anaw 2

## PART 2

### ADDITIONAL LEARNING NEEDS

#### CHAPTER 5

##### GENERAL

##### *Information*

#### **82 Regulations about disclosure and use of information**

- (1) Regulations may make provision about disclosure or use of information for the purposes of this Part or for other purposes connected with the education of a child or young person.
- (2) Regulations under subsection (1) may, for example—
  - (a) specify further persons to whom notice of decisions must be given (including, in specified cases, giving notice of decisions without the consent of the person to whom the decision relates or, in the case of a child, without the consent of that person's parent);
  - (b) specify further persons to whom written copies of a plan must be provided (including, in specified cases, the provision of copies without the consent of the person to whom the plan relates or, in the case of a child, without the consent of that person's parent);
  - (c) make provision about disclosure of plans;
  - (d) make provision about the use of information gathered in preparing and maintaining plans.

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#### Commencement Information

**I1** S. 82 in force at 2.11.2020 by [S.I. 2020/1182](#), [reg. 2\(h\)](#)

### 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).
- (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

**I2** S. 83 in force at 2.11.2020 for specified purposes by [S.I. 2020/1182](#), [reg. 3\(1\)\(j\)](#)

**I3** S. 83 in force at 1.9.2021 in so far as not already in force by [S.I. 2021/373](#), [art. 8\(h\)](#)

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## 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.

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### Commencement Information

**I4** S. 84 in force at 1.9.2021 by [S.I. 2021/373](#), **art. 8(h)**

## 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).
- (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).

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- (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.

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**Commencement Information**

- I5** S. 85 in force at 2.11.2020 for specified purposes by [S.I. 2020/1182](#), **reg. 3(1)(k)**  
**I6** S. 85 in force at 1.9.2021 by [S.I. 2021/373](#), **art. 8(h)**

*Higher education courses provided by further education institutions*

**86 Students at further education institutions undertaking higher education courses**

- (1) For the purposes of this Part, a higher education student at an institution in the further education sector is not to be treated as enrolled as a student at the institution.
- (2) The duty imposed on a local authority by section 68(2) (arrangements for the avoidance and resolution of disagreements) does not apply in so far as it would otherwise apply in relation to a young person in so far as that person is a higher education student at an institution in the further education sector.
- (3) A person is a higher education student at an institution in the further education sector if the person is undertaking a higher education course provided by the institution and is not also receiving education or training provided by it.
- (4) Where a person enrolled as a student at an institution in the further education sector is receiving education or training provided by it, and is also undertaking a higher education course provided by it, the person is a higher education student at the institution in relation to the higher education course (but is otherwise to be treated as enrolled as a student at the institution).
- (5) In this section, “higher education course” means a course of any description mentioned in Schedule 6 to the Education Reform Act 1988 (c. 40).

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**Commencement Information**

- I7** S. 86 in force at 1.9.2021 by [S.I. 2021/373](#), **art. 8(h)**

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*Pupils and students at Welsh institutions who are resident in England*

**87 Application of reconsideration provisions to pupils and students resident in England**

- (1) Subsections (2) and (3) of this section apply to a child or young person who is—
  - (a) in the area of a local authority in England, and
  - (b) a registered pupil at a maintained school in Wales.
- (2) Sections 26, 27, 29 (in its application to sections 26 and 27 only) and 32 apply to the child or young person with the following modifications—
  - (a) in section 26(1)(b), 27(1)(b) and 32(1)(b) for “the local authority responsible for the child or young person” substitute “ the local authority that maintains the school ”;
  - (b) in section 27(1)(a), for “or 12 (3) ” substitute “ , 12 (3) or 12(5) ”;
  - (c) in section 29(2), omit paragraph (b);
  - (d) in each of the sections the other references to “local authority” are to be interpreted as references to the local authority that maintains the school;
  - (e) the duty in section 27(6) may only be discharged in accordance with paragraph (a) of that provision.
- (3) Section 14 applies to the child or young person by virtue of subsection (2) and section 26(4) with the following modifications—
  - (a) in section 14(1), omit “a local authority is responsible for a child or young person, and”;
  - (b) the references to “local authority” are to be interpreted as references to the local authority that maintains the school;
  - (c) the duty in section 14(2) may only be discharged in accordance with paragraph (b) of that provision;
  - (d) the duty in section 14(2) does not apply if—
    - (i) the local authority requests a local authority in England to secure an assessment under section 36 of the Children and Families Act 2014 (c. 6) and, by virtue of that request or otherwise, the authority in England is responsible for the child or young person (within the meaning given by section 24(1) of that Act), or
    - (ii) a local authority in England maintains an EHC plan for the child or young person;
  - (e) if, following a request under paragraph (d)(i), the local authority is notified by the local authority in England that it is not required to secure an EHC plan for the child, the duty in section 14(2) applies again in respect of the child or young person;
  - (f) subsections (6) to (10) of section 14 do not apply.
- (4) A local authority is responsible for a child or young person who is in the area of a local authority in England for the purposes of sections 68 and 69 if he or she is—
  - (a) a registered pupil at a school maintained by the authority, or
  - (b) enrolled as a student at an institution in the further education sector in the authority's area.

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### Commencement Information

**I8** S. 87 in force at 1.9.2021 by [S.I. 2021/373](#), **art. 8(h)**

*Giving notice etc.*

## 88 Giving notice etc. under this Part

- (1) This section applies where a provision of this Part requires or authorises (in whatever terms) a governing body or local authority to—
  - (a) notify a person of something, or
  - (b) give a document to a person (including a notice or a copy of a document).
- (2) The notification or document may be given to the person in question—
  - (a) by delivering it to the person,
  - (b) by sending it by post to the person's proper address,
  - (c) by leaving it at the person's proper address, or
  - (d) if the conditions in subsection (3) are met, by sending it electronically.
- (3) A governing body or local authority may send a notification or document to a person electronically only if the following requirements are met—
  - (a) the person to whom the notification or document is to be given must have—
    - (i) indicated to the governing body or local authority a willingness to receive the notification or document electronically, and
    - (ii) provided the governing body or local authority with an address suitable for that purpose, and
  - (b) the governing body or local authority sends the notification or document to that address.
- (4) For the purposes of this section and section 7 of the Interpretation Act 1978 (c. 30) (references to service by post) in its application to this section, the proper address of a person is the last known address of the person.
- (5) A notification or document given to a person by leaving it at the person's proper address is to be treated for the purposes of this Part as having been given at the time at which it was left at that address.
- [<sup>F1</sup>(6) A notification or document given to a person by sending it electronically in accordance with this section is to be treated for the purposes of this Part as having been given, unless the contrary is proved, on the day on which the electronic communication was sent.]

### Textual Amendments

**F1** S. 88(6) inserted (1.9.2021) by [The Additional Learning Needs \(Wales\) Regulations 2021 \(S.I. 2021/401\)](#), regs. 1(2), 4

### Modifications etc. (not altering text)

**C1** S. 88 applied (with modifications) (1.9.2021) by [The Additional Learning Needs \(Wales\) Regulations 2021 \(S.I. 2021/401\)](#), regs. 1(2), 3

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#### Commencement Information

**I9** S. 88 in force at 1.9.2021 by [S.I. 2021/373](#), [art. 8\(h\)](#)

### *Review of additional learning provision in Welsh*

#### **89 Review of additional learning provision in Welsh**

- (1) The Welsh Ministers must arrange—
  - (a) for reviews of the sufficiency of additional learning provision in Welsh;
  - (b) for reports on the outcome of the reviews to be produced and published.
- (2) Subsection (1) does not prevent reviews from also dealing with other matters.
- (3) The first report on the outcome of a review must be published before 1 September in the fifth year following the year in which any of the provisions of this Part are brought into force by order (whether for all or limited purposes).
- (4) The Welsh Ministers must publish subsequent reports before 1 September in every fifth year following the last year in which a report was required to be published.

#### Commencement Information

**I10** S. 89 in force at 1.9.2021 by [S.I. 2021/373](#), [art. 8\(h\)](#)

#### **90 Power to amend duties to secure additional learning provision in Welsh**

- (1) This section applies to the following provisions—
  - section 12(7)(b);
  - section 14(10)(c);
  - section 19(7)(c);
  - section 20(5)(c);
  - section 21(5);
  - section 42(8)(b).
- (2) Regulations may omit the words “take all reasonable steps to” from a provision.
- (3) Regulations may provide that a provision has effect as if the words “take all reasonable steps to” were omitted—
  - (a) for a prescribed purpose,
  - (b) in relation to a prescribed body, or
  - (c) for a prescribed purpose in relation to a prescribed body.
- (4) If the words “take all reasonable steps to” are omitted by regulations under subsection (2) from each provision to which this section applies, regulations may omit section 89.

#### Commencement Information

**I11** S. 90 in force at 1.9.2021 by [S.I. 2021/373](#), [art. 8\(h\)](#)



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**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\(o\)\(xi\)](#)