
WELSH STATUTORY INSTRUMENTS

2021 No. 401

The Additional Learning Needs (Wales) Regulations 2021

PART 4

PARENTS AND YOUNG PEOPLE LACKING CAPACITY

Interpretation of this Part

34. In this Part—

“the relevant time” (“*yr adeg berthnasol*”) has the same meaning as in section 83(3) of the 2018 Act;

“representative” (“*cynrychiolydd*”) means—

- (a) a deputy appointed by the Court of Protection under section 16(2)(b) of the Mental Capacity Act 2005⁽¹⁾ to make decisions on the parent’s or young person’s behalf in relation to matters within Part 2 of the 2018 Act;
- (b) the donee of a lasting power of attorney (within the meaning of section 9 of the Mental Capacity Act 2005) appointed by the parent of a child or by a young person to make decisions on the parent or young person’s behalf in relation to matters within Part 2 of the 2018 Act;
- (c) an attorney in whom an enduring power of attorney (within the meaning of Schedule 4 to the Mental Capacity Act 2005⁽²⁾) 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;
- (d) the young person’s parent, where the young person does not have a representative listed in paragraph (a), (b) or (c).

When a child’s parent lacks capacity

35.—(1) When a child’s parent lacks capacity at the relevant time, references in the provisions of the 2018 Act listed below to a child’s parent are to be read as references to a representative of that parent—

- (a) section 11(4);
- (b) section 13(3);
- (c) section 18(3);
- (d) section 20(3)(a) and (b);
- (e) section 22(1)(b) and (2)(b);
- (f) section 23(8), (10) and (11);
- (g) section 24(7), (9) and (10);

(1) 2005 c. 9.

(2) Relevant amendments to Schedule 4 are made by [S.I. 2012/2404](#), Schedule 2, paragraph 53(1) and (6).

- (h) section 26(1)(b);
- (i) section 27(1)(b) and (4);
- (j) section 28(2)(b), (4), (5) and (7);
- (k) section 31(7)(b), (8) and (9);
- (l) section 32(1)(a) and (b) and (3);
- (m) section 64(3) and (4).

(2) When a child's parent lacks capacity at the relevant time, references to parents of children, and parents of pupils in section 9(3)(b) and (4)(a) of the 2018 Act respectively are to be read as including both the parents and a representative of the parents.

(3) When a child's parent lacks capacity at the relevant time, the reference in regulation 22(5)(b) to the child's parent is to be read as a reference to a representative of that parent.

When a parent of a child who is a detained person lacks capacity

- 36.** When a parent of a detained person who is a child lacks capacity at the relevant time—
- (a) references in sections 40(4) and (5)(b) and 42(6) of the 2018 Act to the parent of a detained person who is a child are to be read as references to a representative of that parent;
 - (b) the reference in regulation 18(6) to the child's parent is to be read as a reference to a representative of that parent.

When a young person lacks capacity

37.—(1) When a young person lacks capacity at the relevant time, references to a young person in the provisions of the 2018 Act listed below are to be read as references to the representative of the young person—

- (a) section 11(3)(c) in the second place it occurs;
- (b) section 11(4) in the second place it occurs;
- (c) section 12(2)(b) in the second place it occurs;
- (d) section 13(2)(d) in the second place it occurs;
- (e) section 13(3) in the second place it occurs;
- (f) section 14(3) in the second place it occurs;
- (g) section 20(3)(a) and (b);
- (h) section 22(1)(a) and (2)(a);
- (i) section 23(8) in the second place it occurs;
- (j) section 23(10) and (11)(a);
- (k) section 26(1)(b) in the first place it occurs;
- (l) section 27(1)(b) in the first place it occurs;
- (m) section 27(4);
- (n) section 28(2)(a), (4), (5) and (7);
- (o) section 31(7)(a), (8) and (9);
- (p) section 32(1)(a);
- (q) section 32(1)(b) in the first place it occurs;
- (r) section 32(3).

(2) When a young person lacks capacity at the relevant time, the references to young people in section 9(3)(a) and to students in section 9(5) of the 2018 Act respectively are to be read as including both the young person and the representative of the young person.

(3) When a young person lacks capacity at the relevant time, references to a young person in the regulations below are to be read as references to the representative of the young person—

- (a) regulation 10(2), (3) and (5);
- (b) regulation 14(3) and (4);
- (c) regulation 22(5)(a).

When a detained person who is a young person lacks capacity

38. When a detained person who is a young person lacks capacity at the relevant time, the references in the provisions below are to be read as references to a representative of that young person—

- (a) the reference to the detained person in the third place it occurs in section 40(4) of the 2018 Act;
- (b) the reference to a detained person in the first place it occurs in section 40(5)(b) of the 2018 Act;
- (c) the references in sections 41(2)(a) and 42(4) of the 2018 Act to a detained person who is a young person;
- (d) the reference to a detained person in the first place it occurs in section 42(6) of the 2018 Act;
- (e) the reference to a young person in the second place it occurs in regulation 18(4)(b);
- (f) the reference to a detained person in the first place it occurs in regulation 18(6).

Arrangements for avoidance and resolution of disagreements under section 68 of the 2018 Act

39. When a child's parent or a young person lacks capacity at the relevant time, arrangements made by a local authority under section 68 of the 2018 Act must provide for a representative to engage in the arrangements on behalf of that child's parent or that young person.

Independent advocacy services under section 69 of the 2018 Act

40. When a young person for whom a local authority is responsible lacks capacity at the relevant time, that local authority must refer that young person's representative to an independent advocacy service if the representative requests an independent advocacy service.

Representation in appeals

41. When a child's parent, or a parent of a detained person who is a child, lacks capacity at the relevant time, or a young person, or a detained person who is a young person, lacks capacity at the relevant time, their representative may appeal to the Education Tribunal for Wales on their behalf and sections 70 and 72 of the 2018 Act are to be interpreted accordingly.

Mental Capacity Act 2005

42. Regulations 35, 36, 37 and 39 have effect despite section 27(1)(g) of the Mental Capacity Act 2005(3).

(3) Section 27(1)(g) 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.