



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

## 2004 asp 4

### *Main definitions*

#### **1 Additional support needs S**

(1) A child or young person has additional support needs for the purposes of this Act where, for whatever reason, the child or young person is, or is likely to be, unable without the provision of additional support to benefit from school education provided or to be provided for the child or young person.

[<sup>F1</sup>(1A) Without prejudice to the generality of subsection (1), a child or young person has additional support needs if the child or young person is looked after by a local authority (within the meaning of section 17(6) of the Children (Scotland) Act 1995 (c. 36)).

(1B) But where, in the course of identifying (in accordance with the arrangements made by them under section 6(1)(b)) the particular additional support needs of a child or young person who is looked after by a local authority (within the meaning of section 17(6) of the Children (Scotland) Act 1995 (c. 36)), an education authority form the view that the child or young person is, or is likely to be, able without the provision of additional support to benefit from school education provided to or to be provided for the child or young person, subsection (1A) ceases to apply.]

(2) In subsection (1), the reference to school education includes, in particular, such education directed to the development of the personality, talents and mental and physical abilities of the child or young person to their fullest potential.

(3) In this Act, “additional support” means—

- (a) in relation to [<sup>F2</sup>an eligible] pre-school child, a child of school age or a young person receiving school education, provision [<sup>F3</sup>(whether or not educational provision) ]which is additional to, or otherwise different from, the educational provision made generally for children or, as the case may be, young persons of the same age in schools (other than special schools) under the management of the education authority [<sup>F4</sup>responsible for the school education of the child or young person, or in the case where there is no such authority, the education authority ],

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- (b) in relation to a child under school age other than [<sup>F5</sup>an eligible] pre-school child, such [<sup>F6</sup>provision (whether or not educational provision) ] as is appropriate in the circumstances.

#### Textual Amendments

- F1** S. 1(1A)(1B) inserted (14.11.2010) by Education (Additional Support for Learning) (Scotland) Act 2009 (asp 7), **ss. 8(1)**, 26(3); S.S.I. 2010/277, art. 2
- F2** Words in s. 1(3)(a) substituted (1.8.2014) by Children and Young People (Scotland) Act 2014 (asp 8), s. 102(3), **Sch. 5 para. 10(2)(a)**; S.S.I. 2014/131, art. 2(2)(3), Sch.
- F3** Words in s. 1(3)(a) inserted (14.11.2010) by virtue of Education (Additional Support for Learning) (Scotland) Act 2009 (asp 7), **ss. 6(a)**, 26(3); S.S.I. 2010/277, art. 2
- F4** Words in s. 1(3)(a) inserted (14.11.2010) by Education (Additional Support for Learning) (Scotland) Act 2009 (asp 7), **ss. 1(2)**, 26(3); S.S.I. 2010/277, art. 2
- F5** Words in s. 1(3)(b) substituted (1.8.2014) by Children and Young People (Scotland) Act 2014 (asp 8), s. 102(3), **Sch. 5 para. 10(2)(b)**; S.S.I. 2014/131, art. 2(2)(3), Sch.
- F6** Words in s. 1(3)(b) substituted (14.11.2010) by Education (Additional Support for Learning) (Scotland) Act 2009 (asp 7), **ss. 6(b)**, 26(3); S.S.I. 2010/277, art. 2

#### Commencement Information

- I1** S. 1 in force at 14.11.2005 by S.S.I. 2005/564, art. 2

## 2 Co-ordinated support plans **S**

- (1) For the purposes of this Act, a child or young person requires a plan (referred to in this Act as a “co-ordinated support plan”) for the provision of additional support if—
- an education authority are responsible for the school education of the child or young person,
  - the child or young person has additional support needs arising from—
    - one or more complex factors, or
    - multiple factors,
  - those needs are likely to continue for more than a year, and
  - those needs require significant additional support to be provided—
    - by the education authority in the exercise of any of their other functions as well as in the exercise of their functions relating to education, or
    - by one or more appropriate agencies (within the meaning of section 23(2)) as well as by the education authority themselves.
- (2) For the purposes of subsection (1)—
- a factor is a complex factor if it has or is likely to have a significant adverse effect on the school education of the child or young person,
  - multiple factors are factors which—
    - are not by themselves complex factors, but
    - taken together, have or are likely to have a significant adverse effect on the school education of the child or young person.

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#### Commencement Information

**I2** S. 2 in force at 14.11.2005 by [S.S.I. 2005/564, art. 2](#)

### [<sup>F7</sup>3 Children and young persons: capacity **S**

- (1) For the purposes of this Act, a child has capacity—
- (a) in relation to an act that may be carried out by the child under a provision of this Act, if the child has sufficient maturity and understanding to carry out the act,
  - (b) in relation to a decision of the child mentioned in a provision of this Act, if the child has sufficient maturity and understanding—
    - (i) to make the decision,
    - (ii) to communicate the decision,
    - (iii) to understand the decision and its implications for the child, and
    - (iv) to retain the memory of the decision,
  - (c) in relation to the provision, under a provision of this Act, of any information, advice or co-ordinated support plan by an education authority to the child, if the child has sufficient maturity and understanding to understand the information, advice or (as the case may be) plan,
  - (d) in relation to any view of the child mentioned in this Act, if the child has sufficient maturity and understanding to express the view;
- and any references in this Act to a child who lacks capacity are to be read accordingly.
- (2) For the purposes of this Act, a young person lacks capacity to do something if the young person does not have sufficient understanding to do it.
- (3) But a child or young person is not to be treated as lacking capacity by reason only of a lack or deficiency in a faculty of communication if that lack or deficiency can be made good by human, electronic or mechanical aid (whether of an interpretive nature or otherwise).]

#### Textual Amendments

**F7** S. 3 substituted (10.1.2018) by [Education \(Scotland\) Act 2016 \(asp 8\), s. 33\(2\), sch. para. 2; S.S.I. 2017/354, reg. 2\(a\)](#)

### [<sup>F8</sup>3A Children: assessment of capacity, etc. **S**

- (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

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

#### Textual Amendments

**F8** 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)

### 3B Assessment of wellbeing **S**

- (1) Subsection (2) applies where, by virtue of this Act, an education authority or [<sup>F9</sup>the First-tier 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, [<sup>F10</sup>the First-tier Tribunal] is to consider the matter by reference to the extent to which the child is or would be—
  - safe,
  - healthy,
  - achieving,
  - nurtured,

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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.

#### Textual Amendments

- F8** 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)
- F9** Words in s. 3B(1) substituted (12.1.2018) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Additional Support Needs Tribunals for Scotland\) Regulations 2018 \(S.S.I. 2018/4\), reg. 1\(1\), sch. 2 para. 3\(2\)\(a\)](#)
- F10** Words in s. 3B(2) substituted (12.1.2018) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Additional Support Needs Tribunals for Scotland\) Regulations 2018 \(S.S.I. 2018/4\), reg. 1\(1\), sch. 2 para. 3\(2\)\(b\)](#)

### 3C Rights of parents of children aged 12 or over **S**

- (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.]

#### Textual Amendments

- F8** 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:**

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