

Enquire factsheet for professionals

Children's rights to education and additional support in school

This factsheet is in three sections.

Section 1 explains:

- what the law says about a child's rights to education and support
- the specific rights of children aged 12-15.

Section 2 explains:

- how schools and local authorities decide whether or not a child can use their rights.

Section 3 explains:

- what happens if a child wants to use their rights
- the support available to help them use their rights.

The advice in this factsheet applies to children who attend a local authority pre-school, school or partnership nursery; or have a place in an independent or grant-aided special school funded by a local authority.

This factsheet provides information about children under 16.

Section 1: Understanding children’s rights

School education

Every child in Scotland has the right to an “adequate and efficient” school education that aims to develop their “personality, talents and mental and physical abilities... to their fullest potential.”¹

Additional support for learning

Under Scottish law² every child has the right to additional support if they are unable to benefit fully from school education without it.

The additional support should be “adequate and efficient” and aim to help them reach their fullest potential.

Local authorities (councils) must make arrangements to identify each child’s support needs and to monitor the support provided to make sure their needs are met.

Local authorities must also ask for and take account of children’s views and involve them in decisions that affect them about additional support for learning.

In some situations children have the right to appeal against being excluded from school.

Most children can also refer their case to the Additional Support Needs Tribunal (ASNT) if they think their school has discriminated against them because of a disability.

For information about the rights of children aged 16 and over, see page 8.

Explainer:

The ASNT is an independent and expert body. It hears and decides appeals made by parents, children and young people about disagreements on some issues regarding additional support for learning. For more information about ASNT, see **Enquire factsheet: Resolving disagreements**.

Children aged 12 to 15 – new specific rights

Under the law on additional support for learning, children aged 12-15 have other specific rights. They were given these rights in 2018 to ensure that their views are listened to and that they are properly involved in decisions about their education and support. These rights will be of particular use to children whose parents may not be able to act for them (for example, young carers or looked after children).

¹Standards in Scotland’s Schools etc. Act 2000

²The Education (Additional Support for Learning) (Scotland) Act 2004 (as amended)

These include:

The right to ask a local authority about things

Children aged 12-15 can:

- ask the local authority to find out if they have additional support needs
- ask the local authority to find out if they need a co-ordinated support plan (CSP) or to review an existing CSP
- ask to have their views noted in their CSP
- ask the local authority for a specific assessment to find out if they have additional support needs and what support they need
- ask for a specific assessment of their needs if the local authority is thinking about preparing a CSP, or if a CSP is being reviewed.

Rights to get information from a local authority, or to give permission for personal information to be shared

Children aged 12-15 should:

- receive information and advice about their additional support needs
- be told about any decisions regarding their use of their rights
- be given a copy of their CSP
- be asked if they are happy for their information to be shared with relevant agencies when they leave school.

Explainer:

A CSP is a plan that local authorities can prepare for children with complex needs who need support from education bodies as well as other agencies such as health or social work.

Explainer:

Types of specific assessment include:

- educational
- psychological
- health
- social work.

Rights to be involved in resolving disagreements

Children aged 12-15 have the right to:

- ask for independent adjudication
- appeal to the ASNT about CSPs or the failure of schools to adequately plan for the time after they leave school
- be asked for their views during any independent mediation that takes place.

Rights to support to have their views heard

Children aged 12-15 can:

- have a supporter or advocate with them to get their views across at any relevant meetings about their additional support needs
- use the **My Rights, My Say** children's service, which provides:
 - ❖ advice and information about their rights
 - ❖ advocacy and support in meetings and discussions with a school or local authority
 - ❖ advocacy and legal representation for ASNT appeals.

Explainer:

Independent mediation is a voluntary process. An independent third party helps those involved in a disagreement to work together to find a solution that everyone involved can accept. For more information, see **Enquire factsheet: Mediation**.

Explainer:

Independent adjudication is when an independent adjudicator reviews the circumstances of a dispute and recommends ways of resolving it. For more information, see **Enquire factsheet: Resolving disputes using independent adjudication**.

Explainer:

Impact of children's rights on parental rights

For children under 16, parents and carers have rights to act on their child's behalf. You can find information about parental rights in our **Parents' guide to additional support for learning**.

The specific rights that children aged 12-15 have are shared rights. This means that either a child or their parent can use them.

Before a child can use their rights, the school or local authority must agree they have the capacity to do so. The school or local authority must also check that a child's wellbeing will not be negatively affected by using their rights. Find out more about capacity and wellbeing in section 2 of this factsheet.

Section 2: Understanding how schools and local authorities decide if a child can use their rights

What 'capacity' means

If a child is aged 12-15 and wants to use these rights, the school or local authority must check that the child has 'capacity' to do so. There will not just be one decision about the child's capacity to use all their legal rights. A decision about capacity will be made regarding the particular right the child wants to use, at the time they want to use it.

Depending on the right the child wants to use, the school or local authority must check whether the child has the maturity and understanding to:

- carry out an action (such as request an assessment)
- understand any information or advice the school or authority might give them about their additional support needs or their rights
- understand the information in their plan (such as a co-ordinated support plan)
- give their view (for example, during mediation)
- make a decision (such as to let their information be shared with other agencies when they leave school). When checking if the child has capacity to make a decision, the school or local authority will consider whether the child is able to discuss their decision, remember what their decision was, and understand what it might mean for them.

The school or local authority should use any available evidence it has about a child's learning and development to decide if the child has capacity or not. It might, for example, consider the child's progress in school as well as their attitudes to healthy living and relationships. It may also use evidence from day-to-day observations of the child in different settings. Brought together this information should provide a rounded picture of the child's experiences and skills to support the school or local authority to make a decision about the child's capacity.

A child should be asked their views and these should be taken into account when their capacity is being assessed.

Impact on wellbeing

Before a child (aged 12-15) can use their rights, the school or local authority must decide if the child's use of their rights will negatively affect their wellbeing.

Professionals should consider whether a child's use of their rights will negatively affect their wellbeing using the **Getting it right for every child's** wellbeing indicators. This will involve checking that in using their rights the child will not come to any harm and it will not stop them being:

- Safe
- Healthy
- Achieving
- Nurtured
- Active
- Respected
- Responsible
- Included

Professionals can use a variety of tools to measure the child's wellbeing as well as evidence from their day to day interactions with the child.

More detail can be found in **Extending Children's Rights – Guidance on the assessment of capacity and consideration of wellbeing** on the Scottish Government website.

Further advice can also be found in the **Supporting children's learning code of practice (third edition) 2017**.

Common questions about capacity and impact on wellbeing

Who will assess a child's capacity and impact on wellbeing?

In most cases a child's teacher will assess the child's capacity and any potential impact on wellbeing. In some cases other local authority staff (such as an educational psychologist) may be involved.

What if a child is new to a school or local authority?

If a child is new to a school or local authority, professionals will use information from learning plans or from talking to other professionals who know them well to assess their capacity and the impact on their wellbeing.

How long do schools and local authorities have to make a decision about a child's capacity and wellbeing?

The law does not set a time limit for assessing capacity and impact on wellbeing. However, it is expected that schools and local authorities will make decisions as quickly as possible and let both the child and their parents know soon after.

What if a child, parent or carer disagrees with a decision about capacity or wellbeing?

If a child, parent or carer disagrees with a decision about capacity or wellbeing, they can refer this to the ASNT. Information about how to do this can be found on the ASNT website, www.healthandeducationchamber.scot

If a child makes a request to use their right and this is refused because they lack capacity or it will negatively affect their wellbeing, their parent or carer can still act on the child's behalf using their parental right to make the original request.

Section 3: What if a child wants to use their rights?

What should a child do if they want to use their rights?

In many cases, professionals will have identified a child's needs and be working with them and their parents or carers to agree the support needed. A child may not need to go through a formal process of asking to use their rights but this option is available.

If a child is aged 12-15 and is thinking about using their rights, they may want to discuss with their parents whether they use their rights or whether the parent uses their parental rights. It is not expected that parents and children will use their rights at the same time or to overturn a request a school or local authority has already considered.

If a child wants to make use of their rights, they must first tell their school or local authority. They must do this in writing (letter or email) or in another way that can be kept for future reference. You can help a child to do this.

The local authority must let the child and parents know that it intends to assess the child's capacity and the impact of using their rights on their wellbeing.

If a child is aged 12-15, what support is there to help them use their rights?

When a child wants to use their rights, the school or local authority should tell the child about the advice and support available to help them use their rights.

Direct support is provided through a children's service, known as **My Rights, My Say**. This can support children by providing:

- an advocacy service to support them in using their rights
- a service that can listen to their views and make sure they are heard
- legal representation to provide advice and representation in support of children who are making a specific reference to the ASNT.

To access this support, the child or parent can contact the service to make a referral, email help@myrightsmysay.scot Depending on the support the child needs, they will be referred to the appropriate part of the service. If you work for a school or local authority you can also get in touch with the service to ask them to help gather children's views or get advice about doing this. Find out more about the children's service by contacting our helpline on 0345 123 2303.

Children can find information about their rights and what might happen if they want to use them on the Reach website, www.reach.scot

What if a child is 16 or over?

Once a child reaches 16, it is assumed they are able to act on their own behalf unless they are assessed as not having capacity. This means they have the same rights as parents and carers.

Parents continue to make decisions for their child aged 16 or over if they lack capacity to do so themselves. See **Adults with Incapacity (Scotland) Act 2000** for more information about this: www.gov.scot/Publications/2008/03/25120154/1

Where to find more information

Enquire

For more information, see our **Parents' guide to additional support for learning**, (2018)

www.enquire.org.uk/publications

Enquire factsheet: Co-ordinated support plans (2018)

Enquire factsheet: Mediation (2018)

Enquire factsheet: Education and additional support after 16 (2018)

Enquire factsheet: Resolving disputes using independent adjudication (2018)

Enquire factsheets: Resolving disagreements (2018)

Enquire factsheet: Additional support for learning and disability rights (2018)

Scottish Government

Supporting children's learning code of practice (third edition) 2017

www.gov.scot/Publications/2017/12/9598

Extending Children's Rights – Guidance on the assessment of capacity and consideration of wellbeing

www.gov.scot/Publications/2017/12/7828

Additional Support Needs Tribunal

www.healthandeducationchamber.scot

ENQUIRE

Advice and information about additional support for learning

Enquire is the Scottish advice service for additional support for learning. We provide independent and impartial advice to parents and carers, to practitioners in education, social work and health services, and to children and young people themselves.

www.reach.scot offers advice to young people struggling at school. With practical tips on what can help and young people sharing their views and experiences on all sorts of life issues, Reach offers the 'go-to' source of advice to help pupils make the most out of their education.

Contact details

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Helpline: **0345 123 2303**
(Access to interpreters through Language Line)

Office: 0131 313 8800

Email: info@enquire.org.uk

www.enquire.org.uk

Enquire factsheet for professionals: Children's rights to education and additional support in school © Enquire January 2018



Enquire is managed by Children in Scotland
and funded by the Scottish Government