

**Dundee City Council**

**Children and Families Service**

**Information on**

**the Extension of Children’s Rights**

***amendment to the Additional Support for Learning Act, 2004 by the Education (Scotland) Act 2016 (“the 2016 Act”)***

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**Introduction:**

The Additional Support for Learning (Scotland) Act 2004 was revised in 2018. The Act outlines new rights of children aged between 12 and 15, these are explained in this document and how the young person goes about exerting their rights.



**Section 1: Understanding children’s rights**

**1.1 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.”

**1.2 Additional Support for Learning**

Under Scottish law 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. Dundee City Council (DCC) Children and Families Service make arrangements to identify each child’s support needs and to monitor the support provided to make sure their needs are met. They 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.

**1.3 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).

**These include:**

**The right to ask a local authority about things**

Children aged 12–15 can:

• ask DCC Children and Families Service to find out if they have additional support needs

• ask DCC Children and Families Service 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 DCC Children and Families Service 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 DCC Children and Families Service 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.

**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 abouttheir rights**,** advocacy and support in meetings and discussions witha school or local authorityadvocacy and legalrepresentation for ASNT appeals.

Before a child can use their rights, the school or DCC Children and Families Service must agree they have the capacity to do so. The school or DCC Children and Families Service must also check that a child’s wellbeing will not be negatively affected by using their rights.

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

**2.1 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 DCC Children and Families Service 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 DCC Children and Families Service 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 DCC Children and Families Service 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 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.

**2.1 Impact on wellbeing**

Before a child (aged 12-15) can use their rights, the school or DCC Children and Families Service 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:

**• S**afe

**• H**ealthy

**• A**chieving

**• N**urtured

**• A**ctive

**• R**espected

**• R**esponsible

**• I**ncluded

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 <http://www.gov.scot/Publications/2017/12/7828>

Further information can also be found in the Supporting children’s learning code of practice(third edition) 2017. <http://www.gov.scot/Publications/2017/12/9598>

**Section 3: What if a child wants 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 DCC Children and Families Service. 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.

DCC Children and Families Service 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 lo DCC Children and Families Service 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**](http://www.reach.scot)

**Where to find more information:**

**Enquire**

For more information, see our **Parents’guide to additional support for**

**learning,** (2018) [**www.enquire.org.uk/publications**](http://www.enquire.org.uk/publications)

**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