

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

Extending Children's Rights

**Guidance for education authorities and school staff on
assessment of capacity and consideration of wellbeing of
children who have attained 12 years of age in respect of
additional support for learning in school education**

Index

| | | |
|----------------------|---|-----------|
| Chapter One | Introduction | 3 |
| Chapter Two | Children’s Rights | 4 |
| Chapter Three | Assessment of Capacity | 6 |
| Chapter Four | Consideration of Adverse Impact on Wellbeing | 9 |
| Chapter Five | Assessment of Change in Circumstances | 12 |
| Chapter Six | Key Principles in Assessment | 13 |
| Annex A | Case Studies | 17 |
| Annex B | Resources | 22 |

Chapter One Introduction

Introduction

1 In Scotland children who have attained 12 years of age are now empowered by the extension of their rights in respect of additional support for learning in school education. Children now broadly have similar rights to parents and young people for their additional support needs. The extension to children's rights is accompanied by safeguards in the form of assessments of capacity and consideration of impact on a child's wellbeing.

The purpose of this guidance

2 The purpose of this guidance is to provide education authorities and schools with non-statutory guidance and information on the new rights of children who have attained 12 years of age and who have capacity. The guidance includes advice on assessing capacity of children, aged 12 to 15 to exercise their rights in respect of additional support for learning in school education. The guidance also provides information for considering the impact on a child's wellbeing when exercising these rights. This guidance complements that which is provided in the statutory guidance on the Additional Support for Learning (Scotland) Act 2004, the *Supporting Children's Learning Code of Practice*.

Who is this guidance for?

3 This guidance is primarily for staff in education authorities and schools including:

- Officials in education authorities with responsibilities for additional support for learning and educational psychologists who work directly or advise schools about children and young people with additional support needs.
- Headteachers of primary, secondary and special schools.
- Support for learning teachers, centrally or school-based at primary or secondary stages who act as the lead professional for children with additional support needs.
- Primary teachers at P7 stages or teachers in special schools and pastoral care and guidance teachers in secondary schools who are the key person that knows the child well in their school education.

4 Those in independent or grant-aided schools, health boards, social work services and other voluntary services or agencies who are providing help to education authorities to fulfil their functions under the Act may also contribute and provide supporting evidence to schools and education authorities in these considerations and decisions.

5 This guidance outlines the new rights children have and offers advice on the assessment of capacity and consideration of wellbeing of children who have attained 12 years of age within school education in respect of their rights within additional support for learning legislation. In this context, there are important differences for decisions about capacity compared to those for young people, (aged 16 and over in school education,) or adults within services including education, social care or health services.

Chapter Two Children's Rights

Background

6 Scottish Ministers have set the ambition that Scotland is the best place to grow up and bring up children. This ambition requires a positive culture towards children. One where children are welcomed and nurtured. One where we all are alert to their needs and look out for them. Where children are listened to, where their views are heard and their rights protected. They should be respected as people in their own right with rights to a life that allows them to fulfil their potential.

Legislation

7 Parents and young people were given new rights under the Education (Additional Support for Learning) (Scotland) Act 2004 ("the Act"). Children's rights in education in Scotland were extended by the Education (Scotland) Act 2016 which amended the Act. Children who have attained 12 years of age who are in school education now have rights in respect of additional support for learning in their own regard.

8 Under the Act, as amended, children who are 12 years of age with capacity now have rights to:

- request the education authority to establish whether they have additional support needs.
- receive advice and information about their additional support needs.
- request, **at any time**, a specific type of assessment and/or examination for the purpose of considering their additional support needs as well as when the education authority propose to establish whether the child has additional support needs or requires a co-ordinated support plan (or where a plan is being reviewed).
- have their views sought and taken into account as part of the process of mediation.
- make use of dispute resolution arrangements for matters about additional support needs that are specified in regulations – generally matters not eligible to be considered by the Additional Support Needs Tribunal for Scotland, although the use of these arrangements does not affect the entitlement to refer any matter to a Tribunal.
- be informed of the outcome of requests under the Act, reasons why a request is refused and any applicable rights to have a decision reviewed, for example, through mediation or dispute resolution, or referred to a Tribunal or an education authority appeal committee .
- request the education authority to establish whether they need a co-ordinated support plan or to review an existing plan.
- receive a copy of the co-ordinated support plan, and any amended plan be asked for their views and have them taken into account and noted in the co-ordinated support plan.
- refer to the Tribunal specified matters relating to co-ordinated support plans, appeals against the refusal of placing requests to special schools and failures by an education authority in relation to their duties regarding school to post-school transitions.
- have a supporter with them or an advocate to present their case at any meeting with the school or education authority, in connection with the exercise of the education authority's functions under the Act and at Tribunal hearings.

- have access to a free advocacy service in Tribunal proceedings.
- have access to a support service for children and their parents that provides advice, support in discussions with an education authority and advocacy services.

9 Rights that parents and young people have within the Act that are not extended to children include:

- to request the use of mediation services
- to make a placing request to the education authority

New rights subject to safeguards

10 The extension of these rights to children over 12 years of age is subject to safeguards. The safeguards take the form of an assessment of capacity and a consideration of adverse impact on wellbeing of an individual child. These assessments require an evidence-based decision to be made in relation to both of these aspects. Education authorities have to be satisfied that the child has the capacity to carry out such actions under the additional support for learning legislation and that assessment will be used to decide on a child's capacity as well as whether exercising such rights will have an adverse impact of their wellbeing. Parents and children should be involved and informed about the assessments carried out by schools. Annex A includes some case studies of examples when exercising children's rights, assessing capacity and considering wellbeing.

Chapter Three Assessment of Capacity

Assessment of capacity and particular rights

11 The new rights for children are conditional on their having capacity which is defined broadly as “sufficient maturity and understanding”. This is different from adults and young people who are presumed to have capacity unless assessed as lacking capacity.

12 Education authority staff including teachers are best placed to decide on a child’s capacity as they work with and know the child well. They will, as a result of their skills, experience and understanding of the needs of the child, be able to consider and provide evidence as to whether or not a child has capacity in relation to the specific rights that the child is proposing to use.

13 When carrying out an assessment of a child’s maturity and understanding the education authority can take into account the following factors:

- **the child’s age and stage:** to exercise their rights, a child will have attained 12 years of age whether at primary or secondary stages.
- **sufficient maturity:** a child’s maturity will be evidenced by progress within health and wellbeing and its key features of healthy living and relationships, and in approaches to personal planning, assessing risk and decision making.
- **sufficient understanding:** a child’s level of achievement can be used to provide robust and credible assessment, for example, children who have achieved across Second level and working towards Third level experiences and outcomes across literacy and numeracy will have sufficient understanding to exercise their rights; and
- **personal support from an adult who knows the child well.** The assessment by the teacher (whether in primary, secondary or special school) who knows the child will be based on a wide variety of sources of evidence including observing day-to-day learning, learning conversations and/or planned periodic holistic assessment.

14 The Supporting Children’s Learning Code of Practice (Third Edition) 2017 sets the questions to be decided upon in respect of capacity in each of the areas where new rights are enacted. The assessment of capacity is in the context of the particular right a child is exercising. When assessing whether a child has sufficient maturity and understanding the following relevant questions are useful. For ease of understanding these are set out below:

Does the child have sufficient maturity and understanding to carry out an action (i.e. use the right)?

Where that particular right is in relation to making a decision – does the child have sufficient maturity and understanding to:

- make the decision,
- communicate the decision,
- understand the decision and its implications for themselves, and
- retain the memory of the decision?

In relation to rights relating to advice and information, or a co-ordinated support plan, does the child have sufficient maturity and understanding to understand the information, advice or plan?

In relation to rights to express their views does the child have sufficient maturity and understanding to express the view?

15 Taking such factors into account and by answering the relevant questions, in almost all instances the class teacher, pastoral care staff or support teacher will have sufficient robust evidence to assess the child's maturity and understanding to exercise a particular right in context. In a few instances the assessment could be supported through the advice and guidance of education authority officials such as an educational psychologist.

Further support through quality assurance and moderation

16 As described above there is a wide range of assessment information which will support those working in schools and education authorities in reaching conclusions as to whether or not a child has capacity and sufficient maturity and understanding. However, it is recognised that in a very few instances and with specific circumstances, perhaps where a child has not had similar experiences i.e. they may have made decisions before, but not decisions of the same type or requiring the same preparation, there may continue to be challenges in reaching a conclusion on a child's capacity to exercise a particular right. Schools can develop approaches to quality assurance and moderation of such decisions and record and report on their assessment activities. In these circumstances, a specific assessment by education colleagues including education authority officials may provide further clarification on the decision.

Decision on capacity

17 When an education authority reaches a decision on whether or not a child has capacity they must inform the child and their parent or carer of their conclusions.

Where a decision is reached that a child does not have capacity

18 In the circumstances where a child does not have sufficient maturity and understanding as described above they would be considered to lack capacity in relation to that (or those) rights. Where it is assessed that the child lacks sufficient maturity and understanding to exercise that right the education authority (and the child) may not carry out the right. Children's maturity and understanding will change and/or progress over time and education authorities will take account of such changes towards capacity and adverse impact and wellbeing as children make further progress within Curriculum for Excellence.

Capacity of young people

19 A young person aged 16 or over in school education would be considered to lack capacity to use a right only if they do not have sufficient understanding to use it. There is no requirement to consider whether there may be adverse impact on wellbeing in relation to young people.

Capacity and communication needs

20 A child or young person should not be treated as lacking capacity because of a communication need which can be overcome by human, electronic or mechanical aid (whether of an interpretive nature or otherwise).

Eilidh is 15 and attends a special school. She is making good progress in her broad general education and is experiencing learning in some experiences and outcomes at Second level. She does not attain and achieve the outcomes at this level though she has attained a few outcomes in literacy and numeracy at First level. Eilidh has communication needs and uses a voice output aid that helps her communicate. Eilidh, her parents and her teachers are skilled at communicating through the vocal aid. Eilidh's parents have been invited to a review to discuss Eilidh's senior phase options. Eilidh's parents let her know about the review. Eilidh tells them that she wants to attend. The review discusses whether Eilidh is likely to leave or stay on at school. Eilidh communicates that she wants to stay on. In regard to this question, all participants at the meeting agree that Eilidh is mature enough and understands the choice. The education psychologist agrees with Eilidh and her parents that she will not feel any adverse impact in participating in this decision. Eilidh lets the meeting know she is happy to stay on at school.

Chapter Four Consideration of Adverse Impact on Wellbeing

Consideration of adverse impact on a child's wellbeing

21 When a child requests to exercise a particular right, the Act also requires those who have responsibilities in respect of that right to assess the child's capacity and also any potential adverse impact on wellbeing that the use of the particular right may cause.

22 An education authority is to be satisfied that in exercising their rights children will not experience any adverse impact on their wellbeing. The child's wellbeing is as defined by the wellbeing indicators in Getting it Right for Every Child and focuses on the child being Safe, Healthy, Achieving, Nurtured, Active, Respected, Responsible, and Included. These have been incorporated into the Act for this purpose. The impact on child's wellbeing will be considered in terms of the indicators as and may be informed by the progress within the experiences and outcomes within Curriculum for Excellence's Health and Wellbeing.

23 When considering adverse impact on a child's wellbeing using wellbeing indicators, when exercising their rights an education authority can take into account the following factors:

- consider the impact on the child's health and wellbeing as part of Curriculum for Excellence where their progress is assessed as the child is developing the knowledge and understanding skills, attributes and capabilities which they need for mental, emotional, social and physical wellbeing
- consider any adverse impact on the indicators of wellbeing, a variety of assessment tools can be helpful including for example:
 - the [Getting it Right for Every Child interactive guide](#) (See Appendix F)
 - the National Risk Framework to Support the Assessment of Children and Young People. The document includes a national risk assessment 'toolkit' for child protection to support practitioners in identifying and acting on child protection risks in children and young people. <http://www.gov.scot/Publications/2012/11/7143/downloads#res409306>
- ensure active participation of the child in decision-making, in terms of participation the Children and Young People's Commissioner for Scotland's resource is available, [7 Golden Rules for Participation](#)
- personal support from an adult who knows the child well. The consideration of the teacher who knows the child will be based on a wide variety of sources of evidence including observing day-to-day learning, learning conversations and/or planned periodic holistic assessment.

24 Taking such factors into account, in almost all instances the class teacher, pastoral care staff or support teacher will be able to consider any adverse impact of a child exercising their rights. Teachers will want to discuss with the child to consider whether there would be any adverse impact of them exercising particular rights. In a few instances the assessment could be supported through the advice and guidance of education authority officials such as an educational psychologist and through other agencies involved in supporting wellbeing. For instance for a child on the child protection register a range of assessment tools can be used to assess impact on wellbeing.

Decision on whether there may be adverse impact on wellbeing

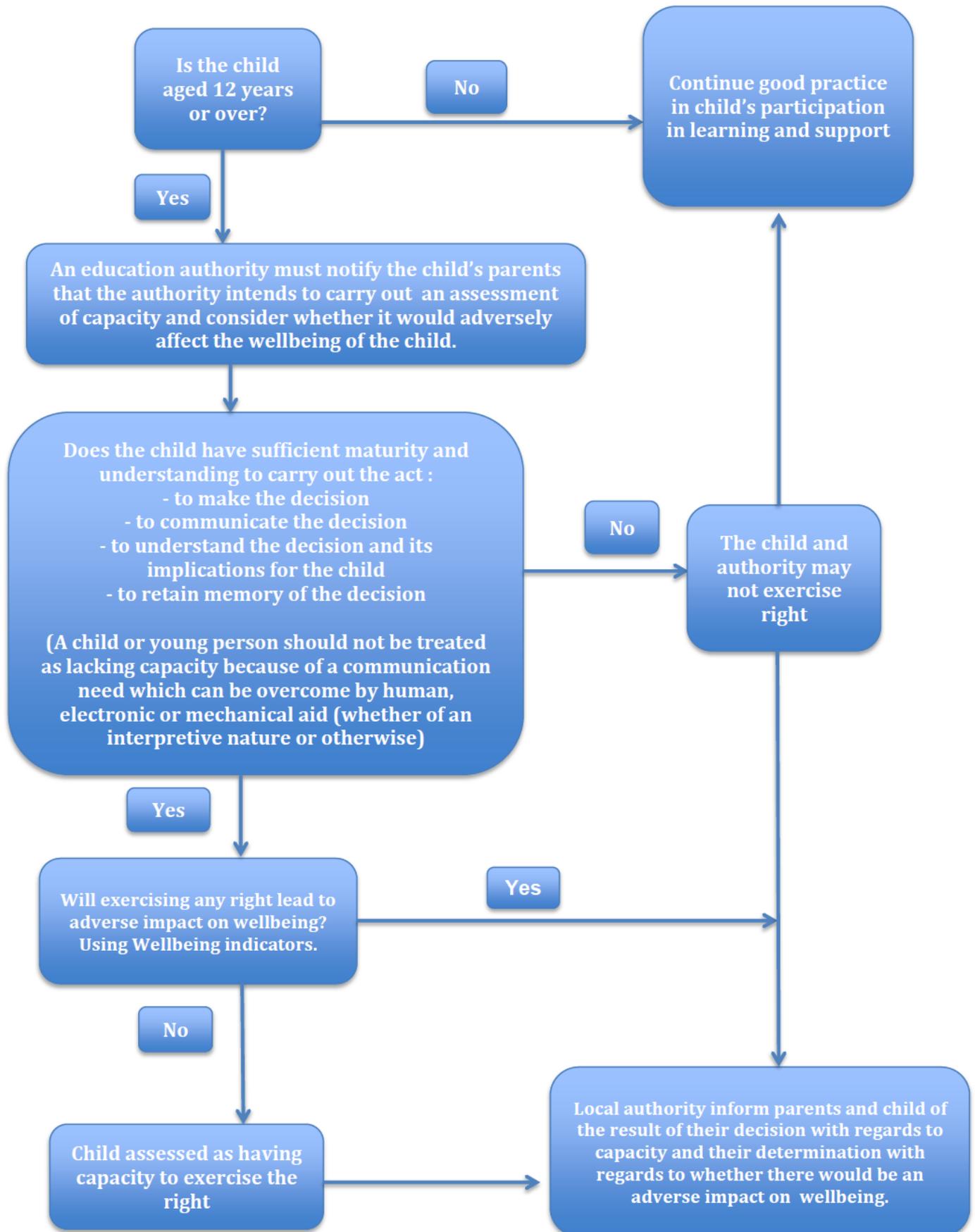
25 When an education authority reaches a decision on whether or not a child using their rights may have an adverse impact on wellbeing they must inform the child and their parent or carer of their conclusions.

Communicating about assessment of capacity and consideration of adverse impact of wellbeing taking place

26 The authority must inform the child and the parent of the child that an assessment is to take place, undertake the assessments and reach a conclusion on those matters. This must be undertaken prior to the right being used.

27 For example, where a child requests that there is a review of their co-ordinated support plan, the assessment of capacity and consideration of adverse impact on wellbeing should be carried out prior to any review being undertaken in response to the child's request. Where the request is made, the authority must notify the child's parents of the request to review the co-ordinated support plan and inform the child's parents of their intention to reach a conclusion on the capacity and any adverse impact on wellbeing of the request.

Extending Children’s Rights: a flow chart on assessing capacity and wellbeing



Chapter Five Assessment of Change in Circumstances

Assessing capacity and adverse impact on wellbeing when similar matters have recently been considered

28 Where a child has requested to exercise their rights within a short period of time after an earlier request an education authority will assess whether there has been any significant change in circumstances of the child since the request was made. This assessment will take into account the following factors:

- time elapsed since request was made, usually there will be little time elapsed between a request to exercise a right and the use of the right, in other instances the time elapsed may be a significant factor
- consideration of any changes in the child's circumstances in the key barriers to learning:
 - learning environment
 - health and disability
 - social and emotional factors
 - family circumstances
- ensure active participation of the child in decision-making,
- personal support from an adult who knows the child well. The assessment of the teacher who knows the child will be based on a wide variety of sources of evidence including observing day-to-day learning, learning conversations and/or planned periodic holistic assessment.
- involve and inform parents, good communication with parents and carers will lead to everyone being updated about significant changes

Notifying the conclusions of considerations

29 The child and their parents or carers must be informed of the conclusions of these considerations. In the circumstances where the child or their parent does not agree with the outcome of these considerations they may refer this to the Tribunal for consideration. Where it is considered that the child is not considered to have capacity and there is adverse impact on wellbeing the education authority (and the child) may not carry out the right.

Chapter Six Key Principles in Assessment

Assessment of capacity and adverse impact on wellbeing further advice

30 Children's rights in additional support for learning are recognised and realised within the rich learning context of curriculum, universal and personal support and assessment. Our schools place learners at the centre. Children gain the purposes of the curriculum, effective contributors, confident individuals, successful learners and responsible citizens. The purposes, also known as the capacities, provide a context for the Getting it Right for Every Child practice model with the child's wellbeing at the heart of good practice. Up to S3, all children are entitled to a broad general education and to experience all the experiences and outcomes up to the Third level. In addition they are entitled to the personal support to enable them to gain as much as possible from the opportunities which *Curriculum for Excellence* can provide. In a coherent way, teachers carry out assessment that focuses on the application of standards and expectations of each learner's progress and achievement in knowledge and understanding, skills and attributes and capabilities.

Principles of assessment of maturity and understanding of children aged 12-15 years of age in respect of additional support needs in school education in Scotland

31 In carrying out duties and responsibilities staff should give consideration to the following principles:

- Assess using a wide variety of sources
- Provide personal support from an adult who knows the child well
- Ensure active participation of child in realising their rights and secure their wellbeing
- Involve and inform parents
- Quality assure and moderate practice within and across schools

Assess using a wide variety of sources

32 When assessing maturity and understanding and wellbeing, teachers should draw on guidance from Building the Curriculum 5: a framework for assessment, the experiences and outcomes of the broad general education and the Benchmarks documents. In particular they will be interested in a child's development and achievement towards attaining beyond the Second level particularly in literacy, numeracy and health and wellbeing. By the end of P7, most children will be attaining at or beyond Second level progressing and developing in line with national expectations. This will enable teachers to provide a robust and credible assessment of children's and young people's achievements in literacy and numeracy at all stages of their broad general education.

33 Evidence of progress and achievement will come from a variety of sources including:

- observing day-to-day learning within the classroom or working area;
- observation and feedback from learning activities that takes place in other environments, for example, outdoors, on work placements;
- coursework, including tests;
- learning conversations; and
- planned periodic holistic assessment.

34 Learning in health and wellbeing ensures that children and young people develop the knowledge and understanding, skills, attributes and capabilities which they need for mental, emotional, social and physical wellbeing now and in the future. Wellbeing is one

of the key outcomes of *Curriculum for Excellence*. Assessment in health and wellbeing has to take account of the breadth and purpose of the wide range of learning experiences of children and young people in this curriculum area.

35 Children's progress and achievement in many aspects of health and wellbeing will depend upon the stage of growth, development and maturity of the individual, upon social issues and upon the community context. From the early years through to the senior stages, children's and young people's progress will be seen in how well they are developing and applying their knowledge, understanding and skills in, for example, key features of healthy living and relationships and in approaches to personal planning, assessing risk and decision making.

36 Assessment in health and wellbeing should also link with other areas of the curriculum, within and beyond the classroom, offering children and young people opportunities to apply their knowledge and skills in more complex, demanding or unfamiliar learning or social contexts.

Provide personal support by an adult who knows the child well

37 All children and young people are entitled to personal support from a key adult who knows them well to enable them to gain from all the opportunities Curriculum for Excellence has to offer.

38 Children and young people are entitled to personal support to enable them to:

- review their learning and plan for next steps
- gain access to learning activities which will meet their needs
- plan for opportunities for personal achievement
- prepare for changes and choices and be supported through changes and choices and
- be supported by schools working with partners

39 All children and young people should have frequent and regular opportunities to discuss their learning with an adult who knows them well and can act as a mentor, helping them to set appropriate goals for the next stages in learning. This provides opportunities to challenge young people's choices, which may be based on stereotypes. At primary stages almost all children aged 12 years or over with additional support needs receive effective personal support from class teachers, support teachers or their headteacher. While at secondary stages, the key adult may be part of a support team made up of pastoral care teachers, support for learning teachers and senior managers.

40 Young people themselves should be at the centre of this planning, as active participants in their learning and development.

41 To ensure that *Curriculum for Excellence* is a curriculum for all children and young people, it is essential that support is provided to remove barriers that might restrict their access to the curriculum because of their circumstances or short or longer term needs.

Ensure active participation of child in realising their rights and secure their wellbeing

42 Curriculum for Excellence and Getting It Right for Every Child place the child at the centre of purposes of school education and services for children. GIRFEC recognises the rights of children and young people, focuses on developing and supporting wellbeing and builds on the good practice evident in services across Scotland. In order for their progress in wellbeing and successes in gaining the four capacities of Curriculum for Excellence children need to be active participants in the learning and development in our schools.

Their active participation is just as important in making decisions about identification, assessment and provision for additional support for learning provision. Participation in decisions about their rights will prepare them for choices and changes in school education and beyond into post-school life.

43 Children, who have attained 12 years in school education, being provided with additional support for learning should be further developing their knowledge about rights to additional support and be actively involved in decision-making about the provision of additional support, subject to their maturity and understanding and impact on wellbeing. Children and young people aged 12 years and above should participate in realising their rights to additional support.

Involve and inform parents

44 In terms of best practice regarding parents and assessment the key points are that parents are actively involved in supporting their children's learning.

45 Parents must be fully involved where children and young people need additional support that is detailed in Individualised Educational Programmes (IEPs) Child's Plans and Coordinated Support Plans (CSPs). Parents should expect to receive regular information about their children's strengths, progress and achievements and be informed about any gaps in their children's progress and ways that they can help.

46 Parents need to receive information on: how well all learners and particular groups of learners are achieving; the performance of children and young people in the school in relation to expected levels at particular stages in key areas such as literacy and numeracy; and how the school is applying national standards and expectations.

47 Teachers report and notify parents in a variety of ways. Parents get the regular information about their children's strengths, progress and achievements to which they are entitled. They should be informed about any gaps in their children's progress and ways that they can help.

48 It is also important for those children and young people with additional support needs, that reporting achieves an appropriate balance across the breadth of learning, in challenging aspects and the application of learning. Staff should make clear the nature of support being put in place to ensure each and every child and young person makes appropriate progress.

Quality assure and moderate practice within and across schools

49 Education authorities have a responsibility to secure improvement in the quality of school education and to ensure appropriate standards in education.

50 Education authorities are working to:

- support self-evaluation and improvement processes
- sample the quality and consistency of learning, teaching, assessment and achievement in schools within the authority
- ensure that schools have suitable arrangements in place to support teachers' assessments and focus on any action required for improvement
- facilitate local networks and contribute to identifying the focus of moderation and verification activities to ensure fitness for purpose and proportionality, this will include ensuring an appropriate focus on moderation across transitions and involving partners across sectors

- ensure that assessment information is used appropriately to encourage and challenge school staff to reflect on the links between classroom practice and outcomes for children and young people in order to inform planning for improvement.

Avoid over-bureaucratic processes

51 Scottish Government are empowering children in exercising their rights in schools subject to the safeguards of assessments of capacity and wellbeing. Moving forward with this agenda occurs in the light of best practice across Scottish education authorities and schools in Curriculum for Excellence and the GIRFEC practice model.

52 Scottish Government views this extension of rights as becoming part of the day-to-day work of schools. This approach should not lead to increased bureaucracy, a paper filing exercise or checklist approach that increases pressures on staff.

53 Education Scotland reported on tackling bureaucracy and identified the following aspects in emerging practice in reporting and notifying parents. In looking to reduce bureaucracy around reporting and notifying parents schools are adopting practices that include more frequent, shorter reports to parents, rather than one big end-of-session report; more oral reporting to parents at meetings; involvement of children and young people in the reporting process; and increased use of e-communication and social media.

Annex A Case Studies

Children now have the right to carry out an action under a provision of the Additional Support for Learning Act. For example they could ask for an assessment of whether they have additional support needs

Gary is now 12 years of age. He recently started his new secondary school based in a new town in central Scotland. At primary school he was achieving well in line with expectations and in secondary he is now making progress towards attaining outcomes at Third Level across many of the curriculum areas and in literacy and numeracy. His end of year report from the primary school to parents mentioned his mature attitude within lessons and his ability to show understanding of challenging problems. In the report on progress in health and wellbeing the teacher had commented on his enjoyment in learning and his positive social and mental wellbeing.

After several weeks in secondary Gary had his settling in interview with his form tutor who was the key adult in the school for a group of 20 children. His form tutor gave Gary praise for his approach to secondary transition and indicated he was happy with the feedback he was receiving from Gary's teachers. Gary shared that he was having some headaches and finding it hard to concentrate in lessons, particularly when faced with writing tasks. He had asked the class co-operative teacher for support on occasion in English.

Gary asked if he could be assessed for dyslexia as he said other children in his class got support for their dyslexia. His form tutor assessed that Gary was mature and showed good understanding based on evidence from assessment benchmarks. In discussion, Gary agreed he would encounter no adverse impact on his wellbeing. The form tutor told Gary he would proceed with his request for an assessment and emailed the learning support teacher and copied in the school's educational psychologist. He told Gary that he can access advocacy support which is part of the new Children's Support Service. Gary said that he was happy and did not want to use the Advocacy Service. His form tutor mentioned that the option was there for Gary to use advocacy support to enable him to prepare for his assessment (if he had any concerns) and to understand the outcome of his assessment.

Gary was pleased to hear this but was happy to go ahead on the advice of his form tutor. The form tutor contacted Gary's parent to reassure her of the strengths in Gary's early stages of secondary school and share his view that Gary would benefit from an assessment of difficulties he was encountering in class. He said he would get back to Gary and his mother before the end of the week with news of progress with Gary exercising his rights for an assessment in line with additional support legislation.

The right's Children have to decide about provisions of the Act have been extended, and are now broadly similar to the rights of parents and young people. For instance, a child can decide that they should be considered for a coordinated support plan (CSP)

Leeanne is looked after and accommodated by the council and lives in a residential unit. She attends the local secondary school and is aged 15. She has been receiving additional support for autism. She has spoken with her care worker who says to Leeanne that she should request that a coordinated support plan (CSP) to be prepared as she is autistic and looked after.

Leeanne speaks to the principal teacher of support for learning and says her care worker says she should have a CSP. Leeanne says that she thinks she should have a CSP. The Principle Teacher has been working with Leeanne to build her ability to manage her support needs. She views her as having good understanding generally in terms of comprehension and also in understanding her needs. Her view of Leeanne's positive approach to her support needs gave her no concerns about whether to proceed. She said to Leeanne that she would raise her request with the educational psychologist for the school. She says that a meeting will take place at an early opportunity to consider whether to prepare a CSP.

She contacts the psychologist and the care worker to suggest a CSP meeting takes place to consider whether Leeanne meets the criteria for a CSP. She suggests to Leeanne and her care worker that they make contact with the Children's Support Service to secure Leeanne's views ahead of the meeting. The Principle Teacher suggested to Leeanne that she needs to discuss with the Support Service whether she wants to attend the meeting or part of the meeting.

John has social, emotional and behavioural needs and attends an independent special school. John is 15 years old. He feels that he has made progress with his management of his needs and wishes to go to his local mainstream school.

John is working towards attaining across Second level with Curriculum for Excellence and has experienced learning at Third level too. It is the view of staff at the school that John has not sufficient maturity and understanding to request a further assessment of his additional support needs.

At his review meeting John is allowed to sit at the start of the meeting to hear about the purpose of the meeting and to meet the new educational psychologist from John's education authority. At the meeting John mentions that he does not have support needs and wants that to be known. The educational psychologist offers to reassess John. The school indicates that John still can have emotional outbursts and that he is immature for his age.

The teacher assesses that John in exercising his right to request reassessment is likely to display challenging behaviour and show signs of stress. John disagrees angrily and swears at the teacher. He asks John to leave the room.

John refuses to leave, he kicks over a chair and threatens the teacher. He is asked to leave again but refuses to move. John's key teacher moves over to sit beside John and reminds him how well he has done throughout today's meeting. He reassures John that he has a right to ask for an assessment and suggests that they discuss it further outside the meeting and come back in again in 10 minutes. John and his advocate leave the room together. John refuses to accept any guidance or advice and begins to get angry. He starts to shout and swear and refuses to go back into the meeting.

The school indicates that John was unable to exercise his rights without showing adverse impact on his wellbeing through his emotional outburst, challenging behaviour and swearing. They have concerns that he does not feel nurtured. The educational psychologists suggests that the meeting be ended at present, that she should arrange to meet John to discuss an assessment

Children now have the right to information and advice, including advice and information about a coordinated support plan

Alana is in S3 and aged 14. She has been progressing well across Third level experiences and outcomes in Curriculum for Excellence. Alana is a young carer and she feels she is struggling with helping her mother who is disabled and her sisters. She is the oldest of three and each day takes her sisters to primary school before walking to the secondary school. She is occasionally late to school.

Alana speaks with her guidance teacher and asks if the guidance teacher will speak to her maths teacher as Alana arrives late to his classes sometimes and he has issued a warning to her about punctuality. Alana also asked if the guidance teacher had any information and advice about young carers.

The guidance teacher considers Alana as has having the maturity and understanding to make the request and receive information. She says she'll pass on some weblinks on young carers and contacts with someone in the education authority who links with a Young Carers Group. She assesses that there is no adverse impact on Alana's wellbeing. She sends an email to Alana's maths teacher reminding him of the information on Alana as a young carer and asks him to monitor Alana's timekeeping but to issue no warnings about punctuality.

Later that day she phones Alana's mother to let her know that Alana is doing really well at school, that she is showing herself to have a degree of maturity beyond her years and a good understanding of how to do well in school. She lets mother know that Alana will get further information and advice as a young carer and reassures mother that Alana is doing really well in school and if she needs further support she just needs to let the guidance teacher know.

Omar's family are refugees from Syria relocated to a housing estate in a city in Scotland. Omar's school in Aleppo had been bombed and classmates killed. In one of the refugee camps he had been able to return to education.

Omar is 14 years old, speaks Arabic and has made a good start after his recent enrolment in secondary school. He is well supported within the school's Bilingual base where he works with other English as a Second Language (EAL) learners. He is building up his timetable in classes where English language demands are not creating a barrier to his learning.

Omar particularly enjoys maths, Art and design and PE lessons. Socially, Omar is getting on well with his peers. He is a skilled footballer. Omar has impressed his school mates with his football abilities though there have been a couple of instances when he has had emotional outbursts when his team is defeated.

His key contact is with his EAL teacher and Imran, his Peer Educator Buddy, a senior student who is one of a group supporting Omar's form class. Imram chats regularly with

Omar and helps out in a couple of his classes. Omar has an upcoming review meeting to consider his progress in secondary school. He asks his EAL teacher if Imran can attend his review meeting to speak up for him.

Omar's EAL teacher is of the view that Omar in his time in school has demonstrated sufficient maturity and understanding of his support needs to attend the review and to have Imran support him. At present, she has a concern, given Omar's experiences, that his wellbeing may still be affected by past events. However she decides in discussion with Omar that he should attend the meeting with Imran. She tells Omar to let his mother know that an interpreter will attend the review and that she will ask the interpreter to phone his mother to let her know of Omar's participation in the meeting.

Children now have the right to their views being expressed regarding the provisions of the act

Asif is 12 years of age and in P7 at his local primary school. He receives additional support for learning for his challenging behaviour and social communication challenges. Asif has been identified as more able, particularly in maths. He is attaining very well across Third level outcomes and is achieving some Fourth level outcomes in maths.

In P6 an initial transition review was held with Asif and his parents, his P6 teacher and a pastoral support teacher from secondary school. Asif sat in on part of the review. Halfway through P7 a further review is being held to plan in greater detail for Asif's transfer to secondary. Asif spoke with his parents and they agreed with him that he should participate to a greater degree in this review. Asif spoke with his primary 7 teacher and said that he wanted to participate fully in his review for secondary school.

Asif's teacher recognises his maturity as well as his great understanding of how his condition impacts on his life, particularly in school. His teacher is concerned though that Asif may have too high expectations of himself on moving to the secondary school. She assesses that Asif clearly has sufficient maturity and understanding to participate in the review. She speaks with Asif and asks if he will be positive about the review.

Theresa has mental wellbeing issues, she is 14 years old and has a place at her local secondary school. Theresa has an eating disorder which can have an impact on her health at school. Theresa has previously had a part-time placement at school in order to help her manage her disorder. She has been making improvements with her diet.

She has requested a further assessment of her additional support needs to receive additional support to attend school full-time. Her pastoral care teacher has taken on board her request and is clear that Theresa's maturity and understanding are well-reflected in her comprehension of her needs as well as her maturity in making progress in handling her condition. Her assessment is that she has capacity in this issue.

Theresa and her parents are keen for the review of her needs to reassess her support needs. While her pastoral care teacher is supportive of Theresa, the deputy head teacher in charge of Theresa's year group is concerned that in exercising her right to reassessment of her needs she may feel her wellbeing suffer.

The deputy headteacher and pastoral care teacher have considered Theresa's likely progress against the indicators of wellbeing considering positive or adverse impact using an assessment tool from GIRFEC self evaluation across the indicators Safe, Healthy, Nurtured, Achieving, Responsible, Respected Included. The staff agree that there will be

positive impact in the nurtured, achieving, responsible, respected and included indicators given Theresa being assessed as able to attend school fulltime.

However they were unable to agree that Theresa would not encounter a negative impact on the indicators, safe and healthy. The depute head teacher decides to invite the school's educational psychologist to meet with Theresa and parents ahead of an upcoming review. She shares with them the indicators and gains their assessment of positive or adverse effect across the indicators.

They agree that with appropriate support from guidance teacher, a supportive girls group in the school and an amended timetable in respect of physical education lessons will be of benefit to her. They agree that in exercising her rights there will likely be no adverse impact on her wellbeing in the short term. They agree that Theresa will be in contact with her guidance teacher everyday in the dinner hall. The teacher will report back every Friday on Theresa's progress and a further review will take place in a month.

Annex B Resources

Resources in support of Children's Rights and assessment of capacity and wellbeing

Children's Rights

Enquire's webpages

Enquire is the Scottish advice service for additional support for learning.

<http://enquire.org.uk>

Their REACH website offers information and advice to children and young people on their rights

<https://reach.scot>

Children and Young People's Commissioner Scotland

The Children and Young People's Commissioner Scotland website has information on participation and education and their 7 Golden Rules for participation.

<https://www.cypcs.org.uk/education> <https://www.cypcs.org.uk/education/golden-rules>

Rights Respecting Schools Awards

UNICEF works with schools in the UK to create safe and inspiring places to learn. UNICEF's Rights Respecting Schools Award embeds these values in daily school life and gives children the best chance to lead happy, healthy lives and to be responsible, active citizens.

<https://www.unicef.org.uk/rights-respecting-schools/>

It's About Ability

This child-friendly UNICEF publication explains the United Nations Convention on the Rights of Persons with Disabilities. Its main purpose is to empower children, with and without disabilities, to play their part in challenging discrimination and promoting the Convention's principles.

https://www.unicef.org/publications/index_43893.html

Assessment of wellbeing

GIRFEC interactive guide

The guide gives staff a clear understanding of wellbeing and demonstrates the links between wellbeing and the teaching and learning process. It provides tools in the form of wellbeing wheels to gauge the level of wellbeing.

<http://www.gov.scot/Resource/0044/00446438.pdf>

National Guidance on Child Protection 2014

<http://www.gov.scot/Publications/2014/05/3052/0>

The National Risk Framework to Support the Assessment of Children and Young People

<http://www.gov.scot/Publications/2012/11/7143/downloads#res409306>

Other helpful resources

Autism toolbox

Autism toolbox provides helpful approaches to supporting communication

<http://www.autismtoolbox.co.uk/supporting-pupils/communication/>

Intandem

Intandem provides mentors for children aged between 8-14 years who are looked after by their local authority but living at home.

<https://www.inspiringscotland.org.uk/what-we-do/thematic-funds/intandem/>

Parental Involvement Act

<http://www.gov.scot/Publications/2006/09/08094112/0>

Looked After Children Strategy

<http://www.gov.scot/Publications/2015/11/2344/0>

Looked After Children's Rights

<http://www.gov.scot/Publications/2014/04/9542/0>

Supporting Children's Learning – Statutory Code of Practice

<http://www.gov.scot/Publications/2011/04/04090720/0>

Supporting Learners and Families – Dyslexia toolkit

<http://addressingdyslexia.org/supporting-learners-and-families>



Scottish Government
Riaghaltas na h-Alba
gov.scot

© Crown copyright 2017

OGL

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at www.gov.scot

Any enquiries regarding this publication should be sent to us at
The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-78851-145-2 (web only)

Published by The Scottish Government, August 2017

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS280506 (08/17)

W W W . G O V . S C O T