

Draft Regulations laid before Senedd Cymru under section 209(6) of the Equality Act 2010, for approval by resolution of Senedd Cymru

DRAFT WELSH STATUTORY
INSTRUMENTS

2021 No. (W.)

EDUCATION, WALES

EQUALITY, WALES

The Equality Act 2010 (Capacity of
parents and persons over
compulsory school age) (Wales)
Regulations 2021

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations supplement the procedural framework in Schedule 17 to the Equality Act 2010 (“the Act”). The Regulations provide persons over compulsory school age and parents who lack capacity with the right to bring a claim in relation to disability discrimination etc. under that Schedule. The Regulations do this by providing that a representative may bring a claim on behalf of the parent or person over compulsory school age who lacks capacity. For the purposes of the Regulations, a person lacks capacity within the meaning of the Mental Capacity Act 2005, namely, when they lack mental, not legal, capacity.

Regulation 3 provides that, where a parent of a child not over compulsory school age lacks capacity, the reference to “parent” in the provision which enables that parent to bring a claim under Schedule 17 is to be read as a reference to a representative of that parent.

Regulation 4 provides that, where a person over compulsory school age lacks capacity, the reference to “person” in the provision which enables that person to bring a claim under Schedule 17 is to be read as a reference to a representative of the person over compulsory school age.

Regulation 5 applies where regulation 3 or 4 applies to claims under paragraph 3A(1) of Schedule 17 to the

Act. Where regulation 5 applies, it requires certain references in section 86 of the Act to be read differently depending on whether a child over compulsory school age, a parent of a child not over compulsory school age, or an adult, lacks capacity. Section 86 of the Act provides that pupils, and persons applying to be pupils, cannot be victimised due to protected acts done by their parent or sibling. By requiring certain references in section 86 of the Act to be read differently, the Regulations ensure that pupils, or persons applying to be pupils, cannot be victimised for protected acts by their representative (if they are a child over compulsory school age or an adult) or a representative of their parent (if they are a child not over compulsory school age).

The Regulations stipulate that, in specified cases, the provisions of the Regulations concerning mental capacity have effect in spite of section 27(1)(g) of the Mental Capacity Act 2005.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

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Made

Coming into force

1 September 2021

The Welsh Ministers, in exercise of the powers conferred on them by section 207(4) of, and paragraph 6F of Schedule 17 to, the Equality Act 2010⁽¹⁾, make the following Regulations.

In accordance with section 209(6) of that Act, a draft of this instrument has been laid before and approved by a resolution of Senedd Cymru⁽²⁾.

Title, commencement and application

1.—(1) The title of these Regulations is the Equality Act 2010 (Capacity of parents and persons over compulsory school age) (Wales) Regulations 2021.

(1) 2010 c. 15. Paragraph 6F of Schedule 17 to the Equality Act 2010 was inserted by paragraph 19(5)(h) of Schedule 1 to the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (anaw 2).

(2) The reference in section 209(6) to the National Assembly for Wales now has effect as a reference to Senedd Cymru, by virtue of section 150A(2) of the Government of Wales Act 2006 (c. 32).

(2) These Regulations come into force on 1 September 2021.

(3) These Regulations apply in relation to Wales.

Interpretation

2. In these Regulations—

“the Act” (“*y Ddeddf*”) means the Equality Act 2010;

“adult” (“*oedolyn*”) means a person who is aged 18 years or over;

“capacity” (“*galluedd*”) has the same meaning as in the Mental Capacity Act 2005⁽¹⁾;

“child” (“*plentyn*”) means a person who has not attained the age of 18;

“compulsory school age” (“*oedran ysgol gorfodol*”) has the meaning given in section 8 of the Education Act 1996⁽²⁾;

“parent” (“*rhiant*”) has the same meaning as in the Education Act 1996;

“relevant time” (“*adeg berthnasol*”) means the time at which, under the Act, something is required or permitted to be done by or in relation to a parent or a person over compulsory school age (including, where relevant, an adult);

“representative” (“*cynrychiolydd*”), in relation to a parent or a person over compulsory school age (including, where relevant, an adult), means—

- (a) a deputy appointed by the Court of Protection under section 16(2)(b) of the Mental Capacity Act 2005 to make decisions on the parent’s or person’s behalf in relation to matters within Schedule 17 to the 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 or person to make decisions on their behalf in relation to matters within Schedule 17 to the Act;
- (c) an attorney in whom an enduring power of attorney (within the meaning of Schedule 4 to the Mental Capacity Act 2005) created by the parent or 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.

(1) 2005 c. 9.

(2) 1996 c. 56; section 8 was amended by section 52 of the Education Act 1997 (c. 44).

When a child’s parent lacks capacity

3. When a parent of a child not over compulsory school age lacks capacity at the relevant time, the reference to “parent” in paragraph 3A(1)(b) of Schedule 17 to the Act is to be read as a reference to a representative of that parent.

When a person over compulsory school age lacks capacity

4. When a person over compulsory school age lacks capacity at the relevant time the reference to “person” in paragraph 3A(1)(a) of Schedule 17 to the Act is to be read as a reference to a representative of that person.

Victimisation for conduct of representatives

5.—(1) Where regulation 3 applies to a claim under paragraph 3A(1)(b) of Schedule 17 to the Act, the references to “parent” in section 86(2), (3) and (4) of the Act are to be read as references to a representative of that parent.

(2) Where regulation 4 applies to a claim under paragraph 3A(1)(a) of Schedule 17 to the Act in respect of a child over compulsory school age, the references to “parent” in section 86(2), (3) and (4) of the Act are to be read as references to a representative of that child.

(3) Where regulation 4 applies to a claim under paragraph 3A(1)(a) of Schedule 17 to the Act in respect of an adult, the references in section 86(2), (3) and (4) of the Act to—

- (a) “parent or sibling” are to be read as references to a representative of that adult, and
- (b) “child” are to be read as references to that adult.

Mental Capacity Act 2005

6. Regulations 3, and 5(1) and (2) have effect despite section 27(1)(g) of the Mental Capacity Act 2005(1).

Name

Minister for Education, one of the Welsh Ministers

Date

(1) 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.