
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.