



OFFERYNNAU STATUDOL
CYMRU

WELSH STATUTORY
INSTRUMENTS

2021 Rhif 403 (Cy. 131)

2021 No. 403 (W. 131)

ADDYSG, CYMRU

EDUCATION, WALES

CYDRADDOLDEB, CYMRU

EQUALITY, WALES

Rheoliadau Deddf Cydraddoldeb
2010 (Galluedd rhieni a phersonau
sy'n hŷn na'r oedran ysgol
gorfodol) (Cymru) 2021

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

NODYN ESBONIADOL

(Nid yw'r nodyn hwn yn rhan o'r Rheoliadau)

Mae'r Rheoliadau hyn yn ychwanegu at y fframwaith gweithdrefnol yn Atodlen 17 i Ddeddf Cydraddoldeb 2010 ("y Ddeddf"). Mae'r Rheoliadau yn darparu'r hawl i bersonau sy'n hŷn na'r oedran ysgol gorfodol a rhieni nad oes ganddynt alluedd i ddod â hawliad mewn perthynas â gwahaniaethu ar sail anabledd etc. o dan yr Atodlen honno. Mae'r Rheoliadau yn gwneud hyn drwy ddarparu y caiff cynrychiolydd ddod â hawliad ar ran y rhiant neu'r person sy'n hŷn na'r oedran ysgol gorfodol nad oes ganddo alluedd. At ddibenion y Rheoliadau, nid oes gan berson alluedd o fewn ystyr "lacks capacity" yn Neddf Galluedd Meddyliol 2005, hynny yw, pan nad oes ganddo alluedd meddyliol, nid galluedd cyfreithiol.

Mae rheoliad 3 yn darparu, pan na fo gan riant i blentyn nad yw'n hŷn na'r oedran ysgol gorfodol alluedd, fod y cyfeiriad at "parent" yn y ddarpariaeth sy'n galluogi'r rhiant hwnnw i ddod â hawliad o dan Atodlen 17 i'w ddarllen fel cyfeiriad at gynrychiolydd i'r rhiant hwnnw.

Mae rheoliad 4 yn darparu, pan na fo gan berson sy'n hŷn na'r oedran ysgol gorfodol alluedd, fod y cyfeiriad at "person" yn y ddarpariaeth sy'n galluogi'r person hwnnw i ddod â hawliad o dan Atodlen 17 i'w ddarllen fel cyfeiriad at gynrychiolydd i'r person sy'n hŷn na'r oedran ysgol gorfodol.

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.

Mae rheoliad 5 yn gymwys pan fo rheoliad 3 neu 4 yn gymwys i hawliadau o dan baragraff 3A(1) o Atodlen 17 i'r Ddeddf. Pan fo rheoliad 5 yn gymwys, mae'n ei gwneud yn ofynnol i gyfeiriadau penodol yn adran 86 o'r Ddeddf gael eu darllen yn wahanol gan ddibynnu ai at blentyn sy'n hŷn na'r oedran ysgol gorfodol nad oes ganddo alluedd, rhiant i blentyn nad yw'n hŷn na'r oedran ysgol gorfodol nad oes ganddo alluedd, neu oedolyn nad oes ganddo alluedd y cyfeirir. Mae adran 86 o'r Ddeddf yn darparu na ellir erlid disgyblion, a phersonau sy'n gwneud cais i fod yn ddisgyblion, oherwydd gweithredoedd gwarchoddedig a wneir gan eu rhiant neu eu brawd neu eu chwaer. Drwy ei gwneud yn ofynnol i gyfeiriadau penodol yn adran 86 o'r Ddeddf gael eu darllen yn wahanol, mae'r Rheoliadau yn sicrhau na ellir erlid disgyblion, neu bersonau sy'n gwneud cais i fod yn ddisgyblion, am weithredoedd gwarchoddedig gan eu cynrychiolydd (os ydynt yn blentyn sy'n hŷn na'r oedran ysgol gorfodol neu'n oedolyn) neu gynrychiolydd i'w rhiant (os ydynt yn blentyn nad yw'n hŷn na'r oedran ysgol gorfodol).

Mae'r Rheoliadau yn pennu bod y darpariaethau yn y Rheoliadau sy'n ymwneud â galluedd meddyliol, mewn achosion penodedig, yn cael effaith er gwaethaf adran 27(1)(g) o Ddeddf Galluedd Meddyliol 2005.

Ystyriwyd Cod Ymarfer Gweinidogion Cymru ar gynnal Aseidiadau Effaith Rheoleiddiol mewn perthynas â'r Rheoliadau hyn. O ganlyniad, ystyriwyd nad oedd yn angenrheidiol cynnal aseiad effaith rheoleiddiol o'r costau a'r manteision sy'n debygol o ddeillio o gydymffurfio â'r Rheoliadau hyn.

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.

2021 Rhif 403 (Cy. 131)

ADDYSG, CYMRU

CYDRADDOLDEB, CYMRU

Rheoliadau Deddf Cydraddoldeb
2010 (Galluedd rhieni a phersonau
sy'n hŷn na'r oedran ysgol
gorfodol) (Cymru) 2021

Gwnaed am 6.50 p.m. ar 24 Mawrth 2021

Yn dod i rym 1 Medi 2021

2021 No. 403 (W. 131)

EDUCATION, WALES

EQUALITY, WALES

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

Made at 6.50 p.m. on 24 March 2021

Coming into force 1 September 2021

Mae Gweinidogion Cymru, drwy arfer y pwerau a roddir iddynt gan adran 207(4) o Ddeddf Cydraddoldeb 2010(1), a pharagraff 6F o Atodlen 17 iddi, yn gwneud y Rheoliadau a ganlyn.

Yn unol ag adran 209(6) o'r Ddeddf honno, gosodwyd drafft o'r offeryn hwn gerbron Senedd Cymru ac fe'i cymeradwywyd ganddi drwy benderfyniad(2).

Enwi, cychwyn a chymhwyso

1.—(1) Enw'r Rheoliadau hyn yw Rheoliadau Deddf Cydraddoldeb 2010 (Galluedd rhieni a phersonau sy'n hŷn na'r oedran ysgol gorfodol) (Cymru) 2021.

(2) Daw'r Rheoliadau hyn i rym ar 1 Medi 2021.

(3) Mae'r Rheoliadau hyn yn gymwys o ran Cymru.

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.

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

(3) These Regulations apply in relation to Wales.

(1) 2010 p. 15. Mewnosodwyd paragraff 6F o Atodlen 17 i Ddeddf Cydraddoldeb 2010 gan baragraff 19(5)(h) o Atodlen 1 i Ddeddf Anghenion Dysgu Ychwanegol a'r Tribiwnlys Addysg (Cymru) 2018 (dccc 2).

(2) Mae'r cyfeiriad yn adran 209(6) at Gynulliad Cenedlaethol Cymru bellach yn cael effaith fel cyfeiriad at Senedd Cymru, yn rhinwedd adran 150A(2) o Ddeddf Llywodraeth Cymru 2006 (p. 32).

(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).

Dehongli

2. Yn y Rheoliadau hyn—

ystyr “adeg berthnasol” (“*relevant time*”) yw’r adeg y mae’n ofynnol, neu y caniateir, o dan y Ddeddf, i rywbeth gael ei wneud gan riant neu berson sy’n hŷn na’r oedran ysgol gorfodol (gan gynnwys, pan fo’n berthnasol, oedolyn) neu mewn perthynas â rhiant neu berson o’r fath;

ystyr “cynrychiolydd” (“*representative*”), mewn perthynas â rhiant neu berson sy’n hŷn na’r oedran ysgol gorfodol (gan gynnwys, pan fo’n berthnasol, oedolyn), yw—

- (a) dirprwy a benodir gan y Llys Gwarchod o dan adran 16(2)(b) o Ddeddf Galluedd Meddyliol 2005 i wneud penderfyniadau ar ran y rhiant neu’r person mewn perthynas â materion o fewn Atodlen 17 i’r Ddeddf;
- (b) rhoddai atwrneiaeth arhosol (o fewn ystyr “lasting power of attorney” yn adran 9 o Ddeddf Galluedd Meddyliol 2005) a benodir gan y rhiant neu’r person i wneud penderfyniadau ar ei ran mewn perthynas â materion o fewn Atodlen 17 i’r Ddeddf;
- (c) atwrnai y mae atwrneiaeth barhaus (o fewn ystyr “enduring power of attorney” yn Atodlen 4 i Ddeddf Galluedd Meddyliol 2005) sydd wedi ei chreu gan y rhiant neu’r person wedi ei breinio ynddo, pan fo’r atwrneiaeth wedi ei chofrestru yn unol â pharagraffau 4 a 13 o’r Atodlen honno neu pan fo cais i gofrestru’r atwrneiaeth wedi ei wneud;

ystyr “y Ddeddf” (“*the Act*”) yw Ddeddf Cydraddoldeb 2010;

mae i “galluedd” yr un ystyr â “capacity” yn Neddf Galluedd Meddyliol 2005(1);

ystyr “oedolyn” (“*adult*”) yw person sy’n 18 oed neu drosodd;

mae i “oedran ysgol gorfodol” yr ystyr a roddir i “compulsory school age” yn adran 8 o Ddeddf Addysg 1996(2);

ystyr “plentyn” (“*child*”) yw person nad yw wedi cyrraedd 18 oed;

mae i “rhiant” yr un ystyr â “parent” yn Neddf Addysg 1996.

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 p. 9.

(2) 1996 p. 56; diwygiwyd adran 8 gan adran 52 o Ddeddf Addysg 1997 (p. 44).

(1) 2005 c. 9.

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

Pan nad oes gan riant plentyn alluedd

3. Pan nad oes gan riant i blentyn nad yw'n hŷn na'r oedran ysgol gorfodol alluedd ar yr adeg berthnasol, mae'r cyfeiriad at "parent" ym mharagraff 3A(1)(b) o Atodlen 17 i'r Ddeddf i'w ddarllen fel cyfeiriad at gynrychiolydd i'r riant hwnnw.

Pan nad oes gan berson sy'n hŷn na'r oedran ysgol gorfodol alluedd

4. Pan nad oes gan berson sy'n hŷn na'r oedran ysgol gorfodol alluedd ar yr adeg berthnasol, mae'r cyfeiriad at "person" ym mharagraff 3A(1)(a) o Atodlen 17 i'r Ddeddf i'w ddarllen fel cyfeiriad at gynrychiolydd i'r person hwnnw.

Erlid am ymddygiad cynrychiolwyr

5.—(1) Pan fo rheoliad 3 yn gymwys i hawliad o dan baragraff 3A(1)(b) o Atodlen 17 i'r Ddeddf, mae'r cyfeiriadau at "parent" yn adran 86(2), (3) a (4) o'r Ddeddf i'w darllen fel cyfeiriadau at gynrychiolydd i'r riant hwnnw.

(2) Pan fo rheoliad 4 yn gymwys i hawliad o dan baragraff 3A(1)(a) o Atodlen 17 i'r Ddeddf mewn cysylltiad â phlentyn sy'n hŷn na'r oedran ysgol gorfodol, mae'r cyfeiriadau at "parent" yn adran 86(2), (3) a (4) o'r Ddeddf i'w darllen fel cyfeiriadau at gynrychiolydd i'r plentyn hwnnw.

(3) Pan fo rheoliad 4 yn gymwys i hawliad o dan baragraff 3A(1)(a) o Atodlen 17 i'r Ddeddf mewn cysylltiad ag oedolyn, mae'r cyfeiriadau yn adran 86(2), (3) a (4) o'r Ddeddf at—

- (a) "parent or sibling" i'w darllen fel cyfeiriadau at gynrychiolydd i'r oedolyn hwnnw, a
- (b) "child" i'w darllen fel cyfeiriadau at yr oedolyn hwnnw.

Deddf Galluedd Meddyliol 2005

6.—(1) Mae rheoliadau 3, 5(1) a (2) yn cael effaith er gwaethaf adran 27(1)(g) o Ddeddf Galluedd Meddyliol 2005(1).

(2) Pan fo rheoliad 4 yn gymwys mewn cysylltiad â phlentyn, mae'r rheoliad yn cael effaith er gwaethaf adran 27(1)(g) o Ddeddf Galluedd Meddyliol 2005.

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

(2) Where regulation 4 applies in respect of a child, the regulation has effect despite section 27(1)(g) of the Mental Capacity Act 2005.

(1) Nid yw adran 27(1)(g) yn caniatáu i benderfyniadau ar gyflawni cyfrifoldebau riant mewn materion nad ydynt yn ymwneud ag eiddo plentyn gael eu gwneud ar ran person.

(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.

Kirsty Williams

Y Gweinidog Addysg, un o Weinidogion Cymru
Am 6.50 p.m. ar 24 Mawrth 2021

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Argraffwyd a chyhoeddwyd yn y Deyrnas Unedig gan The Stationery Office Limited o dan awdurdod ac arolygiaeth Jeff James, Rheolwr Gwasg Ei Mawrhydi ac Argraffydd Deddfau Seneddol y Frenhines.

Minister for Education, one of the Welsh Ministers
At 6.50 p.m. on 24 March 2021

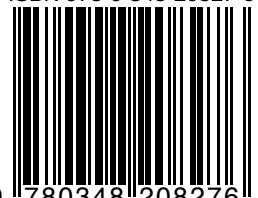
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