

SL(5)798 – The Equality Act 2010 (Capacity of parents and persons over compulsory school age) (Wales) Regulations 2021

Background and Purpose

These Regulations are proposed to be made by the Welsh Ministers under section 207(4) of, and paragraph 6F of Schedule 17 to, the Equality Act 2010 (“the 2010 Act”).

The Regulations provide persons over compulsory school age, and parents of children not over compulsory school age, who lack capacity with the right to bring a disability discrimination claim against a responsible body for a school in Wales in accordance with Schedule 17 to the 2010 Act.

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 (“the 2005 Act”), namely, when they lack mental, not legal, capacity.

The Regulations also require references in section 86 of the 2010 Act to be read differently so that pupils, and persons applying to be pupils, cannot be victimised due to specified protected acts by the representative, such as bringing proceedings under the 2010 Act.

The Regulations will come into force on 1 September 2021.

Procedure

Draft Affirmative.

The Welsh Ministers have laid a draft of the Regulations before the Senedd. The Welsh Ministers cannot make the Regulations unless the Senedd approves the draft Regulations.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

The following point is identified for reporting under Standing Order 21.3 in respect of this instrument.

1. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.

Regulations 3, 4 and 5 of these Regulations, which will come into force on 1 September 2021, refer to provisions in Schedule 17 to the 2010 Act as prospectively inserted by



paragraph 19 of Schedule 1 to the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (“the 2018 Act”).

The relevant provisions of paragraph 19 will therefore need to be brought into force by 1 September 2021 pursuant to a Commencement Order made by the Welsh Ministers under section 100(3) of the 2018 Act in order for the provisions of these Regulations to operate effectively.

Paragraph 3.7 of the Explanatory Memorandum to these Regulations confirms that:

“The Welsh Ministers intend to exercise their commencement powers (under section 100 of the Act) to provide for functions under the Act to come into force on a phased basis from 1 September 2021.”

Welsh Government response

A Welsh Government response is not required.

Committee Consideration

The Committee considered the instrument at its meeting on 22 March 2021 and reports to the Senedd in line with the reporting point above.

