



## 2016 CHAPTER 8

### *Rights of child over compulsory school age*

#### **Rights of child over compulsory school age in relation to special educational provision**

**11.—**(1) Part 2 of the 1996 Order is amended as set out in the Schedule for the purpose of conferring on a child over compulsory school age who has or may have special educational needs certain rights previously exercisable by the parent of that child.

(2) Regulations shall make provision about assistance and support to enable a child over compulsory school age to exercise any such right.

(3) Regulations shall make provision for cases where a child over compulsory school age lacks (or may lack) capacity to exercise any such right.

(4) Regulations made by virtue of subsection (3) may in particular make provision—

- (a) for, and in connection with, determining whether a child lacks capacity in relation to the exercise of any such right (including the criteria to be applied in making that determination);
- (b) for the exercise of any such right by the parent of the child in a case where it is determined that the child lacks capacity to exercise the right;
- (c) for Part 2 of the 1996 Order to have effect in such a case with such modifications as may be prescribed by the regulations.

(5) In this section “regulations” means—

- (a) in relation to the right to appeal to the Tribunal, regulations made by the Department of Justice under Article 23 of the 1996 Order; and

(b) in relation to any other right mentioned in subsection (1), regulations made by the Department.

(6) Regulations made by the Department under this section are subject to negative resolution.

**Rights of child over compulsory school age in relation to disability discrimination claims**

**12.—**(1) In Article 22 of the Special Educational Needs and Disability (Northern Ireland) Order 2005 (jurisdiction and powers of the Tribunal) in paragraph (1) for “by A’s parent” substitute “—

(i) by A, if A is over compulsory school age; or

(ii) by A’s parent in any other case.”.

(2) In Article 23 of that Order (Tribunal procedure) after paragraph (2) insert—

“(2A) In a case falling within Article 22(1)(i) where a claim is made by A, the regulations may in particular make provision—

(a) about assistance and support to enable A to pursue the claim;

(b) for cases where, in the opinion of the Tribunal, A lacks (or may lack) capacity to pursue the claim, including provision—

(i) for, and in connection with, determining whether A lacks capacity to pursue a claim (including the criteria to be applied in making that determination);

(ii) for A’s parent to pursue the claim in a case where it is determined that A lacks capacity to do so;

(iii) for provisions of the regulations to apply with modifications in relation to such a claim.”.