

---

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations supplement the procedural framework assessing a child or young person with special educational needs, and the procedure for making, reviewing, amending and ceasing to maintain an EHC plan, set out in Part 3 of the Children and Families Act 2014 (“the Act”). They require local authorities to notify the child’s parent or the young person of decisions within certain timescales, as well as notifying them of any right to appeal such decision. (*regulations 3 to 31*).

The Regulations include details of mediation, both where mediation has to be considered before issuing an appeal in the First-tier Tribunal, and where mediation is desired in any other case, and the action local authority and commissioning bodies must take as a result of the mediation (*regulations 32 to 42*).

The Regulations also set out the powers of the First-tier Tribunal and the timescales in which local authorities must comply with orders of the Tribunal (*regulations 43 to 45*).

The Regulations prescribe the period of the academic year, for the purposes of continuing to maintain an EHC plan beyond a young person’s 25<sup>th</sup> birthday (*regulation 46*). They also make provision requiring a local authority to disclose an EHC plan to a person in connection with an assessment for a disabled student’s allowance in connection with undertaking higher education, and to the higher education institution itself, at the request of the young person (*regulation 47*). They set out the time period in which a child or young person may remain at a special school or post-16 institution when admitted for the purposes of an assessment (*regulation 48*).

The Regulations set out the qualifications and experience that SENCOs must have (*regulation 49*) and details of functions in relation to those SENCOs (*regulation 50*). They also set out details of the information to be included in a school’s SEN information report and requirements for publication (*regulations 51 and 52 and schedule 1*).

Provision is made in relation to the local offer. The Regulations set out details of what must be included in the local offer (*regulation 53 and Schedule 2*) and who the local authority must consult about the local offer (*regulations 54 and 55*), as well as requirements in relation to publication (*regulations 56 and 57*).

The Regulations also make provision in relation to approving schools and post-16 institutions under section 41. They set out the type of special post-16 institution that can be approved, and matters to be taken into account when approving such institutions and independent educational institutions and independent schools. They also set out the matters to be taken into account and the procedure when withdrawing approval, and require the list of approved institutions to be published (*regulations 58-62*).

Part 6 of the Regulations deals with parents and young people who lack mental capacity to take the decisions or actions required. For the purposes of the Act, a person lacks capacity when they lack capacity within the meaning of the Mental Capacity Act 2005, that is when they lack mental, and not legal capacity. The Regulations provide that where a child’s parent lacks capacity all references to a child’s parent in Part 3 of the Act and all references in these Regulations (except two which are identified in regulation 63) are to be read as a reference to the representative of the parent (*regulation 63*). The Regulations also provide that, where a young person lacks capacity, the references to a young person in provisions in the Act identified in Part 1 of Schedule 3 to the Regulations are to be read as if they referred to both the young person and his alternative person; the references to a young person in provisions in the Act identified in Part 2 of Schedule 3 are to

**Status:** This is the original version (as it was originally made).

be read as if they referred to the young person's alternative person instead of the young person; the references to a young person in the provisions in these Regulations identified in Part 3 of Schedule 3 are to be read as if they referred to both the young person and to his alternative person; and the references to a young person in the provisions in these Regulations identified in Part 4 of Schedule 3 are to be read as if they referred to the young person's alternative person instead of to the young person (*regulation 65 and Schedule 3*).

The provisions identified in Parts 1 and 3 of Schedule 3 are those provisions in which, in relation to a child rather than a young person, both the child and the child's parent are involved in the decision or action. The provisions identified in Parts 2 and 4 of Schedule 3 are those provisions in which, in relation to a child rather than a young person, only the child's parent is involved.

The Regulations also make clear that the provisions concerning mental capacity have effect in spite of section 27(1)(g) of the Mental Capacity Act 2005 (*regulation 65*)