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## EXPLANATORY NOTE

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

These Regulations supplement the procedural framework for assessing detained persons with special educational needs, and for subsequent mediation and appeals, which is set out in sections 70 to 75 of the Children and Families Act 2014 (“the Act”).

*Regulations 3 to 15* set out the procedure for carrying out a detained person’s EHC needs assessment and making an EHC plan. This includes prescribing time-scales in which decisions need to be made and to whom the home authority needs to contact at each stage of the assessment process. The regulations specify the factors which the home authority need to consider when carrying out an assessment and the information and advice which should be made available to the detained person and, where the detained person is a child, the child’s parent.

*Regulation 16* describes what happens when a detained person is released into a local authority which is not the home authority.

*Regulation 17* prescribes the circumstances in which a detained person’s EHC plan may be disclosed.

*Regulations 18 to 27* set out how mediation should be conducted where this needs to be considered before a detained person may exercise an appeal right.

*Regulations 28 and 29* set out the powers of the First-tier Tribunal when dealing with appeals from detained persons, and the time-scales in which local authorities must comply with orders of the Tribunal.

*Regulation 30* specifies what happens when the home authority states that it will not oppose an appeal.

*Part 5 and the Schedule* concerns parents (regulation 31) and young people (regulation 32) who lack mental capacity to take 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.

*Regulation 31* describes that where the child’s parent lacks capacity, and the appropriate person is the child’s parent, all references to the appropriate person in Part 3 of the Act and these Regulations are to be read as if they were to the representative of the parent. Where the child’s parent lacks capacity, all references to the child’s parent in these regulations are to be read as the representative of the parent, except for the reference in regulation 6(1)(b)(iv).

*Regulation 32* describes where the young person lacks capacity, where the appropriate person is a young person, all references to the appropriate person in Part 3 of the Act and these Regulations are to be read as if they were to the alternative person. In cases where the young person lacks capacity, where the detained person is a young person, references in these regulation to the detained person in Part 1 of the Schedule should be read as references to both the detained person and the alternative person, and the reference in these regulations to detained person in Part 2 of the Schedule is to be read as a reference to the alternative person.

*Regulation 33* makes clear that the provisions concerning mental capacity have effect in spite of section 27(1)(g) of the Mental Capacity Act 2005.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen. An Explanatory Memorandum is available alongside this instrument on [www.legislation.gov.uk](http://www.legislation.gov.uk).