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STATUTORY INSTRUMENTS

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**2015 No. 62**

**EDUCATION, ENGLAND**

The Special Educational Needs and Disability  
(Detained Persons) Regulations 2015

<i>Made</i>	- - - -	<i>26th January 2015</i>
<i>Laid before Parliament</i>		<i>28th January 2015</i>
<i>Coming into force</i>	- -	<i>1st April 2015</i>

The Secretary of State makes the following Regulations, in exercise of the powers conferred by sections 31(4), 36(11), 37(4)(1), 44(7), 56(1)(2), 71(11), 73(4), 74(3), 80(1) and 135(3) of the Children and Families Act 2014(3):

**PART 1**

**Introduction**

**Citation and commencement**

1. These Regulations may be cited as the Special Educational Needs and Disability (Detained Persons) Regulations 2015 and come into force on 1st April 2015.

**Interpretation**

2.—(1) In these Regulations(4)—

“the Act” means the Children and Families Act 2014;

“detained person’s health services commissioner” has the same meaning as in section 74(8) of the Act;

“the home commissioning body” means the body which was responsible for commissioning health services for the detained person immediately before the detention.

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(1) Section 72(2) applies the powers which are in section 37(4) with modifications.

(2) Section 73(9) applies the powers which are in section 56(1) with modifications.

(3) [2014 c.6](#).

(4) The definitions in the Act are applied throughout these Regulations.

## PART 2

### Detained persons with special educational needs

#### *Assessments*

#### **Consideration of request**

**3.** A home authority must consult the appropriate person and the person in charge of the relevant youth accommodation where the detained person is detained as soon as practicable after—

- (a) receiving a request to secure a detained person's EHC needs assessment under section 71(2) of the Act, or
- (b) the detained person has been brought or comes to the attention of the authority in accordance with section 71(4)(b) or (c) of the Act,

before determining whether it may be necessary for special educational provision to be made for the detained person in accordance with an EHC plan on release from detention.

#### **Determination whether or not special educational provision may be necessary**

**4.—(1)** Where a home authority determines that it is not necessary for special educational provision to be made for the detained person in accordance with an EHC plan on release from detention it must notify the appropriate person and the person in charge of the relevant youth accommodation where the detained person is detained, in accordance with section 71(6) of the Act as soon as practicable, but in any event within 6 weeks of—

- (a) receiving a request to secure a detained person's EHC needs assessment under section 71(2) of the Act, or
- (b) the date on which the detained person has been brought or comes to the attention of the authority in accordance with section 71(4)(b) or (c) of the Act.

**(2)** Where the home authority is considering securing a detained person's EHC needs assessment it must also notify—

- (a) the home commissioning body,
- (b) the detained person's health services commissioner,
- (c) the officers of the home authority who exercise the home authority's social services functions for children or young people with special educational needs,
- (d) the youth offending team responsible for the detained person,
- (e) in relation to a detained person who is a child, if the child is a registered pupil<sup>(5)</sup> at a school, the head teacher of that school (or the person holding the equivalent position),
- (f) in relation to a detained person who is a young person—
  - (i) if the young person is a registered pupil at a school, the head teacher of that school (or the person holding the equivalent position), or
  - (ii) if the young person is a student at a post-16 institution, the principal of that institution (or the person holding the equivalent position), and
- (g) in relation to a detained person who has been deleted from the admission register in accordance with regulation 8(1)(i) of the Education (Pupil Registration)(England)

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(5) Pupil has the meaning in section 3 of EA 1996.

Regulations 2006(6), the person from whom the authority is required to seek advice and information from under regulation 6(1)(b).

### **Decision whether or not to conduct a detained person's EHC needs assessment**

5.—(1) The home authority must notify the appropriate person and the person in charge of the relevant youth accommodation where the detained person is detained as soon as practicable and in any event within 6 weeks of—

- (a) receiving a request to secure a detained person's EHC needs assessment under section 71(2) of the Act, or
- (b) the date on which the detained person has been brought or comes to the attention of the authority in accordance with section 71(4)(b) or (c) of the Act,

of its decision whether or not it is necessary to secure a detained person's EHC needs assessment.

(2) The home authority must also notify the persons who were notified in accordance with regulation 4(2) of its decision.

(3) When notifying the appropriate person of its decision that it is not necessary to secure a detained person's EHC needs assessment, it must also notify them of—

- (a) their right to appeal that decision,
- (b) the time limits for doing so,
- (c) the information concerning mediation, set out in regulation 18, and
- (d) the availability of information and advice in connection with a detained person's EHC needs assessment.

(4) The home authority need not comply with the time limit referred to in paragraph (1) if it is impractical to do so because—

- (a) the home authority has requested advice from the head teacher or principal of a school or post-16 institution (or person holding the equivalent position) during a period beginning one week before any date on which that school or institution was closed for a continuous period of not less than 4 weeks from that date and ending one week before the date on which it re-opens,
- (b) exceptional personal circumstances affect the detained person or, where the detained person is a child, the child's parent during the time period referred to in paragraph (1), or
- (c) where the detained person is a child, the child's parent is absent from the area of the authority for a continuous period of not less than 4 weeks during the time period referred to in paragraph (1).

### **Information and advice to be obtained for a detained person's EHC Needs Assessments**

6.—(1) Where the home authority secures a detained person's EHC needs assessment, it must seek the following advice and information, on the needs of the detained person on release from detention, what provision may be required to meet such needs and the outcomes that are intended to be achieved by the detained person receiving that provision on release from detention—

- (a) advice and information from the appropriate person,
- (b) educational advice and information—
  - (i) from the head teacher or principal of the school or post-16 or other institution that the detained person was attending immediately prior to their detention,

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(6) [S.I 2006/1751](#) to which there are amendments not relevant to these Regulations.

- (ii) where this is not available, from a person who the home authority is satisfied has experience of teaching children or young people with special educational needs, or knowledge of the differing provision which may be called for in different cases to meet those needs, or
  - (iii) if the detained person was not attending a school or post-16 or other institution immediately prior to their detention and advice cannot be obtained under subparagraph (ii), from a person who was responsible for educational provision for the detained person at any time prior to their detention, and
  - (iv) if any parent of the detained person is a serving member of Her Majesty's armed forces, also from the Secretary of State for Defence,
- (c) medical advice and information from a health care professional identified by the home commissioning body,
  - (d) psychological advice and information from an educational psychologist,
  - (e) advice and information in relation to social care,
  - (f) advice and information from the person in charge of the relevant youth accommodation where the detained person is detained,
  - (g) advice and information from the youth offending team responsible for the detained person,
  - (h) advice and information from any other person the home authority thinks is appropriate,
  - (i) where the detained person would have been beyond year 9 (if not for their detention), advice and information in relation to provision to assist the detained person in preparation for adulthood and independent living, and
  - (j) advice and information from any person the appropriate person reasonably requests that the home authority seek advice from.
- (2) Where it appears to the authority, in consequence of medical advice or otherwise, that the detained person in question is either or both—
- (a) hearing impaired;
  - (b) visually impaired;
- and any person from whom advice and information is sought as provided in paragraph (1)(b) is not qualified to teach children or young people who are so impaired, then the advice sought must be advice given after consultation with a person who is so qualified.
- (3) When seeking advice in accordance with paragraphs (1)(b) to (j), the home authority—
- (a) must provide the person from whom advice is being sought with copies of—
    - (i) any representations made by the appropriate person, and
    - (ii) any evidence submitted by or at the request of the appropriate person.
  - (b) may, with the consent of the person in charge of the relevant youth accommodation, provide the persons from whom advice is being sought with any representations made and any evidence submitted under section 71(2) of the Act, by the person in charge of the relevant youth accommodation where the detained person is detained.
- (4) The home authority must not seek any of the advice referred to in paragraphs (1)(b) to (j) if such advice has previously been provided for any purpose and the person providing that advice, the home authority and the appropriate person are satisfied that it is sufficient for the purposes of the detained person's EHC needs assessment.

### **Matters to be taken into account in securing a detained person's EHC needs assessment**

7. When securing an EHC needs assessment a home authority must—

- (a) consult the detained person and, where the detained person is a child, the child's parent and take into account their views, wishes and feelings,
- (b) consider any information provided to the home authority by or at the request of the detained person and, where the detained person is a child, the child's parent,
- (c) consider the information and advice obtained in accordance with regulation 6(1),
- (d) engage the detained person and, where the detained person is a child, the child's parent and ensure they are able to participate in decisions,
- (e) have regard to the need to support the detained person in order to facilitate their development, and help them to achieve their best educational and other outcomes, and
- (f) minimise disruption for the detained person and their family.

#### **Duty to co-operate in a detained person's EHC needs assessment**

**8.**—(1) Where a home authority requests the co-operation of a body in securing a detained person's EHC needs assessment in accordance with section 31 of the Act, that body must comply with such a request within 6 weeks of the date on which they receive it.

(2) A body need not comply with the time limit referred to in paragraph (1) if it is impractical to do so because—

- (a) exceptional circumstances affect the detained person or, where the detained person is a child, the child's parent during that 6 week period;
- (b) where the detained person is a child, the child's parent is absent from the area of the authority for a continuous period of not less than 4 weeks during that 6 week period;
- (c) where the detained person has an alternative person, the alternative person is absent from the area of the authority for a continuous period of not less than 4 weeks during that 6 week period;
- (d) the detained person fails to keep an appointment for an examination or a test made by the body, during that 6 week period.

#### **Provision of advice, information and support to the appropriate person**

**9.** When securing a detained person's EHC needs assessment the home authority must consider whether the detained person or, where the detained person is a child, the child's parent requires any information, advice and support in order to enable them to take part effectively in the assessment, and if it considers that such information, advice or support is necessary, it must provide it.

#### **Decision not to secure an EHC plan**

**10.**—(1) Where, following a detained person's EHC needs assessment, a home authority decides that it is not necessary for special educational provision to be made for the detained person in accordance with an EHC plan, the notification given in accordance with section 71(10) of the Act must be given as soon as practicable, and in any event within 16 weeks of the home authority receiving a request for a detained person's EHC needs assessment in accordance with section 71(2) of the Act, or the date on which the detained person has been brought or comes to the attention of the authority in accordance with section 71(4)(b) or (c) of the Act.

(2) The home authority must also notify —

- (a) the home commissioning body,
- (b) the detained person's health services commissioner,
- (c) the youth offending team responsible for the detained person, and

- (d) the person notified in accordance with regulation 4(2)(e),(f) or (g).
- (3) When notifying the appropriate person in accordance with paragraph (1) the home authority must also notify them of—
  - (a) their right to appeal that decision,
  - (b) the time limits for doing so,
  - (c) the information concerning mediation, set out in regulation 18, and
  - (d) the availability of information and advice relating to the special educational needs of children and young people.
- (4) The home authority need not comply with the time limit referred to in paragraph (1) if it is impractical to do so because—
  - (a) the authority has requested advice from the head teacher or principal of a school or post-16 institution (or person holding the equivalent position) during a period beginning one week before any date on which that school or institution was closed for a continuous period of not less than 4 weeks from that date and ending one week before the date on which it re-opens;
  - (b) exceptional personal circumstances affect the detained person or, where the detained person is a child, the child's parent during that time period; or
  - (c) where the detained person is a child, the child's parent is absent from the area of the authority for a continuous period of not less than 4 weeks during that time period.

### *EHC plans*

#### **Preparation of EHC plans for a detained person**

- 11.** When preparing a detained person's EHC plan a home authority must—
- (a) take into account the evidence received when securing the detained person's EHC needs assessment, and
  - (b) consider how best to achieve the outcomes to be sought for the detained person on release from detention.

#### **Form of EHC plan**

- 12.—(1)** When preparing an EHC plan a home authority must set out—
- (a) the views, interests and aspirations of the detained person and, where the detained person is a child, the child's parent (section A);
  - (b) the detained person's special educational needs on release from detention (section B);
  - (c) the detained person's health care needs on release from detention, which relate to their special educational needs (section C);
  - (d) the detained person's social care needs on release from detention, which relate to their special educational needs or to a disability (section D);
  - (e) the outcomes sought for the detained person on release from detention (section E);
  - (f) the special educational provision required by the detained person on release from detention (section F);
  - (g) any health care provision on release from detention reasonably required by the learning difficulties or disabilities which result in the detained person having special educational needs (section G);

- (h) any—
  - (i) social care provision which must be made for the detained person as a result of section 2 of the Chronically Sick and Disabled Persons Act 1970(7) on release from detention (section H1);
  - (ii) other social care provision on release from detention reasonably required by the learning difficulties or disabilities which result in the detained person having special educational needs (section H2);
- (i) the name of the school, post-16 institution or other institution to be attended by the detained person on release from detention and the type of that institution or, where the name of a school or other institution is not specified in the EHC plan, the type of school or other institution to be attended by the detained person on release from detention (section I); and
- (j) where any special educational provision is to be secured by a direct payment on release from detention, the special educational needs and outcomes to be met by the direct payment (section J),

and each section must be separately identified.

(2) The health care provision specified in the EHC plan in accordance with paragraph (1)(g) must be agreed by the home commissioning body.

(3) Where the detained person would have been in or beyond year 9 (if not for their detention), the EHC plan must include within the special educational provision, health care provision and social care provision specified, provision to assist the detained person in preparation for adulthood and independent living on release from detention.

(4) The advice and information obtained in accordance with regulation 6(1) must be set out in appendices to the EHC plan (section K).

### **Timescales for EHC plans**

- 13.—(1) When a home authority sends a draft plan to the appropriate person it must—
- (a) give them at least 15 days, beginning with the day on which the draft plan was served, in which to—
    - (i) make representations about the content of the draft plan, and to request that a particular school or other institution be named in the plan, and
    - (ii) require the home authority to arrange a meeting between them and an officer of the home authority at which the draft plan can be discussed, and
  - (b) advise them where they can find information about the schools and colleges that are available for the detained person to attend on release from detention.
- (2) A home authority must send the finalised EHC plan to—
- (a) the appropriate person,
  - (b) the person in charge of the relevant youth accommodation where the detained person is detained,
  - (c) the youth offending team responsible for the detained person,
  - (d) the governing body, proprietor or principal of any school, or other institution named in the EHC plan,

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(7) 1970 c.44; section 2(1) was amended by section 14(1) and Schedule 2, paragraph 12 of the Local Authority Social Services Act 1970 (c.42); and by section 272(1) and Schedule 30 of the Local Government Act 1972 (c.70); and section 66, and paragraph 12 of Schedule 9 and Schedule 10 of the National Health Service and Community Care Act 1990 (c.19). Section 2(1A) was inserted by section 148(3) of the Health and Social Care Act 2008 (c.14). Section 2(2) was repealed by section 272(1) and Schedule 30 of the Local Government Act 1972.

- (e) the home commissioning body, and
- (f) the detained person's health services commissioner

as soon as practicable, and in any event within 20 weeks of the home authority receiving a request for an EHC needs assessment in accordance with section 71(2) of the Act, or on the date which the detained person has been brought or comes to the attention of the authority in accordance with section 71(4)(b) or (c) of the Act.

(3) The home authority need not comply with the time limit referred to in paragraph (2) if it is impractical for any of the reasons set out in regulation 10(4)(a) to (c)

### **Sending the finalised EHC plan**

**14.**—(1) The finalised EHC plan must be in the form of the draft plan sent in accordance with regulation 13(1), or in a form modified in the light of the representations made in accordance with that regulation.

(2) When sending a copy of the finalised EHC plan to the appropriate person in accordance with section 39(8)(a) or 40(5)(a)(8) of the Act, the home authority must notify them of—

- (a) their right to appeal matters within the EHC plan in accordance with section 73(2)(c) of the Act,
- (b) the time limits for doing so,
- (c) the information concerning mediation, set out in regulation 18, and
- (d) the availability of information and advice relating to the special educational needs of children and young people.

### **Needs assessments which are not completed**

**15.**—(1) —Where as a consequence of a release from detention, a local authority is required to complete an EHC needs assessment in respect of a child or young person for whom a detained person's EHC needs assessment was started but not completed; the local authority must ensure, that —

- (a) any EHC plan is finalised within 20 weeks;
- (b) any decision not to secure an EHC plan is finalised within 16 weeks;
- (c) a decision whether or not to secure an EHC needs assessment is made within 6 weeks;

from the date which the detained person has been brought or comes to the attention of the local authority in accordance with section 71(4)(b) or (c) of the Act.

(2) Where paragraph (1) applies, a local authority may treat anything done in relation to a detained person's EHC needs assessment as discharging any comparable requirement in relation to an EHC needs assessment.

(3) Paragraph (1) does not apply where the local authority carrying out the EHC needs assessment post-detention is different from the home authority which started the detained person's EHC needs assessment.

(4) Where as a consequence of a detention order a home authority is required to complete a detained person's EHC needs assessment in respect of a detained person for whom an EHC needs assessment was started but not completed, the local authority must ensure that —

- (a) any EHC plan is finalised within the 20 weeks specified in regulation 13(2);
- (b) any decision not to secure an EHC plan is finalised within the 16 weeks specified in regulation 10(1);

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(8) As applied by section 72(2) of the Act.



- (c) a decision whether or not to secure an EHC needs assessment is made within the 6-weeks specified in regulation 5(1);

from the date which the local authority became responsible for the child or young person.

(5) Where paragraph (4) applies, a home authority may treat anything done in relation to an EHC needs assessment as discharging any comparable requirement in relation to a detained person's EHC needs assessment.

(6) In this regulation, "comparable requirement" has the meaning set out in the code of practice issued under section 77(1) of the Act.

### **Transfer of a kept EHC plan**

**16.**—(1) This regulation applies where on the release date a detained person in respect of whom an EHC plan is kept, becomes (or is to become) the responsibility of a local authority which is not the home authority ("the new authority").

(2) The home authority must disclose the EHC plan to the new authority within 5 working days following the date of being informed of the release of the detained person to the new authority.

(3) The new authority must disclose the EHC plan to the responsible commissioning body within 5 working days following the date it either became responsible for the child or young person, or if later, the date it received a copy of the EHC plan under paragraph (2).

(4) Where it is not practicable for the responsible commissioning body to arrange the health care provision specified in the EHC plan, it must within 15 working days following the date it received a copy of the EHC plan, request that the new authority makes an EHC needs assessment or reviews the EHC plan, and where the new authority receives such a request, it must comply with that request.

(5) In this regulation, "responsible commissioning body" has the same meaning as in section 42(4) of the Act.

### **Restriction on disclosure of EHC plans**

**17.**—(1) When a home authority becomes responsible for keeping an EHC plan for a detained person it must send a copy of the EHC plan to—

- (a) the person in charge of the relevant youth accommodation where the detained person is detained,
- (b) the youth offending team responsible for the detained person, and
- (c) the detained person's health services commissioner

within 5 working days following either the date which the home authority first kept the plan or became aware of the detention if this is later.

(2) If a home authority is informed under section 39A of the Crime and Disorder Act 1989(9) that a detained person has moved, or will move, to new relevant youth accommodation, it must send a copy of the EHC plan to the person in charge of that relevant youth accommodation, within 5 working days following the date on which it was informed.

(3) Subject to the provisions of the Act, and of these Regulations, an EHC plan in respect of a detained person must not be disclosed by the home authority without the detained person's consent except—

- (a) to persons to whom, in the opinion of the home authority concerned, it is necessary to disclose the whole or any part of the EHC plan in the interests of the detained person;

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(9) 1989 c.37; as inserted by section 51 of the Apprenticeships, Skills, Children and Learning Act 2009 (c.22) and amended by Article 5(1) and paragraph 16 of Part 1 of Schedule 2 of SI 2010/1158.

- (b) for the purposes of any appeal under the Act;
  - (c) for the purposes of educational research which, in the opinion of the home authority, may advance the education or training of children or young persons with special educational needs, if, but only if, the person engaged in that research undertakes not to publish anything contained in, or derived from, an EHC plan otherwise than in a form which does not identify any individual including, in particular, the detained person concerned and, where the detained person is a child, the child's parent;
  - (d) on the order of any court or for the purposes of any criminal proceedings;
  - (e) for the purposes of any investigation under Part 3 of the Local Government Act 1974(10) (investigation of maladministration);
  - (f) to the Secretary of State when he requests such disclosure for the purposes of deciding whether to—
    - (i) give directions, make determinations, or exercise any contractual rights under an Academy's funding agreement (for any purpose), or
    - (ii) make an order under section 496, 497 or 497A of EA 1996(11).
  - (g) for the purposes of an assessment of the needs of the detained person with respect to the provision of any statutory services for him or her being carried out by officers of an authority by virtue of arrangements made under section 5(5) of the Disabled Persons (Services, Consultation and Representation) Act 1986(12);
  - (h) for the purposes of a local authority in the performance of its duties under sections 22(3) (a), 85(4)(a), 86(3)(a) and 87(3) of the Children Act 1989(13); and
  - (i) to Her Majesty's Chief Inspector of Education, Children's Services and Skills(14), exercising the right to inspect and take copies of an EHC plan in accordance with section 10(1)(e) of the Education Act 2005(15) and section 140(2)(a) of the Education and Inspections Act 2006.
- (4) A detained person who is a child may consent to the disclosure of an EHC plan for the purposes of this regulation if his or her age and understanding are sufficient to allow him or her to understand the nature of that consent.
- (5) If a detained person who is a child does not have sufficient age or understanding to allow him or her to consent to such disclosure, the child's parent may consent on the child's behalf.
- (6) The arrangements for keeping a detained person's EHC plan must be such that they ensure, so far as is reasonably practicable, that unauthorised persons do not have access to it.

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(10) 1974 c.7.

(11) Section 496 was amended by article 5(1) of, and paragraph 7(2) of Schedule 2 to, SI 2010/1158; by section 99 of, and paragraph 2(4) of Schedule 5 to, the *School Standards and Organisation (Wales) Act 2013 (anaw.1)*; by section 140(1) of, and paragraph 129 of Schedule 30 of SSFA 1998; by section 168(1) of the Education and Inspections Act 2006 (c.40); by section 45(2)(b) of the Education Act 2001 (c.21); and by section 59 of, and paragraph 7 of Schedule 2 to, the Apprenticeships, Skills, Children and Learning Act 2009 (c.22). Section 497 was amended by article 5(1) of, and paragraph 7(2) of Schedule 2 to, SI 2010/1158; by section 99 of, and paragraph 2(5) of Schedule 5 to, the *School Standards and Organisation (Wales) Act 2013 (anaw.1)*; by section 140(1) of, and paragraph 130 of Schedule 30 of SSFA 1998; by section 168(2) of the Education and Inspection Act 2006 (c.40); by section 45(2)(c) of the Education Act 2011 (c.21); and by section 59 of, and paragraph 8 of Schedule 2 to, the Apprenticeships, Skills, Children and Learning Act 2009 (c.22). Section 497A was inserted into EA 1996 by section 8 of SSFA 1998 Act, and amended by section 60 of and Schedule 22 to the Education Act 2002 (c.32) and by section 59 of and Schedule 2 to the Apprenticeships, Skills, Children and Learning Act 2009.

(12) 1986 c.33 as amended by section 93 and paragraph 91(1), Part II of Schedule 8 the Further and Higher Education Act 1992 (c.13).

(13) 1989 c.41; section 85(4) was amended by section 17(1)(4) of the Children and Young Persons Act 2008 (c.23); section 86(3) was amended by section 17(6) and (9) of the Children and Young Persons Act 2008; and section 87(3) was amended by section 43(2)(b) of the Education Act 2011 (c.21).

(14) Her Majesty's Chief Inspector of Education, Children's Services and Skills is appointed under the Chief Inspector of Education, Children's Services and Skills Order 2011 (S.I. 2011/2720) which is made under section 113(1) of the Education and Inspections Act 2006 (c.40).

(15) 2005 c.18.

(7) In this regulation, any reference to an EHC plan includes a reference to any representations, evidence, advice or information obtained in relation to an EHC plan.

## PART 3

### *Mediation*

#### **Information to be included in notices sent by a home authority**

**18.** Where a notice sent by a home authority must include the information set out in this regulation, that information is—

- (a) any requirement to obtain a certificate in accordance with section 55(4) or (5) of the Act<sup>(16)</sup> (“a mediation certificate”) before an appeal can be made to the First-tier Tribunal<sup>(17)</sup>;
- (b) contact details for the mediation adviser that the appropriate person should contact to obtain that certificate;
- (c) the timescales for requesting mediation;
- (d) the requirement to inform the home authority if the appropriate person wishes to pursue mediation; and
- (e) contact details for any person acting on behalf of the home authority whom the appropriate person should contact if they wish to pursue mediation.

#### **Requirement to consider mediation**

**19.** Where an appropriate person is required to obtain a mediation certificate, he or she must contact the mediation adviser within 2 months of the date that written notice of the home authority’s decision was sent, and inform the mediation adviser that he or she wishes to appeal and inform the mediation adviser whether they wish to pursue mediation.

#### **Where the appropriate person does not wish to or fails to pursue mediation**

**20.**—(1) Where an appropriate person who is required to obtain a mediation certificate informs the mediation adviser that he or she does not wish to pursue mediation, the mediation adviser must issue a mediation certificate under section 55(4) of the Act within 3 working days of being informed by the appropriate person.

(2) The mediation adviser may not issue such a certificate if the appropriate person did not contact the mediation adviser within 2 months of the date of the notice issued by the home authority.

(3) An appropriate person may seek leave to appeal to the First-tier Tribunal notwithstanding that he or she is required to obtain a mediation certificate and a mediation adviser has not issued a certificate to him or her, where the appropriate person has failed to comply with regulation 18 and the time for doing so has elapsed.

#### **Mediation**

**21.** Where the appropriate person has informed the mediation adviser that he or she wishes to pursue mediation, the home authority must arrange for mediation between it and the appropriate

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<sup>(16)</sup> As applied by section 73(7) of the Act.

<sup>(17)</sup> The First-tier Tribunal was established under section 3 of the Tribunals, Courts and Enforcement Act 2007 c.15.

person, within 30 days from the date on which the mediation adviser was informed by the appropriate person that he or she wishes to pursue mediation.

### **Arrangements for mediation**

**22.**—(1) The home authority must ensure that the mediation is attended by persons who have authority to resolve the mediation issues.

(2) The home authority must inform the appropriate person of the date and place of the mediation at least 5 working days prior to the mediation unless the appropriate person consents to this period of time being reduced.

### **Attendance at the mediation**

**23.**—(1) The following persons may attend the mediation—

- (a) the parties to the mediation;
- (b) any advocate or other supporter that the appropriate person wishes to attend the mediation;
- (c) where the child's parent is a party to the mediation, the child (with the agreement of the child's parent, the mediator and the person in charge of the relevant youth accommodation where the child is detained);
- (d) where the detained person's alternative person(18) is a party to the mediation, the young person (with the agreement of the alternative person and the mediator); and
- (e) any other person, with the consent of the parties to the mediation, or where there is no such agreement, with the consent of the mediator.

(2) Where the child's parent is a party to the mediation, the mediator must take reasonable steps to ascertain the views of the child about the issues being considered by the mediation.

(3) Where the young person's alternative person is a party to the mediation, the mediator must take reasonable steps to ascertain the views of the young person about the issues being considered by the mediation.

### **Mediation certificate under section 55(5) of the Act**

**24.**—(1) Where mediation is pursued before making an appeal to the First-tier Tribunal, the mediation adviser must issue a certificate under section 55(5) of the Act to the appropriate person within 3 working days of the conclusion of the mediation.

(2) Where mediation is pursued before making an appeal to the First-tier Tribunal and the home authority is unable to arrange for mediation within the period specified in regulation 21, the home authority must notify the mediation adviser of this fact as soon as possible after it realises that it is unable to arrange for mediation within that period.

(3) Where paragraph (2) applies, it is deemed that the appropriate person has participated in mediation, and the mediation adviser will issue a certificate under section 55(5) of the Act within 3 working days of being notified of this by the home authority, whether or not the appropriate person later participates in mediation.

### **Training, qualifications and experience of mediators**

**25.** Mediators must have sufficient knowledge of the legislation relating to special educational needs, health and social care to be able to conduct the mediation.

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(18) Alternative person has the meaning given in regulation 32(3) of these Regulations.

**Expenses**

26.—(1) Subject to paragraph (2), the home authority when arranging the mediation must pay the expenses as described in the table below, to —

- (a) the child’s parent, or
- (b) where the detained person has an alternative person, the alternative person attending the mediation—

**Table**

<i>Item</i>	<i>Description</i>
Travel Costs	Standard class public transport fares.  A mileage rate of 25p per mile for travel by car or motorcycle.  Taxi fares.
Repayment for loss of earnings	Loss of earnings up to £45.
Registered child or young person care expenses	Engagement of a registered child or adult carer at £5.35 per hour, per child or young person.
Overnight expenses	Expenses up to £81 per night for inner London or £71 per night for elsewhere or £21 per night if the stay is with family or friends.

(2) The home authority when arranging the mediation may require either or both of the following conditions before making payment of a claim for expenses under paragraph (1)—

- (a) payment is made with the prior agreement of the home authority;
- (b) payment is made upon receipt of satisfactory supporting evidence of the expenses claimed.

**Steps to be taken by a home authority**

27.—(1) This regulation applies where mediation has taken place and the parties to the mediation reach an agreement, such an agreement is to be recorded in writing (“the mediation agreement”).

(2) Where the issues in the mediation agreement are those on which the appropriate person has a right to appeal to the First-tier Tribunal, the home authority must comply with the time limits set out in regulation 29, as if the mediation agreement were an order of the First-tier Tribunal.

(3) Where the mediation agreement requires the home authority to do something in relation to which the appropriate person has no right of appeal to the First-tier Tribunal, the home authority must do that thing within two weeks of the date of the mediation agreement.

(4) The timescales referred to in paragraphs (2) and (3) do not apply where the parties to the mediation agree in writing to a different timescale.

## PART 4

### *Appeals*

#### **Powers of the First-tier Tribunal**

**28.**—(1) Before determining any appeal brought under section 73 of the Act, the First-tier Tribunal may, with the agreement of the parties, correct any deficiencies in the EHC plan which relate to the special educational needs or special educational provision for the detained person.

- (2) When determining an appeal the powers of the First-tier Tribunal include the power to—
- (a) dismiss the appeal;
  - (b) order the home authority to arrange a detained person’s EHC needs assessment under section 71 of the Act where the home authority has refused to do so, where the appeal is made under section 73(2)(a) of the Act;
  - (c) order the home authority to make and keep an EHC plan where the home authority has refused to do so, where the appeal is made under section 73(2)(b) of the Act;
  - (d) refer the case back to the home authority for them to reconsider whether, having regard to any observations made by the First-tier Tribunal, it is necessary for the home authority to determine the special educational provision for the detained person, where the appeal is made under section 73(2)(b) of the Act;
  - (e) order the home authority to substitute in the EHC plan the school or other institution or the type of school or other institution specified in the EHC plan, where the appeal concerns, the specific school or other institution, or the type of school or other institution named in the EHC plan, where the appeal is made under section 73(2)(c)(i) or (ii) of the Act;
  - (f) where appropriate, when making an order in accordance with paragraph (e) this may include naming—
    - (i) a special school or institution approved under section 41 of the Act where a mainstream school or mainstream post-16 institution is specified in the EHC plan, or
    - (ii) a mainstream school or mainstream post-16 institution where a special school or institution approved under section 41 of the Act is specified in the EHC plan.

#### **Compliance with the orders of the First-tier Tribunal**

**29.**—(1) This regulation applies if the First-tier Tribunal makes an order requiring a home authority to take any action.

(2) If the order requires a home authority to make a detained person’s EHC needs assessment, the home authority within 2 weeks of the order being made must notify the appropriate person that it must make the assessment.

- (3) If following a detained person’s EHC needs assessment, the home authority—
- (a) decides it is not necessary for special educational provision to be made for the detained person, in accordance with an EHC plan, the home authority must notify the appropriate person of its decision, giving reasons for it as soon as practicable, and in any event within 10 weeks of the date of the First-tier Tribunal’s order, or
  - (b) decides that it is necessary for special educational provision to be made for the detained person, in accordance with an EHC plan, the home authority must send the finalised plan to the appropriate person under regulation 14 and those specified in regulation 13(2) as soon as practicable and in any event within 14 weeks of the date of the First-tier Tribunal’s order.

(4) If the order requires a home authority to make and maintain an EHC plan, the home authority must—

- (a) issue a draft EHC plan within 5 weeks of the order being made, and
- (b) send a copy of the finalised EHC plan to the appropriate person under regulation 14(2) and those specified in regulation 13(2) as soon as practicable and in any event within 11 weeks of the date of the First-tier Tribunal's order.

(5) If the order refers the case back to the home authority for it to reconsider, the home authority must do so within 2 weeks of the order being made and must either send a copy of the draft EHC plan as required under regulation 12 or give notice as required under regulation 5 of any decision not to maintain an EHC plan.

(6) If the order requires the home authority to amend the name of the school or other institution or the type of school or other institution specified in the EHC plan, the home authority must issue the amended EHC plan within 2 weeks of the order being made.

(7) The home authority need not comply with the time limits specified in paragraph (4) and (5) if it is impractical to do so because—

- (a) exceptional personal circumstances affect the detained person or, where the detained person is a child, the child's parent during that period of time;
- (b) where the detained person is a child, the child's parent is absent from the area of the authority for a continuous period of 2 weeks or more during that period of time; or
- (c) the circumstances referred to in regulation 10(4)(a) apply.

(8) The time-limits for action by the home authority specified by this regulation may be varied by direction of the First-tier Tribunal.

### **Unopposed appeals**

**30.**—(1) This regulation applies where the detained person has appealed to the First-tier Tribunal and the home authority notifies the First-tier Tribunal that it does not oppose the appeal before it submits a response.

(2) The appeal is to be treated as if it was determined in favour of the appellant and the First-tier Tribunal is not required to make an order.

(3) Where the appeal is made under section 73(2)(a) of the Act, the home authority must, within 2 weeks of the date it notified the First-tier Tribunal under paragraph (1), notify the appropriate person that it must make a detained person's EHC needs assessment.

(4) If following a detained person's EHC needs assessment, the home authority—

- (a) decides that it is not necessary for special educational provision to be made for the detained person in accordance with an EHC plan, the home authority must notify the appropriate person of its decision, giving reasons for it as soon as practicable, and in any event within 10 weeks of the date it notified the First-tier Tribunal under paragraph (1), or
- (b) decides that it is necessary for special educational provision to be made for the detained person in accordance with an EHC plan, it must send the finalised plan to the appropriate person under regulation 14(2) and those specified in regulation 13(2) as soon as practicable and in any event within 14 weeks of the date it notified the First-tier Tribunal under paragraph (1).

(5) Where the appeal is made under section 73(2)(b) of the Act, the home authority must—

- (a) issue a draft EHC plan within 5 weeks of the date it notified the First-tier Tribunal under paragraph (1), and

- (b) send a copy of the finalised EHC plan to the appropriate person under regulation 14(2) and those specified in regulation 13(2) within 11 weeks of the date it notified the First-tier Tribunal under paragraph (1).
- (6) Where the appeal is made under section 73(2)(c) of the Act, the home authority must issue the amended EHC plan within 2 weeks of the date it notified the First-tier Tribunal under paragraph (1).
- (7) The home authority need not comply with the time limits specified in paragraphs (4) or (5) if it is impractical to do so because—
  - (a) exceptional personal circumstances affect the detained person or, where the detained person is a child, the child’s parent during the relevant period,
  - (b) where the detained person is a child, the child’s parent is absent from the area of the home authority for a continuous period of not less than 2 weeks during the relevant period, or
  - (c) the circumstances referred to in regulation 10(4)(a) apply.

## PART 5

### *Appropriate persons and detained persons lacking capacity*

#### **Where a child’s parent lacks capacity**

**31.**—(1) If the appropriate person is the child’s parent and the parent lacks capacity at the relevant time, references in—

- (a) Part 3 of the Act, and
- (b) these Regulations,

to the appropriate person are to be read as references to a representative of the parent.

(2) If the child’s parent lacks capacity at the relevant time references to a child’s parent in these regulations, except the reference in regulation 6(1)(b)(iv), are to be read as references to a representative of the parent.

#### **Where a young person lacks capacity**

**32.**—(1) If the appropriate person is a young person and the young person lacks capacity at the relevant time, references in—

- (a) Part 3 of the Act, and
- (b) these Regulations

to the appropriate person are to be read as references to the alternative person.

(2) If the detained person is a young person and the young person lacks capacity at the relevant time—

- (a) references to a detained person in the regulations listed in Part 1 of the Schedule are to be read as references to both the detained person and the alternative person, and
  - (b) references to a detained person in the regulation listed in Part 2 of the Schedule are to be read as references to the alternative person instead of the detained person.
- (3) For the purposes of this regulation, “the alternative person” means—
- (a) a representative of the detained person;
  - (b) the detained person’s parent, where the detained person does not have a representative;



- (c) a representative of the detained person's parent, where the detained person's parent also lacks capacity at the relevant time and the young person does not have a representative.

### **Mental Capacity Act 2005**

**33.** Regulations 31 and 32 have effect in spite of section 27(1)(g) of the Mental Capacity Act 2005<sup>(19)</sup>.

26th January 2015

*Edward Timpson*  
Parliamentary Under Secretary of State  
Department for Education

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<sup>(19)</sup> 2005 c.9. Section 27(1)(g) does not permit decisions discharging parental responsibilities in matters not relating to a child's property to be made on a person's behalf.

## SCHEDULE

Regulation 32(2)

Regulation 32(2)(a)

### PART 1

The regulations referred to in regulation 32(2)(a) are—

- regulation 5(4)(b) (first reference);
- regulation 7(a) (first reference), (b) (first reference) and (d) (first reference);
- regulation 8(2)(a) (first reference);
- regulation 9 (second reference);
- regulation 10(4)(b) (first reference);
- regulation 12(1)(a) (first reference);
- regulation 29(7)(a) (first reference);
- regulation 30(7)(a) (first reference).

Regulation 32(2)(b)

### PART 2

The regulation referred to in regulation 32(2)(b) is—

- regulation 17(3) (second reference).

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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).